

OAK CREEK ADDITION

A MASTER PLANNED RESIDENTIAL AND RECREATIONAL SUBDIVISION

DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS

This **DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS**, hereinafter referred to as the "**Declaration**," is made on October 22, 2015 by Tyler Oak Creek Development, LLC, a Texas limited liability company, hereinafter referred to as "**Declarant**."

WITNESSETH:

WHEREAS, Declarant owns the real property described on Exhibit "A," which is attached hereto and incorporated herein for all purposes, same being the same real property described in a Deed from Lenard R. McMillin to Tyler Oak Creek Development, LLC dated June 20, 2014 and recorded under Clerk's File No. 2014-24651 in the Official Public Records of Smith County, Texas (the "**Property**");

WHEREAS, in order to enable Declarant to implement a general plan of development and accomplish the development of the Property as a residential development of high quality and standards in a consistent manner with continuity and to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property to the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth herein collectively called the "**Covenants**;"

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the Covenants, which shall be deemed as covenants running with the land and imposed upon and intended to benefit and burden each Lot, hereinafter defined.

ARTICLE I - DEFINITIONS

1.01. Definitions. The definitions of certain words, phrases or terms used in this Declaration are set forth on Exhibit "B," which is attached hereto and incorporated herein for all purposes.

ARTICLE II - COVENANTS BINDING ON PROPERTY AND OWNERS

2.01 Property Bound. From and after the date of recordation of this Declaration, the Property and all of the Lots shall be subject to the Covenants, and the Covenants shall run with, be for the benefit of, bind and burden the Property and each Lot.

2.02 Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and inure to the benefit of the Declarant, each Owner, and the heirs, executors, administrators, personal representatives, successors and assigns of the Declarant and each Owner, whether or not so provided or otherwise mentioned in the Deed. Each Owner, his heirs, executors, administrators, personal representatives, successors and assigns, expressly agrees to pay, and to be personally liable for, the assessments provided for hereunder, and to be bound by all of the Covenants herein set forth.

2.03 General. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City of Tyler, Texas, by Smith County, Texas, or by other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. **IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS**

RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL. All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided.

ARTICLE III - ARCHITECTURAL CONTROL

3.01 Reservation and Assignment of Architectural Control. The Declarant, desiring (i) to provide for the preservation of the values and amenities in and upon the Property and each Lot and (ii) to subject the Property and each Lot to the reservation of architectural control hereinafter expressed for the purpose of implementing a general plan of development for the Property to insure the creation of a high quality, architecturally harmonious subdivision, which general plan of development and reservation of architectural control is for the benefit of the Property and each Lot, or any part thereof, and each Owner, as well as for the benefit of the Declarant as developer of the Property, hereby reserves the right and all rights to approve or disapprove as to:

- A. compliance with any specific restrictions imposed by Declarant, the Architectural Control Committee, or anyone acting on behalf of either the Declarant or the Architectural Control Committee, with respect to a Lot, the Lots, and the Property and/or any part thereof;
- B. without limitation, harmony of external design, adequacy of structural design, location of improvements, allowing and location of exterior lighting, building and landscaping setbacks from property lines, playground equipment, recreational equipment, athletic equipment, basketball goals, swimming pools, spas, hot tubs, square footage of improvements, driveways, fences, walls, retaining walls and landscaping in relation to surrounding structures and topography which are now or hereafter may be existing or proposed, including, but not by way of limitation, architectural designs, setbacks, landscaping, color schemes, types and quality of construction materials, quality of workmanship, any and all subdivisions, resubdivisions (where permitted), exterior additions to, changes in, construction, paving, alteration or excavation of the Property or of any Lot or any part thereof (including, but not limited to the trees now located or to be located thereon) and any and all Dwellings, structures and other improvements located thereon, either permanent or temporary, including without limitation, additions to, changes in, or alterations of grade, landscaping, roadways, walkways, signs, exterior lights, walls, fences, buildings, or other structures or improvements of any type or nature located thereon which any person or entity, including without limitation, governmental and quasi-governmental subdivisions or agencies, seeks to commence, erect, construct, place or maintain upon any Lot, or any part thereof.

3.02 Appointment. Until the right to appoint the members of the Architectural Control Committee and the right to change the number of members comprising the Architectural Control Committee is assigned by the Declarant to the Association, the Declarant shall have the sole and exclusive right to (i) appoint the members of the Architectural Control Committee and (ii) change the number of members comprising the Architectural Control Committee. ~~The initial number of members comprising the Architectural Control Committee shall be three (3) and the initial members of the Architectural Control Committee shall be J. P. Davis, Lenard R. McMillin and Steven F. Thornton.~~ The persons constituting the members of the Architectural Control Committee and the number of members constituting the Architectural Control Committee may be changed or modified by the Declarant at any time by the filing of a Designation

of Appointment in the Official Public Records of Smith County, Texas. Upon the assignment of right to appoint the members of the Architectural Control Committee and the right to change the number of members comprising the Architectural Control Committee by the Declarant to the Association, the Association shall then have the sole and exclusive right to (i) appoint the members of the Architectural Control Committee and (ii) change the number of members comprising the Architectural Control Committee.

3.03 Construction and Other Approval Requests. All requests for approval of any of the items set forth in this Article III shall initially be submitted in writing to the **Architectural Control Committee, Oak Creek Addition, Unit 2, at 2203 Oak Alley, Suite 3, Tyler, Texas 75703**, or at such other address as may from time to time be designated by the Architectural Control Committee, and such request for approval shall be accompanied by complete and specific plans and specifications showing the nature, kind, shape, elevations, height, materials, color, location, landscaping, and other material attributes of the Dwelling Unit and other Permanent Improvements, additions, changes, alterations or excavation of a Lot or any part thereof. The Architectural Control Committee shall have no duty to exercise the power of approval or disapproval hereby reserved. The Architectural Control Committee shall have the power and authority to charge an application fee to be submitted with all requests for approval of any and all items as required in this Article III.

3.04 Designation of Power of Approval. With respect to each Lot, or any part thereof, the Declarant does herein and hereby delegate the power of approval and disapproval, reserved in this Declaration to the Architectural Control Committee. This delegation of the power of approval and disapproval may be rescinded at any time by the Declarant by the filing of an instrument so stating such act of rescission in the Official Public Records of Smith County, Texas. As long as this delegation of the power of approval and disapproval is in effect, any person or entity owning any interest in any Lot, or any part thereof (where permitted), shall be required to deal with the Architectural Control Committee, and not the Declarant, and the Declarant shall have no responsibility or liability of any nature whatsoever for the actions of the Architectural Control Committee.

3.05 Prior Approval. No dwelling, building, garage, storage building, fence, wall, sign, exterior lighting, pole, antenna, television or satellite disc or dish, driveway, parking lot, sidewalk, other walkway, mailbox, athletic equipment, recreational equipment, playground equipment, basketball goals, swimming pool, spa, hot tub, other structure, equipment or apparatus or any nature whatsoever, either permanent or temporary, or landscaping shall be commenced, erected, constructed, placed or maintained upon any Lot, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, roadways, and walkways, be made, until the plans and specifications showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted in writing to and approved in writing by the Architectural Control Committee, in its sole and exclusive discretion, as to (i) compliance with the Covenants herein contained, and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not limited to, architectural designs, setbacks, landscaping, color schemes and construction materials. The Architectural Control Committee shall have the right to promulgate a form for submission of such items to the Architectural Control Committee, and upon such promulgation, all Owners shall be required to use the form for all such submissions. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been properly submitted to the Architectural Control Committee, approval will not be required, and the requirements for approval set forth in this Article shall be deemed to have been fully met and performed. Non-exercise of the powers hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in any other or different instances. Likewise, approval of anyone set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to the Architectural Control Committee, the Architectural Control Committee and the individual members of the Architectural Control Committee shall not be liable for the improper enforcement or failure to exercise any of the powers reserved and delegated unto said Architectural Control Committee pursuant to this Declaration. The fact that some type of structure or improvement may be mentioned in this Declaration is not in any manner to be construed as a statement that such type of structure or improvement will be allowed on any Lot in the Subdivision, as the final approval or disapproval for any type of structure or improvement on any Lot shall is expressly vested solely in the Architectural Control Committee to be exercised at its sole discretion.

3.06 No Liability. In no event shall any approval obtained from the Architectural Control Committee pursuant to the terms of this Declaration be in any manner deemed to be a representation of any nature regarding the structural integrity or safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations, nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval. No member of the Architectural Control Committee shall at any time have any liability to any Owner, Member or other person or entity for any decision(s) that are made by the Architectural Control Committee as long as such decision(s) are made by the decision maker without willful and intentional misconduct. Any and all errors or omissions from the plans submitted to the Architectural Control Committee shall be the sole responsibility of the Owner of the Lot to which the plans and improvements relate, and the Architectural Control Committee, and each member thereof, shall have no obligation to check the plans for errors or omissions or to check such plans for compliance with this Declaration, zoning ordinances, laws, building lines, easements or rights-of-way, or any other issue.

3.07 Restriction on Commencement of Construction. No construction nor pre-construction (site clearing, tree cutting or trimming, dirt removal, etc.) work of any type, kind or nature may be commenced on any Lot unless and until the Owner has received the written approval of the Architectural Control Committee as required by this Declaration.

3.08 Finality of Determinations. The authority granted by the Declarant to the Architectural Control Committee in this Declaration has intentionally been very broad and all encompassing. Therefore, no decision of the Architectural Control Committee may in any manner be avoided, challenged, reversed, rendered, modified, changed or nullified in any manner by any person, tribunal, court or other entity, except by the Architectural Control Committee itself, as long as the decision of the Architectural Control Committee was made without willful and intentional misconduct on the part of any member of the Architectural Control Committee, even if the decision of the Architectural Control Committee may seem to some as arbitrary.

ARTICLE IV - GENERAL RESTRICTIONS

4.01 Single-Family Residential Purposes. Except for the 10.00 acre, more or less, tract or parcel of land described on Exhibit "B," which is attached hereto and incorporated herein for all purposes, all Lots and all Permanent Improvements thereon shall be used for single-family residential purposes only and for no other purposes. No Lot in the Subdivision shall ever be used, even temporarily, for any commercial, business or professional purposes, as such use shall be determined solely by the Architectural Control Committee and whose determination shall not be subject to challenge, review or appeal, judicially or otherwise. Each Owner by accepting a Deed to a Lot hereby waives any and all rights to challenge, review or appeal the determination by the Architectural Control Committee of whether or not a use is for commercial, business or professional purposes. Notwithstanding anything in this Declaration to the contrary, the provisions of this Paragraph 4.01 shall not apply to the 10.00 acre tract or parcel of land described on Exhibit "B."

4.02 Types of Structures. Unless otherwise approved by the Architectural Control Committee, no Permanent Improvements shall be erected, constructed, altered or permitted to remain on any Lot other than one (1) detached single-family, residential dwelling. Each Dwelling Unit shall have a private garage as provided in Section 4.03, below. No used or previously constructed building or other structure shall be moved onto any Lot at any time. No structure of any kind of a temporary character nor any trailer, mobile home, manufactured home, trailer home, recreational vehicle, travel trailer, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either permanently or temporarily. Notwithstanding anything in this Declaration to the contrary, the provisions of this Paragraph 4.02 shall not apply to the 10.00 acre tract or parcel of land described on Exhibit "B."

4.03 Garage Construction. Plans and specifications for all garages to be constructed on any Lot shall be approved in writing by the Architectural Control Committee prior to the commencement of construction of the Dwelling Unit on such Lot. Garages may not at any time be closed in and occupied or used as part of a Dwelling Unit. Garages may not be used for other than storage and parking vehicles, boats, boat trailers and all terrain vehicles without the prior express written consent of the Architectural Control Committee. Any garage that faces or fronts any street in the Subdivision shall be located and constructed only as specifically allowed by the Architectural Control Committee in writing. The Architectural Control Committee shall have the right and power to require such setback of the garage on

any Lot as determined solely by the Architectural Control Committee in its sole discretion. All doors on any garage shall be the style, type of material, type of construction and type of workmanship as shall be required and approved in writing by the Architectural Control Committee. No garage doors may be installed for the garage on any Lot until the Owner has received the written approval for the garage doors. All garages shall be constructed to accommodate at least two (2) full size automobiles.

4.04 Setbacks. No Dwelling Unit or other Permanent Improvement shall be located on any Lot nearer to the front Lot line than twenty (20) feet. No Dwelling Unit or other Permanent Improvement shall be located on any Lot nearer to the back Lot line than fifteen (15) feet. Except as provided below, on the sides of each Lot, there will be a six (6) foot building setback line, and no Dwelling Unit or other Permanent Improvement shall be located on any Lot nearer to such side Lot line than six (6) feet. The Architectural Control Committee may, unilaterally without amendment to this Declaration, permit a change in any direction of the setback line on any Lot when in the sole opinion of the Architectural Control Committee it is determined to be advisable to permit such change; provided, however, that no such change shall be in any manner deemed to be a waiver of any of the Covenants nor shall any change in any manner be deemed or construed as a statement of precedent for the consideration of any other setback change. Notwithstanding the foregoing to the contrary:

- A. the side setback on the portion of Lots 1, 49 and 51 and facing Barton Creek Circle will be twelve (12) feet;
- B. the side setback on the portion of Lots 15 and 28 facing Simms Creek Court will be twelve (12) feet;
- C. the side setback on the portion of Lots 29, 34, 35 and 39 facing Tule Creek Lane will be twelve (12) feet; and
- D. the side setback on the portion of Lot 48 facing Shoal Creek Court will be twelve (12) feet;
- E. the side setback of the 102.73 foot long portion of Lot 49 facing Shoal Creek Court will be twelve (12) feet;
- F. the setback line for that portion of the 10.00 acre tract or parcel of land described on Exhibit "B" that has frontage on Oak Creek Boulevard and on Club Drive will be twenty-five (25) feet for all buildings and swimming pools and ten (10) feet for tennis courts; and
- G. there will be no setback line for the boundary lines of the 10.00 acre tract or parcel of land described on Exhibit "B" that do not have frontage on Oak Creek Boulevard or Club Drive.

4.05 Retaining Walls, Fences, Hedges and Other Screening Material. No retaining wall, fence, planter, hedge or other screening material may be erected or maintained on any Lot without the prior written consent of the Architectural Control Committee. No crossties or landscape timbers (or similar types of materials) may be used on any Lot for any purpose without the prior written consent of the Architectural Control Committee.

4.06 Construction Materials. All materials used in the construction of any Dwelling Unit or other Permanent Improvement must be approved in writing by the Architectural Control Committee before commencement of construction. Only new construction materials shall be used (except for brick if and as approved in advance by the Architectural Control Committee on a case by case basis).

4.07 Drilling Activity. At no time shall the drilling, usage or operation of any water well or any well or excavation for any oil, gas or other minerals be permitted on any Lot without the prior written consent of the Architectural Control Committee.

4.08 Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed or maintained on or in any Dwelling Unit, Permanent Improvement or elsewhere on the

Property. All approved air conditioning and heating units shall be screened as determined and required by the Architectural Control Committee.

4.09 Utilities. Each Dwelling Unit and other Permanent Improvements shall be required to be connected to the water distribution system and sanitary sewer collection system in the Subdivision in the easements adjacent to or within the respective property upon which the Dwelling Unit or other Permanent Improvement is located. Individual underground electrical service drops must be installed to each Dwelling Unit and other Permanent Improvement. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in applicable utility company rules, regulations and terms and conditions of service, as the same may be amended from time to time without notice. No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any of the Property, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.

4.10 On Street Parking. On street parking on the residential streets in the Subdivision shall be and is hereby restricted to only reasonable and normal residential deliveries, normal residential pick-ups, or short-time guests and invitees (short-time guests and invitees being those that may park their vehicle on a street in the Subdivision for not more than three (3) consecutive days. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling Unit, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked for any reason on the public streets in the Subdivision (i) any motor home, recreational vehicle, bus, tractor, trailer, tractor-trailer, travel trailer, utility trailer, all terrain vehicle, or bob-tail truck, nor (ii) any van in excess of three-quarters ($\frac{3}{4}$) of a ton, or truck of any type in excess of three-quarters ($\frac{3}{4}$) of a ton. Both the Architectural Control Committee and the Board, acting either jointly or independently, shall have the right and authority to determine if the On Street Parking privileges for the Subdivision are being violated or abused by any Owner, or any relative of any Owner, or anyone residing in a Dwelling Unit, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot. In the event that the Architectural Control Committee and/or the Board determines that the On Street Parking privileges are being violated or abused, the Architectural Control Committee and/or the Board shall have the power to levy a fine, in an amount to be determined by the Architectural Control Committee and/or the Board, as applicable,

4.11 Off Street Parking. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling Unit, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any residential Lot, park or allow to be parked for any reason on any Lot in the Subdivision any (i) boat, boat trailer, motor home, recreational vehicle, bus, tractor, trailer, tractor-trailer, travel trailer, utility trailer, all terrain vehicle, or bob-tail truck, or similar item, nor (ii) van in excess of three-quarters ($\frac{3}{4}$) of a ton, or truck of any type in excess of three-quarters ($\frac{3}{4}$) of a ton, unless parked completely inside the garage of a Dwelling Unit such that the door on the garage can be completely closed and such that such boat, boat trailer, motor home, recreational vehicle, bus, tractor, trailer, travel trailer, all terrain vehicle, bob-tail truck, van or other type of truck is completely concealed from being visible from all points outside the Dwelling Unit.

4.12 No Exterior Storage. No exterior storage of any items of any kind shall be permitted on the Property, except with prior written approval and authorization of the Architectural Control Committee. This provision shall apply, without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, boat trailers, recreational vehicles, motorcycles, all terrain vehicles and unmounted pick-up camper units. Additionally, and without limitation, no boat, boat trailer, recreational vehicle, motorcycle, all terrain vehicle, trailer, automobile, truck, or other vehicle or any type whatsoever, regardless of ownership, age, condition, type or appearance, shall remain on any Lot in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use, except pursuant to written approval of the Architectural Control Committee.

4.13 Garbage. No rubbish, garbage, or trash shall be placed or be allowed to remain at the exterior of any Dwelling Unit or other structure on any Lot or other Permanent Improvement, except in containers meeting the

specifications of the Declarant or the Architectural Control Committee. The placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the Architectural Control Committee. The placement of all such containers shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring property, Lots, Dwelling Units, pathways, and streets. Each Owner is responsible to provide that all rubbish, garbage, and trash shall be regularly removed from said Owner's Lot and rubbish, garbage, and trash shall not be allowed to accumulate. No trash container shall be allowed to be placed on or near the street for collection for a period in excess of twenty-four (24) hours.

4.14 Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on the Property except with the prior written consent of and in accordance with rules and regulations promulgated by the Architectural Control Committee or the Association; provided, however, that dogs, cats, birds, or fish may be kept thereon as household pets so long as, in the sole discretion of the Architectural Control Committee or the Board, such pet is not, or does not become, a nuisance, threat, or otherwise objectionable to other Owners. If, in the sole discretion of either the Architectural Control Committee or the Board, an Owner's pet or pets do become a nuisance or threat to any Owner or otherwise becomes objectionable to any Owner, the Architectural Control Committee or the Board shall give notice to the Owner of the pet or pets of such nuisance, threat or objection, and the Owner shall thereafter not be allowed to keep such pet or pets on the Owner's Lot or anywhere else upon the Property.

4.15 Re-subdivision. No Lot shall be further subdivided and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant, its successors or assigns, which approval may be withheld for any reason or for no reason. The 10.00 acre tract or parcel described on Exhibit "B" shall not be further subdivided without the prior written authorization and approval of the Declarant, its successors or assigns, which approval shall not be unreasonably withheld or delayed.

4.16 Burning and Incinerators. No open fires shall be permitted on the Property at any time, and no incinerators or like equipment shall be placed, allowed or maintained upon the Property. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues, grills or chimaneas.

4.17 Signs. Except as provided below with respect to the 10.00 acre tract or parcel of land described on Exhibit "B," no exterior signs or advertisements of any kind may be placed, allowed or maintained on any portion of the Property without prior approval and authorization of the Architectural Control Committee, except that mailboxes, residential nameplates, "For Sale" signs not to exceed five (5) square feet in size, and signs designating the contractor of the Dwelling Unit upon such Lot may be placed and maintained in conformity with such common specifications, including without limitation, reasonable restrictions as to size, as may be adopted from time to time by the Architectural Control Committee. Notwithstanding anything to contrary set forth above, these restrictions do not prohibit any Owner from erecting a sign in compliance with Section 202.009 of the Texas Property Code, as said Section may be hereafter amended. Any signage on the 10.00 acre tract or parcel of land described on Exhibit "B" may, with the prior written approval of the Declarant, be of any size, color, shape and other character so approved by the Declarant, such prior written approval not to be unreasonably withheld or delayed.

4.18 Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed anywhere on the Property unless previously approved in writing by all governmental authorities having jurisdiction with respect thereto and by the written approval of the Architectural Control Committee, which written approval may be withheld for any reason or for no reason. No outside toilets of any kind are permitted, except during the period of construction of a Dwelling Unit during which time chemically treated outside toilets shall be maintained in a manner subject to approval of the Architectural Control Committee. No installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source or onto any Lot.

4.19 Firearms and Weapons. No Lot or any other portion of the Property shall be used or permitted for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow or any other device capable of killing or injuring.

4.20 Diseases and Insects. No Owner shall permit any thing or condition to exist upon the Property which shall in the sole opinion of the Architectural Control Committee induce, breed or harbor plant disease or noxious insects.

4.21 Machinery, Fixtures and Equipment. No machinery, fixtures or equipment of any type, including without limitation, air conditioning or refrigeration equipment and clothes lines, shall be placed, allowed or maintained upon the ground on any Lot or otherwise upon the Property, except with prior written approval of the Architectural Control Committee (subject to all required approvals as to architectural control), and no such machinery, fixtures or equipment shall be placed, allowed, or maintained anywhere other than the ground (such as on the roof) except with prior written approval of the Architectural Control Committee.

4.22 Motor Vehicles. The operation of any and all motorized vehicles within or upon the Property or any part thereof shall be subject to such rules and regulations as shall from time to time be established by the Architectural Control Committee, the Association or the Declarant.

4.23 Misuse and Mismanagement. No part or portion of the Property shall be maintained or utilized in such manner as to (i) present an unsightly appearance, (ii) unreasonably offend the sensitivity of a reasonable person, or (iii) constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, any Owners or residents of the Subdivision, as determined in the sole opinion of the Architectural Control Committee. No noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted anywhere on the Property as determined in the sole opinion of the Architectural Control Committee.

4.24 Violation of Statutes, Ordinances, and Regulations. No Lot or other portion of the Property shall be maintained or utilized in such manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Texas, the County of Smith, the City of Tyler, or any other governmental or quasi-governmental agency or subdivision having jurisdiction over the Property.

4.25 Violation of Rules or of Covenants. No Lot or other portion of the Property shall be maintained or utilized in violation of (i) this Declaration, or (ii) the rules and regulations of the Declarant, the Architectural Control Committee, the Board or the Association, or (iii) any of the Covenants.

4.26 Renting Restricted. No part of any Dwelling Unit, guest quarters, garage or other structure of any type whatsoever on any Lot may be rented by any Owner or by any other person or entity at any time without the prior written consent of the Architectural Control Committee. In the event that there is a guest quarters on a Lot that is separate from the Dwelling Unit and that has been approved by the Architectural Control Committee, no person or persons may occupy such guest quarters for a period of more than seven (7) continuous days without the written consent of the Architectural Control Committee. In consenting to rental or to occupancy of a guest quarters for a period in excess of seven (7) continuous days, the Architectural Control Committee shall have the right to place such rules, regulations and restrictions on such rental or occupancy as the Architectural Control Committee shall in its sole discretion determine, which rules, regulations and restrictions may vary from situation to situation. No "For Rent" sign or "For Lease" sign or any other similar sign or signs of any nature whatsoever may be placed, allowed or permitted at any time on any Lot, without the prior written consent of the Architectural Control Committee.

4.27 No Commercial Activity or Use. No part or portion of the Property shall ever be used for any business, professional, commercial or industrial purposes of any kind whatsoever. No activity or use, whether or not for profit, shall be conducted on any part or portion of the Property which is not related to single family residential purposes. Nothing in this Declaration shall prohibit the Declarant from using a Dwelling Unit as a temporary sales office until the Declarant's last Lot in the Subdivision shall be sold and closed and all Dwelling Units being constructed by Declarant, or any of the Declarant's owners, have sold all Dwelling Units constructed or under construction owned by them. No business or commercial deliveries may be made to or taken from any Dwelling Unit at any time. Notwithstanding anything to the contrary in this Paragraph 4.27, the 10.00 acre tract or parcel of land described on Exhibit "B" may be used for the commercial purpose of operating a tennis and athletic facility.

4.28 Vehicle Parking. If the garage on a Lot is a two car garage, there must be at least one motor vehicle parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage. If the garage on a

Lot is a three car garage, there must be at least two motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage. If, and only if, the garage is fully parking the required number of vehicles inside the garage as set forth above, then an Owner may allow a vehicle to be parked overnight on the paved driveway of an Owner's Lot outside of the garage or on a street in the Subdivision in front of the Owner's Lot. Notwithstanding anything in Article XI of this Declaration to the contrary, both the Architectural Control Committee and the Association shall at any and all times have the right amend this Declaration to adopt vehicle parking rules or regulations that are more restrictive than the restrictions set forth in this Section 4.28 at the sole discretion of the Architectural Control Committee or the Association, and the more restrictive measure shall control in the event of any conflict between this Section 4.28 and any rule or regulation adopted by the Architectural Control Committee or the Association. Such amendment shall become effective upon the amendment being recorded in the Official Public Records of Smith County, Texas. The provisions of this Paragraph 4.28 shall not apply to the 10.00 acre tract or parcel of land described on Exhibit "B."

4.29 Lot Exterior Lighting. Upon being given notice by the Architectural Control Committee that any exterior lighting is objectionable, as determined by the Architectural Control Committee in its sole and exclusive discretion, the Owner of the Lot on which said exterior lighting is located shall immediately remove any such lighting or shield or redirect the exterior lighting in such a way that it is no longer objectionable to the Architectural Control Committee. Notwithstanding anything to the contrary in this Paragraph 4.29, the prohibition against objectionable lighting does not apply to the 10.00 tract or parcel of land described on Exhibit "B."

4.30 Minimum Floor Space. Each Dwelling Unit shall contain a minimum of two thousand two hundred (2,200) square feet of air-conditioned floor area, exclusive of all porches, garages, patios or breezeways.

4.31 Building Materials and Exterior Paint. The exterior walls (excluding doors and windows) of each Dwelling Unit constructed or placed on a Lot shall consist of at least seventy-five percent (75%) brick or brick veneer, or stone or stone veneer, stucco, or other material that is approved in writing by the Architectural Control Committee. The exterior of any fireplace chimney must be approved by the Architectural Control Committee. No material on the exterior of any Dwelling Unit or other Permanent Improvement except wood, hardiboard or stucco, shall be stained or painted without the prior written approval of the Architectural Control Committee. All exterior paint colors must be approved in writing by the Architectural Control Committee prior to commencement of any exterior painting on any Permanent Improvements.

4.32 Landscaping Requirements. The Architectural Control Committee shall have the right and power to require an Owner to install and properly maintain specific types of landscaping (trees, shrubs, plants, grass, flower bed and garden borders, etc.) as a condition to any approvals or consents required to be obtained by and Owner from the Architectural Control Committee pursuant to this Declaration. Failure of any Owner to properly install or maintain any landscaping required by the Architectural Control Committee shall be a violation of this Declaration.

4.33 Drainage.

- A. Prior to commencement of any dirt work, site work, tree removal or any other improvements of any nature to any Lot, the Owner of any part of portion of the Property shall be required to submit to the Architectural Control Committee for approval a written drainage plan, and no dirt work, site work, tree removal or other improvements to any part or portion of the Property shall be commenced until the Owner receives written approval of the drainage plan from the Architectural Control Committee.
- B. Each Permanent Improvement on a Lot shall have rain gutters and downspouts to catch and handle all water that shall run off of the roof of such Permanent Improvements. All rain gutters and downspouts shall be constructed such that they are directed into an underground drainage system that shall drain according to the drainage plan described in Paragraph 4.33(A), above. No gutter(s) may encroach over the boundary line of a Lot.
- C. Neither the Declarant, the Architectural Control Committee, the Board nor the Association, nor any of their respective successors or assigns, shall ever be liable for any loss of, or damage done to, any

Dwelling Unit, Permanent Improvements, shrubbery, grass, flowers, improvements, fences, sidewalks, driveways or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, drainage waters or other water or storm damage, each Owner by accepting a Deed to a Lot thereby releasing the Declarant and the Architectural Control Committee, the Board and the Association from any and all such loss or damage.

4.34 Antennas, Aerials and Satellite Dishes.

- A. Any antenna or satellite dish less than one meter in diameter shall be installed so as to not be visible from any street and shall be integrated and architecturally and aesthetically compatible with the Dwelling Unit and the surrounding landscape.
- B. All broadcast television antennas and all other antennas and aerials shall be located inside the attic of the residence constructed on the Lot.
- C. One (1) satellite dish over one meter in diameter may be permitted on a Lot only if it is not visible from any street or the ground level of an adjoining Lot and does not extend above the height of the lowest fence on the Lot.
- D. With respect to any antenna or satellite dish covered by Section 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time, the provisions of Section 4.35(A) and (B) shall be applicable only to the extent that the requirements hereof do not (i) preclude reception of an acceptable quality signal, (ii) unreasonably delay or prevent installation, maintenance and use of the antenna or satellite dish, or (iii) unreasonably increase the cost of installation, maintenance and use of the antenna or satellite dish.
- E. No ham radio antennae or other antennae of any type, size, height or nature whatsoever shall be allowed on the exterior of any Permanent Improvement without the prior written consent of the Architectural Control Committee.

4.35 Roofing Materials. No roofing materials may be installed on any Permanent Improvements without the prior written approval of the Architectural Control Committee. All roofing material installed on any Permanent Improvements shall be of at least a twenty-five (25) year warranty quality.

ARTICLE V - IMPROPER MAINTENANCE BY OWNER

5.01. Maintenance by Owner. In the event any portion of any Lot, any Dwelling Unit, or any Permanent Improvement is in the reasonable judgment of either the Architectural Control Committee or the Board so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to substantially detract from the appearance or quality of the surrounding Lots or other residential or commercial areas of the Property or the Oak Creek Addition, or (iii) as to in any manner fail to comply with any of these Covenants, the Architectural Control Committee or the Board, as applicable, may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver written notice thereof to the offending Owner that unless corrective action, such corrective action to be stated in the written notice to the Owner, is taken within ten (10) days from the date of such written notice to remedy the situation, the Architectural Control Committee or the Board will cause such action to be taken at such Owner's cost and expense to remedy the situation, including entry upon the Owner's Lot, if necessary. Any entry upon any part or portion of the Property by the Architectural Control Committee or the Board, or anyone at the direction of the Architectural Control Committee or the Board, shall not be deemed a trespass or other violation of any law, ordinance or statute. Each Owner grants to the Architectural Control Committee and the Board the right to enter upon the Owner's property at all reasonable times to fulfill the obligations under this Article V, and neither the Architectural Control Committee nor the Board nor anyone else entering upon any part or portion of the Property at their direction shall be subject to any liability therefor. If after the expiration of said ten (10) day period the requisite corrective action has not been completed to the reasonable satisfaction of the Architectural Control Committee or the Board, as applicable, the

Architectural Control Committee or the Board shall be and is hereby authorized and empowered by the violating Owner to cause such remedial action to be taken on the Owner's behalf, and all costs and expenses thereof and associated therewith, including but not limited to the costs of collection, court costs and reasonable attorneys' fees, such costs and expenses being herein collectively called the "**Maintenance Charges**," together with interest accruing thereon from the date or dates of the remedial action of such costs at the rate of (i) ten percent (10.0%) per annum or (ii) the highest rate allowed by law if the highest legal rate is less than ten percent (10.0%) per annum, from such date until paid, shall be charged and assessed against the offending Owner and the offending Owner's Lot. The Maintenance Charges, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VI hereof. Written notice of such assessment shall be delivered to the offending Owner by the Architectural Control Committee or the Board which notice shall specify the amount of such Maintenance Charges and shall demand payment thereof within thirty (30) days after the date of said notice. By acceptance of a Deed to any part or portion of the Property, every Owner agrees to and shall pay all Maintenance Charges that shall be charged or assessed against an Owner's Lot or other Property.

5.02. Subdivision Maintenance Charges. By accepting a Deed to any of the Property or any Lot, each Owner:

- A. agrees to and shall pay such Owner's pro rata share (such pro rata share to be determined initially by the Declarant and which later shall be determined by the Association) of the cost to landscape, irrigate, light and maintain the area(s) of land constructed as garden or landscaped areas in (i) the entryways into the Oak Creek Addition or (ii) the streets, street rights-of-way, or cul-de-sacs in the Subdivision (the "**Oak Creek Amenities**"); and
- B. agrees that the landscaping, irrigation, lighting and maintenance of Oak Creek Amenities will enhance the beauty and value of the Subdivision and the Owner's Lot.

The cost for landscaping, irrigation, lighting and maintenance of Oak Creek Amenities shall hereinafter be collectively called the "**Oak Creek Amenities Charges**." The Architectural Control Committee, or the Association, as the assignee of the Architectural Control Committee, in its sole and exclusive discretion, shall have the right to determine how Oak Creek Amenities will be landscaped, irrigated, lighted and maintained. At such intervals as shall be determined by the Architectural Control Committee, or the Association, as the assignee of the Architectural Control Committee, a statement will be sent to each Owner for the Owner's pro rata share of Oak Creek Amenities Charges, and each Owner agrees to and shall pay their pro rata share of Oak Creek Amenities Charges within thirty (30) days of the date shown on the statement. If the Owner's pro rata share is not paid in full within said thirty (30) day period, the Architectural Control Committee, or the Association, as the assignee of the Architectural Control Committee, shall be and is hereby authorized and empowered to take any and all action as shall be determined in the sole discretion of the Architectural Control Committee, or the Association, as the assignee of the Architectural Control Committee, to enforce the collection of the Owner's unpaid pro rata share of Oak Creek Amenities Charges, together with any court costs, reasonable attorney's fees and interest at the rate of twelve percent (12.0%) per annum from the due date of the payment until the date of payment in full. The Oak Creek Amenities Charges, together with all costs and interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VI, below. Notwithstanding anything to the contrary in this Paragraph 5.02, the provisions of this Paragraph 5.02 shall not apply to the 10.00 acre tract or parcel of land described on Exhibit "B" nor the owner thereof.

ARTICLE VI - IMPOSITION OF LIEN; OWNERS' AGREEMENT

6.01 Imposition of Assessment Lien and Priority of the Lien. THE OBLIGATION TO PAY MAINTENANCE, AMENITIES AND FENCE CHARGES IN THE MANNER PROVIDED FOR IN ARTICLE V, TO PAY FINES IN THE MANNER PROVIDED FOR IN ARTICLE VIII, TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN ARTICLE IX, AND TO PAY ANY OTHER CHARGES, OR ASSESSMENTS AS PROVIDED IN THIS DECLARATION, TOGETHER WITH INTEREST, COLLECTION COSTS, COURT COSTS, AND REASONABLE ATTORNEY'S FEES RELATED THERETO, SHALL BE AND IS HEREBY EXPRESSLY SECURED BY A CONTINUING CONTRACTUAL LIEN (THE "**ASSESSMENT LIEN**") AND CHARGE ON THE LOT OR OTHER PART OR PORTION OF THE PROPERTY COVERED BY SUCH MAINTENANCE CHARGES,

FINES, ASSESSMENTS OR OTHER CHARGES, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual Assessment Lien shall attach to the Lots and other part or portion of the Property as of the date of the recording of this Declaration in the Official Public Records of Smith County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in Section 7.03 of this Declaration. Either the Declarant, the Board or Association, as applicable, shall have the right to subordinate the aforesaid Assessment Lien to any other lien. The exercise of such right shall be entirely discretionary with the Board or the Association. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or in Section 7.03 hereof, all Lots and other parts and portions of the Property are conveyed to, and accepted and held by, the Owner thereof subject to the Assessment Lien provided for in this Section 6.01. To evidence any unpaid Assessments, the Declarant, the Architectural Control Committee or the Association, as applicable, may prepare a written notice of unpaid Assessments (the "Notice of Unpaid Assessments") setting forth the amount of the unpaid indebtedness, the reason for the indebtedness, the name of the Owner of and describing the affected Lot or other part or portion of the Property. Such notice shall be signed by the Declarant, the Architectural Control Committee, or one (1) of the officers of the Association and may, at the sole and exclusive discretion of the one giving the Notice, be recorded in the Official Public Records of Smith County, Texas. The Declarant, the Architectural Control Committee, or the Association, as applicable, shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT OR OTHER PROPERTY BY THE DECLARANT, THE ARCHITECTURAL CONTROL COMMITTEE, OR THE ASSOCIATION, AS APPLICABLE, SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH OF THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME. In addition, the Declarant, the Architectural Control Committee, or the Association, as applicable, may institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Declarant, the Architectural Control Committee, or the Association, as applicable, shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or nonjudicial, or in any suit or other action against, or pertaining to, the Owner, the Owner shall be required to pay all costs, expenses and reasonable attorneys' fees incurred by the foreclosing party. The Declarant, the Architectural Control Committee, and the Association shall have the right and power to buy the Lot or other Property at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same, subject to any statutory right of redemption.

6.02 Owner's Agreement. Each Owner, owning a part or portion of the Property or of any Lot, for said Owner, and the Owner's heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:

- A. that the Owner acquires the Owner's Property or Owner's Lot subject to the Maintenance Charges, Amenities Charges, Fines, Assessments, and the Assessment Lien; and
- B. that by accepting a Deed to the Owner's Property or Owner's Lot, the Owner is, shall be, and shall remain personally liable for any and all Maintenance Charges, Amenities Charges, Fines and Assessments assessed against the said Owner's Property or Owner's Lot while the said Owner is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed; and
- C. that by accepting a Deed to the Owner's Property or Owner's Lot and to secure the Owner's performance hereunder, the Owner conveys the Owner's Property and the Owner's Lot, and all portions thereof, to the Association, and its successors and assigns, in Trust, with a power of sale, and warrants and agrees to defend the title to the Lot, and all portions thereof. If the Owner pays all of the Fines, Maintenance Charges, Amenities Charges, and Assessments imposed against the Owner's Property or Owner's Lot as provided herein, this conveyance in trust shall have no further effect. If the Owner fails to pay any of the Fines, Maintenance Charges, Amenities Charges, or Assessments imposed against the Owner's Property or Owner's Lot, the Association in its capacity as trustee shall

have the right to nonjudicially foreclose upon the Assessment Lien granted herein in accordance with and upon compliance with the provisions of the Texas Property Code, as the same may be amended or supplemented from time to time.

6.03. Article VI Inapplicable to 10.00 Acre Tract or Parcel. Notwithstanding anything to the contrary in this Declaration, the provisions of Article VI of the Declaration shall not apply to the 10.00 acre tract or parcel of land described on Exhibit "B" nor the owner thereof.

ARTICLE VII - ENFORCEMENT OF DECLARATION AND OF ASSESSMENT LIEN

7.01 Enforcement By Declarant, Architectural Control Committee or Association. The Declarant, the Architectural Control Committee, the Board, or the Association, acting either jointly or independently, shall each have the right, jointly or severally, but not the obligation, to enforce the provisions of this Declaration, including, but not limited to, enforcement of the Assessment Lien. Any Owner shall also have the right to enforce this Declaration at the said Owner's sole cost and expense by any appropriate action, whether at law or in equity. Neither the Declarant, nor the Architectural Control Committee, nor the Board, nor the Association shall have any liability to any Owner or any other person or entity for failing or refusing to enforce this Declaration.

7.02 Enforcement Remedies. If the Owner of any Lot or other part or portion of the Property fails to pay any Fines, Maintenance Charges, Amenities Charges, or Assessments assessed, or to pay any interest accrued on any Fines, Maintenance Charges, Amenities Charges, or Assessments, or any and all costs (including court costs and attorneys' fees) incurred by either the Declarant, the Architectural Control Committee, the Board, or the Association, or any one of them, in collecting same, the Declarant, the Architectural Control Committee, the Board and/or the Association, as applicable, shall have the right to enforce the payment of the Fines, Maintenance Charges, Amenities Charges, and Assessments, and all interest accrued thereon and costs incurred by either the Declarant, the Architectural Control Committee, the Board, or the Association, or any one of them, in collecting same, and/or enforce the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Declarant, the Architectural Control Committee, the Board and the Association do not prejudice there exercise of any other remedy):

- A. bring an action at law and recover judgment against the Owner personally obligated to pay the Fines, Maintenance Charges, Amenities Charges, or Assessments; or
- B. enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in 51.002 of the Texas Property Code, as the same may be amended or supplemented from time to time. The Declarant, the Association, or any Owner may be the purchaser at any such foreclosure sale.

7.03 Priority of Texas Property Code. Notwithstanding the provisions of Section 8.02 and 8.03, above, all enforcement remedies for Maintenance Charges and Assessment Liens shall be conducted in accordance with the provisions of the Texas Property Code.

7.04 Application of Paragraph 7.01 to 10.00 Acre Tract or Parcel and its Owner. Notwithstanding anything to the contrary in this Declaration, (i) for as long as the Declarant remains Tyler Oak Creek Development, LLC, only the Declarant shall have the right under Paragraph 7.01, above, to enforce the provisions of this Declaration against the 10.00 acre tract or parcel of land described on Exhibit "B" and its owner, and (ii) when Tyler Oak Creek Development, LLC is no longer the Declarant, it shall take a two-thirds (2/3) vote of the Class A Members to initiate any enforcement of any of the provisions of this Declaration under Paragraph 7.01, above, against the 10.00 acre tract or parcel of land described on Exhibit "B" or its owner.

7.05 Application of Paragraphs 7.02 to 10.00 Acre Tract or Parcel and its Owner. Notwithstanding anything to the contrary in this Declaration, (i) for as long as the Declarant remains Tyler Oak Creek Development, LLC, only the Declarant shall have the right under Paragraph 7.02, above, to enforce any of the remedies provided for in this

Declaration against the 10.00 acre tract or parcel of land described on Exhibit "B" and its owner, and (ii) when Tyler Oak Creek Development, LLC is no longer the Declarant, it shall take a two-thirds (2/3) vote of the Class A Members to enforce any of the remedies provided for in this Declaration under Paragraph 7.02, above, against the 10.00 acre tract or parcel of land described on Exhibit "B" or its owner.

7.06 Subordination of the Assessment Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any valid first mortgage lien (purchase money or improvement loan) held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United States or any state within, the United States. Sale or transfer of any Lot or other part or portion of the Property shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of any such superior mortgage lien or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage lien foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or other Property free of the Assessment Lien for all Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens, or encumbrances (except lien for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take the Lot or other Property subject to all Maintenance Charges and Assessments, and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

ARTICLE VIII - RIGHTS AND POWERS

8.01 Right to Inspect. The Declarant, the Architectural Control Committee and the Association, jointly or severally, shall have the right to enter upon all Lots and other Property for the purpose of inspecting whether or not the Owner thereof is in compliance with the Declaration and Covenants, and each Owner grants the Declarant, the Architectural Control Committee and the Association an express easement and the right to enter upon the Owner's Lot or other Property for such inspection purposes. If during the course of construction of a Dwelling Unit or other Permanent Improvement upon a Lot or other Property, the Declarant, the Architectural Control Committee or the Association, jointly or severally, determines in its/their sole discretion that there is a violation of the Covenants, the Declarant, the Architectural Control Committee or the Association, as appropriate, may order a discontinuance of the construction of the Dwelling Unit or other Permanent Improvement until such time as corrective measures have been taken to assure full compliance with the Covenants, and an Owner's failure to immediately discontinue or cause the discontinuance of construction of the Dwelling Unit or other Permanent Improvement, upon demand by Declarant, the Architectural Control Committee or the Association, shall constitute a further violation of this Declaration by that Owner.

8.02 Fines. The Architectural Control Committee, the Association and/or the Board shall have the right and authority to levy reasonable fines against any Owner who (i) violates or abuses any of the Covenants, (ii) violates or abuses any other covenant, restriction, reservation, charge, servitude, assessment or conditions set forth in this Declaration, or (iii) violates any rule, condition or regulation enacted, passed or otherwise required or approved by the Declarant, the Architectural Control Committee, the Board or the Association. Such fines against any Owner shall be an Assessment, as herein defined.

- A. When the Architectural Control Committee, the Association or the Board shall levy a reasonable fine against any Owner or Owners, the Architectural Control Committee, the Association or the Board, as applicable, shall give written notice of such fine to the affected Owner or Owners at such Owner's or Owners' most recent address according to the records of the Association by United States mail, certified mail, return receipt requested, with proper postage affixed thereon. Upon receipt of such written notice, the Owner or Owners shall have ten (10) days to request in writing a private meeting with the Architectural Control Committee, the Association or Board, as applicable, to discuss the nature of the violation giving rise to the fine.
- B. (i) At the conclusion of the private meeting provided for in Section 8.02(A), above, or (ii) if no private meeting is requested by the Owner or Owners, the Architectural Control Committee, the Association

or the Board, as applicable, shall advise the Owner or Owners in writing of its final decision with respect to the violation. If the final decision results in a fine being levied against the Owner or Owners, the Owner or Owners shall pay such fine within ten (10) days of such final decision. If such fine is not fully paid within such ten-day period, the Architectural Control Committee, the Association or the Board may, subject to the provisions of the Texas Property Code, enforce such Assessment as provided in this Declaration.

ARTICLE IX- THE ASSOCIATION

9.01 Establishment. The Declarant shall have the right to form the Association by the filing of a Certificate of Formation of the Association with the Secretary of State of the State of Texas. The Association has not been established on the date of the filing of this Declaration. The Association may be formed after the date on which this Declaration is recorded.

9.02 By-Laws. By-Laws for the Association will be established and adopted by the Board of the Association.

9.03 Membership. Except as provided below with respect to the 10.00 acre tract or parcel of land described on Exhibit "B," the Declarant and each Owner of a Lot, including successive buyers, shall automatically and mandatorily become and be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every Member shall have a right at all reasonable times during regular business hours of the Association to inspect the books and records of the Association. The owner of the 10.00 acre tract or parcel of land described on Exhibit "B" is not required to be and shall not be a Member of the Association.

9.04 Voting Rights. The Association shall have two (2) classes of membership to be designated as Class A and Class B. Subject to the provisions of this Article and the Texas Property Code, Membership in the Association and the voting rights of a Member shall be as follows:

- A. Class A Members shall be all Owners with the exception of the Declarant. Subject to the provisions of the Texas Property Code to the contrary, a Class A Member shall be not entitled to vote until (i) the Declarant initially sells all of the Lots in the Subdivision, as now existing or as the Subdivision may be expanded as provided in this Declaration, owned by the Declarant, or (ii) the Declarant files a statement with the Association that the Declarant will allow the Class A Members to vote. Once the Declarant files the statement with the Association allowing Class A Members to vote, the statement may not be revoked by the Declarant. Each Class A Member shall, once the Class A Members are entitled to vote, be entitled to one (1) vote for each individual Lot owned. When more than one person owns an interest in an individual Lot, all such persons shall be members of the Association, however, the one (1) vote voting right for such Lot shall be exercised collectively as the owners of the particular Lot shall between or among themselves determine.
- B. The Declarant shall be the Class B Member for so long as it owns any Lot in the Subdivision, as now existing or as the Subdivision may be expanded as provided in this Declaration, which has not previously been conveyed by the Declarant to an Owner. When any Lot is initially sold by the Declarant, the Class B membership with respect to such Lot shall cease and automatically become and be a Class A membership. Unless the Declarant files the statement with the Association referred to in Section 9.04(A), above, allowing Class A Members to vote, for so long as the Declarant, owns any Class B membership, the Declarant shall be the only Member of the Association entitled to vote.
- C. Once the Class A Members are entitled to vote, whether by sale by the Declarant of all of the Declarant's Lots or by the Declarant's filing the statement with the Association allowing the Class A Members to vote, the Class B Member shall no longer be entitled to vote as a Class B Member.

9.05 Board of Directors. The Board shall be elected by the Members as provided in the By-Laws. The Board shall conduct the business of the Association, except when a membership vote is required by this Declaration, the Articles of Incorporation or the By-Laws.

9.06 POA Assessments. Each Lot is hereby and shall be subject to an annual Property Owners Association (“POA”) maintenance charge and assessment for the purpose of creating a fund to be used for the mutual benefit of all Lot Owners and the Subdivision. The amount of such annual maintenance charge shall be determined by the Board, and, except as is provided in Subsections 9.06(A) and 9.06(B), below, such annual maintenance charge shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. The annual maintenance charge may be used for, among other purposes, upkeep, repair and maintenance of the Subdivision. The Board shall also have the right to levy and charge to the Owners special assessments for such purposes that shall benefit the Subdivision as the Board, in its sole discretion, shall determine. Except as is provided in Subsections 9.06(A) and 9.06(B), below, the special assessments shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. If an Owner shall own more than one Lot, the Owner shall be responsible for paying the full annual maintenance charge and the full special assessment for each Lot owned by the Owner.

- A. Notwithstanding anything contained in this Declaration or elsewhere, neither (i) the Declarant nor (ii) the owner of the 10.00 acre tract or parcel of land described on Exhibit “B” for so long as such tract or parcel is used for the sole purposes of a tennis and athletic facility and for no other purposes, shall at any time be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment. If the said 10.00 acre tract or parcel ceases to be used solely for the purposes of a tennis and athletic facility and for no other purposes, then the 10.00 acre tract or parcel of land and the owner thereof shall be subject to payment of all annual maintenance charges and special assessments.
- B. Notwithstanding anything contained in this Declaration or elsewhere, a homebuilder who purchases a Lot directly from the Declarant on which the homebuilder shall construct a Dwelling Unit that shall be constructed to be sold to a third party shall not be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment for a period of one (1) year from the date that such homebuilder purchases a Lot from the Declarant, such purchase date being the date that the Deed is signed by the Declarant conveying the Lot to the homebuilder. If, prior to the expiration of the one-year exemption period, the homebuilder sells the Lot to any third party, the exemption shall automatically and without notice lapse, and the new Owner shall then be fully responsible for all annual maintenance charges, the Club Assessment and special assessments from and after the date of such sale as evidenced by the date of the Deed from the homebuilder to the Owner.

9.07. Tennis and Athletic Assessments. Each Lot is hereby subject to a mandatory club assessment (the “Club Assessment”) for the support of the tennis and athletic facility to be constructed on the 10.00 acre tract or parcel of land described on Exhibit “B” (the “Club”). Each Lot is additionally hereby subject to a mandatory Club membership initiation fee (the “Initiation Fee”).

- A. The initial amount of the Club Assessment shall be \$60.00 per month per Lot, commencing on the date that a non-builder Owner purchases a Lot; provided that the Club Assessment shall not include tennis membership privileges and benefits, but shall include all other Club privileges and benefits. The Club Assessment shall not be greater than \$60.00 for the year 2016 and may be changed beginning on January 1, 2017 and from time to time thereafter by the owner of the 10.00 acre tract or parcel described on Exhibit “B;” provided that the annual increase in the Club Assessment shall not be greater than (i) five percent (5.0%) per year or (ii) the increase in the Consumer Price Index, All Urban Consumers - South Region with January 1, 2016 as the base period. This restriction limitation regarding the owner’s right to increase the Club Assessment shall automatically and without notice terminate on the expiration of the 15-Year Term defined in Paragraph 9.07G), below.

B. The Initiation Fee shall be initially established and thereafter changed from time to time by the owner of the 10.00 acre tract or parcel described on Exhibit "B." The Initiation Fee shall be waived for the initial, non-builder purchaser of a residential owner of a Lot only. Each subsequent owner of a Lot shall be required to pay only the Club's lowest non-resident membership initiation fee in effect at the time of the conveyance of the Lot, such initiation fee not to exceed \$300.00 in the year 2016 plus an annual increase in each year thereafter of an amount not to exceed the greater of (i) five percent (5.0%) per year or (ii) the increase in the Consumer Price Index, All Urban Consumers - South Region with January 1, 2016 as the base period. This restriction limitation regarding the owner's right to increase the Initiation Fee shall automatically and without notice terminate on the expiration of the 15-Year Term defined in Paragraph 9.07G), below.

C. The Club Assessment and the Initiation Fee shall not be charged until (i) the construction of the Club is completed and open to its members and (ii) the earlier of (a) that date that a Lot is first inhabited for residential purposes or (b) six (6) months after the acquisition of a Lot by a non-builder owner even if the Dwelling Unit is not completed by such date.

D. The owner of a Lot may choose to include tennis membership and tennis benefits upon payment of the Club's additional cost of a tennis membership, including both the tennis membership initiation fee and additional monthly dues.

E. five (5) years after the date that the control of the POA in the Development is transferred from the Developer to the property owners of Lots in the Development, the members of the POA may terminate the requirement imposed upon each Lot for membership in the Club and Club Assessments by the affirmative vote of at least sixty percent (60.0%) of the voting members of the POA, which vote must be completed by no later than sixty (60) days after the fifth anniversary of the transfer of the control of the POA to its members:

1. If the requirement for Club membership and Club Assessments is not terminated as provided above, then another vote may not be allowed for termination of such requirement until five (5) years after the date of the failed vote.

2. If the POA votes to terminate the requirement for Club membership and Club Assessments, Lot owners may join the Club upon payment of the then current initiation fee and Club Assessments, provided that any non-builder initial purchaser of a Lot from the Developer or from the homebuilder who initially constructed the residence on a Lot shall be required to pay only one-half of the then current initiation fee, such one-half initiation fee not to exceed \$300.00 for a period ending five (5) years after the Closing Date.

F. Notwithstanding anything to the contrary set forth in this Paragraph 9.07, the Club Assessment will be waived in its entirety for the first ten (10) Lots sold to non-builder owners of Lots in the Development and the Club Assessment will be reduced by fifty percent (50.0%) for the next twenty (20) Lots sold to non-builder owners of Lots in the Development, provided that the waiver/reduction shall apply only to the original, non-builder owner of a Lot and all subsequent owners of such Lots shall be required to pay the resident initiation fees and Club Assessments then in effect.

G. Beginning on the date that this Declaration is recorded in the Official Public Records of Smith County, Texas and continuing for a period of fifteen (15) years thereafter (the "15-Year Term"), the Property shall be used for the sole purposes of a tennis and athletic facility and for no other purposes, provided, however, that once the Buyer's tennis and athletic facility has been finally completed according to the plans and specifications that have been approved in writing by Seller, the Buyer may use any portion of the Property that is not a part of the original tennis and athletic facility proper for any residential purpose(s). The tennis and athletic shall include at least the following: (i) a 10,000 square foot clubhouse with lobby, pro shop, group fitness area, cardio and strength training areas, men's and women's locker rooms, and a kid's area, (ii) outdoor recreational areas including twelve (12) lighted tennis courts, a junior Olympic swimming pool with lap lanes, a Kids pool and Splash Zone, and picnic and gathering areas. Following the expiration of the 15-Year Term, the owner of the 10.00 acre tract or parcel shall have the right to make any use of the 10.00 acre tract or parcel that is permitted

by or otherwise in compliance with the then current zoning and land use codes or ordinances of the City of Tyler, Texas or other governmental unit having jurisdiction over the 10.00 acre tract or parcel.

H. The 10.00 acre tract or parcel of land described on Exhibit "B will be completely exempt from the Club Assessment and any other POA dues and/or assessments for so long as the Property is used for a tennis and athletic facility.

9.08 Conflicts. The Association may make whatever rules, regulations and By-Laws it deems necessary or desirable to govern the Association and its Members; provided, however, that any conflict between the Association's rules, regulations and By-Laws and the provisions of this Declaration shall be controlled by and resolved in favor of this Declaration.

ARTICLE X - RESERVATIONS OF DECLARANT

10.01 Reservations. The following reservations are hereby made by Declarant:

- A. The utility easements shown on any Plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the benefit of Declarant to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone liens, television cable lines, security, gas, water, sanitary sewers, storm and sewers and any other utility or service which Declarant may find necessary or proper.
- B. Declarant reserves the right from time to time to make changes in the location, shape, and size of, and additions to, the easements described in Section 10.01(A), above, for the purpose of more efficiently or desirably installing utilities therein and thereon, and this right to make such changes is herein and hereby expressly transferred and assigned to Declarant.
- C. The title conveyed to any Lot or any part of the Property shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewers or sanitary sewers lines, poles, pipes, conduits, cable television lines or other appurtenances or facilities constructed by Declarant or public utility companies upon, under, along, across or through such utility easements; and the right (but not obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to Declarant, its successors and assigns.
- D. The right to sell, dedicate or lease the liens, utilities, appurtenances and other facilities described in Section 10.01(C), above, to any municipality, governmental agency (including any water control or utility district created under Article XVI, Section 59 of the Texas Constitution covering the Property as well as other lands), public service corporation or other party is hereby expressly reserved to Declarant.
- E. The Declarant, and its successors or assigns, shall not be liable for any damage caused or done by the Declarant, nor any of its agents or employees to any Lot, any Permanent Improvements, or to any shrubbery, trees, flowers or other property of any Owner situated on any Lot.
- F. The right to enter upon any Lot or Lots during installation of streets for the purpose of performing street excavation, construction, and paving is hereby reserved to Declarant, its successors and assigns. The Declarant, and its successors or assigns, shall not be liable for any damage done by The Declarant nor any of its agents or employees to shrubbery, trees, flowers or other property of the Owner which is necessitated by such street construction.

ARTICLE XI - TERMS; AMENDMENTS; TERMINATIONS

11.01 Term; Method of Termination. This Declaration and the Covenants shall be effective upon the date of recordation hereof and, as may be amended from time to time, shall continue in full force and effect to and including December 31, 2045. From and after December 31, 2045 and expressly subject to the provisions of the Texas Property Code which shall control in the event of any discrepancy between the Texas Property Code and this Declaration, this Declaration, as it may have been amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners of at least fifty-one percent (51.0%) of the Lots (there being only one vote per Lot which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes for termination at a meeting of the Owners held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

11.02 Amendments

- A. Except as expressly provided otherwise in Paragraph 11.02(B), below, until the Declarant has initially sold all of the Lots, including any additional Lots that may be added to the Subdivision by virtue of the Declarant's right to expand the Subdivision as provided in this Declaration, such sales being evidenced by the recording of a Deed from the Declarant to the initial buyer of a Lot, the Declarant shall have the sole right to unilaterally change or amend this Declaration at any time, in any manner, and for any reason or purpose as determined at the sole discretion of the Declarant. After all of said Lots have been initially sold by Declarant, this Declaration, subject to the provisions of the Texas Property Code which shall control in the event of any discrepancy between the Texas Property Code and this Declaration, may be amended or changed in whole or in part at any time only by the affirmative vote of the then Owners of at least fifty-one percent (51.0%) of the Lots (each Owner having one vote per Lot owned which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes to amend or change this Declaration at a special meeting of the Owners called pursuant to Section 11.03.
- B. Notwithstanding the provisions of Paragraph 11.02(A), above, and Paragraph 11.06, below, to the contrary, Paragraphs 4.01, 4.02, 4.04(F), 4.04(G), 4.17, 4.27, 4.28, 4.29, 5.02, 9.03, 9.06(A) and 9.07 of this Declaration shall not be amended or changed in any manner without the prior written consent of the owner of the 10.00 acre tract or parcel of land described on Exhibit "B."

11.03 Election Procedures. The affirmative votes required under Sections 11.01 and 11.02 hereof shall be obtained and evidenced by the requisite vote of the Owners present at a meeting of Owners duly called by at least fifteen percent (15.0%) of the Owners or by the Declarant pursuant to notice to all of the Owners on or prior to ten (10) days before the date of the meeting at which meeting the requisite percentage of Owners vote to so amend or terminate this Declaration. No proxy votes shall be allowed or valid. The notice of the meeting must set forth the proposal as to amendment of this Declaration and such affirmative vote of the requisite percentage of Owners must be evidenced by minutes of the meeting duly certified by the Owners who called the meeting or the Declarant. In any event, as long as the Declarant owns a Lot in the Subdivision, a copy of the minutes shall be delivered to the Declarant prior to any amendment or change becoming effective.

11.04 Recording Amendments. Upon the amendment or change of this Declaration (and/or the Covenants contained herein) as herein provided, and upon the other conditions set forth in Section 11.01 and Section 11.03 of this Article being satisfied, then each amendment shall be executed by the (i) the Declarant, its successors or assigns, or (ii) the Owners who voted in favor of the amendment or change, as applicable, placed in recordable form, and filed of record in the Official Public Records of Smith County, Texas, accompanied by a statement that either (i) the Declarant, or (ii) the requisite percentage of Owners, have voted to make such amendment to this Declaration.

11.05 Effect. Upon the filing of an amendment or change in accordance with Section 11.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

11.06 Other Right of Amendment Anything in this Article to the contrary notwithstanding and subject to the provisions of Paragraph 11.02(B), above, Declarant, its successors and assigns, reserves the right at any time prior to the initial sale of all of the Lots to amend all or any part of this Declaration to such an extent and with such language as shall be required by any federal, state, or local agency which requires such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of the Property or any portion thereon. Any such amendment shall be effected by the recordation, by Declarant, its successors or assigns, of a Certificate of Amendment signed by Declarant, its successors or assigns, with proper signature acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requiring the amendment and setting forth the amendatory language required by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's requirement for such an amendment, and such Certificate, when recorded, shall be binding upon the Property, or the affected portion thereof, and all persons or Owners having an interest in the same. Except as provided in Section 11.02 and Section 11.06 of this Declaration, Declarant shall not have any right to unilaterally amend this Declaration.

ARTICLE XII -RESERVATION OF RIGHT TO RESUBDIVIDE

Subject to the approval of any and all appropriate governmental agencies having jurisdiction over the Subdivision or any Lot, Declarant hereby reserves the right at any time while it is the Owner thereof to subdivide or resubdivide, as the case may be, and/or plat or replat, as the case may be, all or any portion of the Subdivision, the Property or of any Lot or Lots then owned by Declarant without the consent of any Owner.

ARTICLE XIII - RESERVATION OF RIGHT TO EXPAND SUBDIVISION

These Covenants and the Oak Creek Addition may, at the sole discretion of the Declarant, be expanded to include additional real property and future development or subdivision of additional real property by the Declarant, or its assigns, which are contiguous with any of the real property that has been platted as part of the Oak Creek Addition. The Covenants shall automatically become effective against and shall run withall of the land that is described on any Plat that is a part of or a Unit of the Oak Creek Addition, whether or not any additional documents are filed of record in the Official Public Records of Smith County, Texas. By accepting a Deed to a Lot, each Owner stipulates, acknowledges, covenants and agrees that additional real property may be made subject to this Declaration by the Declarant at the sole and exclusive discretion of the Declarant.

ARTICLE XIV - TEXAS PROPERTY CODE

It is the intent of the Declarant that this Declaration be in all respects consistent with the provisions of the Texas Property Code. Therefore, in the event of any conflict between this Declaration and the provisions of the Texas Property Code, the provisions of the Texas Property Code shall control.

ARTICLE XV-MISCELLANEOUS

15.01 Interpretation of the Covenants. Except for judicial construction, until the Association is incorporated, the Declarant shall have the exclusive right and power to construe and interpret the provisions of this Declaration. Once the Association is formed, the Board shall have the exclusive right and power to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a Court of competent jurisdiction, the Declarant's or the Board's construction or interpretation of the provisions hereof, as applicable, shall be final, conclusive, and binding as to all persons and property benefitted or bound by this Declaration and the provisions hereof.

15.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other, remaining provisions hereof, which remaining provisions shall be and remain in full force and effect.

15.03 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect

as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) if applicable, those of the issue of the Steven F. Thornton who are living at the time the period of perpetuities starts to run on the challenged interest.

15.04 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

15.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant, the Board or the Architectural Control Committee, as applicable, shall have the right to adopt rules and regulations with respect to all other aspects of the rights, activities and duties of the Declarant, the Board or the Architectural Control Committee, as applicable, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

15.06 Disclaimer of Representation. 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 Public Records of Smith County, Texas, neither the Declarant nor the Architectural Control Committee makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out.

15.07 Limitation of Liability. In the absence of willful and intentional misconduct attributable to (i) Declarant, its successors or assigns, (ii) the Architectural Control Committee (and any and all members thereof), or (iii) the Board (and any and all members thereof) neither the Declarant, nor its successors or assigns, nor the Architectural Control Committee (nor any member thereof), nor the Board (nor any member thereof) shall have any liability of any nature whatsoever arising out of or in any manner related to the performance or nonperformance of any of the rights and powers reserved unto Declarant, the Architectural Control Committee, the Board, or their respective heirs, executors, administrators, personal representatives, legal representatives, successors or assigns, pursuant to this Declaration.

15.08 Successors and Assigns. Any reference in this Declaration to Declarant shall include Declarant's successors and assigns.

15.09 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

15.10 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are 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.

15.11 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to each such person or entity at the address given by such person or entity to the party sending the notice or to the address of the Dwelling Unit or the office of such person or entity if no address has been given. Such address may be changed from time to time by notice in writing.

15.12 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property.

15.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions of this Declaration, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a

prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.

15.14 Suspension of the Covenants. The Declarant and the Architectural Control Committee shall and do have the right during the period of construction, development, and sale of the Lots in the Subdivision, to grant reasonable and specifically limited exemptions and waivers from the Covenants to Declarant and any other developer or contractor. Any such exemptions or waivers shall be granted only upon specific written request, itemizing the exemption or waiver requested, the location thereof, the need therefor, and the anticipated duration thereof; and any authorization and approval thereof shall be similarly itemized. No such exemption or waiver shall be broader in terms of activity, location, or time than is reasonably required.

15.15 Non-Waiver. Any failure or delay on the part of either the Declarant, the Architectural Control Committee, the Board, the Association, and/or any Owner (i) to exercise any right, remedy or duty under this Declaration, or (ii) to take any action to enforce the Covenants or the Declaration, with regard to anyone matter or situation or group of matters or situations in any manner covered by or arising out of the Covenants or Declaration shall not in any manner be deemed or construed to be a waiver of the same or any subsequent matter or situation or group of matters or situation arising hereunder. No forbearance of any type for any period of time by either the Declarant, the Architectural Control Committee, the Board, the Association, and/or any Owner shall be in any manner deemed or construed to be a waiver of any right, remedy or duty hereunder, but all such rights, remedies and duties shall continue in full force and effect as if no forbearance had occurred. All Owners by accepting a Deed to a Lot hereby expressly covenant, stipulate, acknowledge and agree that (i) he, she or it expressly waives the affirmative defense of waiver with respect to any violation of this Declaration, or any part hereof or covenant herein, and (ii) the affirmative defense of waiver as recognized under the laws of the State of Texas shall not be available to any Owner as a defense to the violation of this Declaration, or any part hereof or covenant herein.

15.16 Liberal Interpretation. This Declaration, and all of the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements, shall be liberally construed to effectuate the purposes of this Declaration.

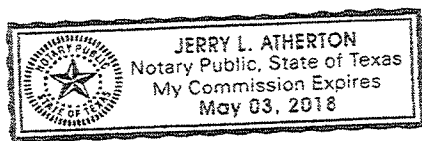
15.17 Consent or Approval Requirement. Whenever the consent or approval of the Declarant, the Architectural Control Committee, the Board or the Association is required under the terms of this Declaration, the Declarant, the Architectural Control Committee, the Board and the Association, as applicable, shall have the right to withhold such consent or approval for any reason or for no reason, unless expressly provided otherwise in this Declaration.

TYLER OAK CREEK DEVELOPMENT, LLC
a Texas limited liability company

BY: 
STEVEN F. THORNTON, Manager

STATE OF TEXAS §
COUNTY OF SMITH §

This instrument was acknowledged before me on October 22, 2015 by Steven F. Thornton, Manger of Oak Creek Development, LLC, a Texas limited liability company, on behalf of said company.




NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT 'A'

Metas and Bounds Description
128.694 Acres

All that certain tract or parcel of land situated in the Don Thomas Quevedo Seven League Grant, Abstract 18, Section 4, Smith County, Texas, being all of that certain Tract One, called 64 acres, and that certain Tract Two, called 64 acres, described in a Special Warranty Deed from Dorothy M. Loggins, Trustee, to Loggins Freestone, Ltd., dated December 23, 1897, and recorded in Volume 4178, Page 81 of the Official Public Records of Smith County, Texas, and being more particularly described by metas and bounds as follows:

TRACT ONE (Northern):

BEGINNING at a metal fish plate found for the northwest corner of said called 64 acre Tract One, same being in the pavement of County Road 178 (Junestown Road);

THENCE, North 86°21'42" East, a distance of 3,885.17 feet to a 1/2" iron rod set for the northeast corner of said 64 acre tract, same being in the east margin of County Road 164 (Meher Road), same being in the west right-of-way line of that certain tract described in a Deed from East Texas Rails to Trails to the State of Texas, recorded in Volume 4002, Page 269 of the Official Public Records of Smith County;

THENCE, South 05°57'17" East, with said west right-of-way line, a distance of 338.18 feet to a 1/2" iron rod set for a corner and the beginning of a curve to the right having a radius of 5,835.48 feet;

THENCE, continuing with said west right-of-way line, and along said curve to the right having a radius of 5,835.48 feet, a central angle of 03°53'46", and a chord bearing and distance of South 04°58'22" East, 383.14 feet, an arc length of 383.22 feet to a 1/2" iron rod set for the southeast corner of said 64 acre tract;

THENCE, South 88°21'42" West, a distance of 3,885.88 feet to a steel spindle set for the southwest corner of said 64 acre tract, same being in said pavement of County Road 178;

THENCE, North 01°23'40" West, with the west line of said 64 acre tract, a distance of 719.72 feet to the POINT OF BEGINNING and containing 63.830 acres of land.

TRACT TWO (Southern):

BEGINNING at a steel spindle set for the northwest corner of said called 64 acre Tract Two, same being in the pavement of County Road 178 (Junestown Road);

THENCE, North 88°21'42" East, a distance of 3,885.88 feet to a 1/2" iron rod set for the northeast corner of said 64 acre tract, same being in the west right-of-way line of that certain tract described in a Deed from East Texas Rails to Trails to the State of Texas, recorded in Volume 4002, Page 269 of said Official Public Records, same being in a curve to the right having a radius of 5,835.48 feet;

THENCE, continuing with said west right-of-way line, and along said curve to the right having a radius of 5,835.48 feet, a central angle of 00°18'10", and a chord bearing and distance of South 02°52'24" East, 28.78 feet, an arc length of 28.78 feet to a 1/2" iron rod set for a corner and the end of said curve;

THENCE, South 02°46'18" East, continuing with said west right-of-way line, a distance of 689.23 feet to a 1/2" iron rod set for the southeast corner of the herein described tract;

THENCE, South 88°48'53" West, a distance of 382.80 feet to a 1/2" iron rod found for a corner in the south line of said 64 acre tract;

THENCE, South 88°38'15" West, a distance of 2,713.82 feet to a 1/2" iron rod found for a corner in the south line of said 64 acre tract;

THENCE, South 88°37'08" West, a distance of 163.01 feet to a 1/2" iron rod found for a corner in said south line of said 64 acre tract;

THENCE, South 88°46'48" West, a distance of 458.82 feet to a steel rod found for a corner in said south line of said 64 acre tract;

THENCE, South 88°46'51" West, a distance of 214.13 feet to a steel spindle set for the southwest corner of said 64 acre tract, same being in said pavement of County Road 178;

THENCE, North 01°23'40" West, with the west line of said 64 acre tract, a distance of 719.72 feet to the POINT OF BEGINNING and containing 65.284 acres of land.

EXHIBIT 'A'

TRACT THREE: **Metes and Bounds Description**
 0.885 Acre Tract
 Part of Lot 4, Boris Park Unit One

All that certain tract or parcel of land situated in the Don Thomas Guevado Seven League Grant, Abstract 18, Section 4, Smith County, Texas, being out of and a part of Lot 4, BORIS PARK UNIT ONE, according to the Final Plat thereof recorded in Cabinet 'D', Slide 338-B, of the Plat 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 northwest corner of said Lot 4 of Boris Park Unit One;

THENCE, South 69°49'15" East, a distance of 467.90 feet to a 1/2" iron rod set for the northeast corner of the herein described tract, same being in the east line of said Lot 4, same being in the west right-of-way line of F.M. Road 2493 (Old Jacksonville Highway), same being South 19°33'09" West, a distance of 170.94 feet from a 1/2" iron rod found for the northeast corner of said Lot 4, for reference;

THENCE, South 19°33'09" West, with said east line of said Lot 4, same being said west right-of-way line of F.M. Road 2493 (and the bearing basis of this survey as related to the record bearing), a distance of 78.00 feet to a 1/2" iron rod set for the southeast corner of the herein described tract;

THENCE, North 69°52'22" West, a distance of 62.48 feet to a 1/2" iron rod set for a corner;

THENCE, North 48°52'29" West, a distance of 50.51 feet to a 1/2" iron rod set for a corner;

THENCE, North 69°49'15" West, a distance of 338.65 feet to a 1/2" iron rod set for the southwest corner of the herein described tract, same being in the west line of said Lot 4;

THENCE, North 00°20'14" West, with said west line of said Lot 4, a distance of 64.08 feet to the **POINT OF BEGINNING** and containing 0.885 acre of land.

EXHIBIT "B"
Metes and Bounds Description
10.000 Acres

All that certain tract or parcel of land situated in the Don Thomas Quevado Seven League Grant, Abstract 18, Section 4, Smith County, Texas, being a part of that certain Tract One, called 63.830 acres, and that certain Tract Two, called 65.264 acres, described in a Warranty Deed with Vendor's Lien from Lenard R. McMillin to Tyler Oak Creek Development, LLC, dated June 20, 2014, and recorded in C.F.N. 2014-00024651 of the Official Public Records of Smith County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod set for the southeast corner of the herein described tract, same being in the north right-of-way line of Oak Creek Boulevard, same being North 71°20'52" West, a distance of 28.49 feet, and North 67°05'11" West, a distance of 520.16 feet from the northeast corner of the Oak Creek Boulevard right-of-way as shown on the Final Plat of Oak Creek Addition Unit 1, a subdivision of record in Cabinet "E," Slide 339-B of the Plat Records of Smith County; said beginning point being in a curve to the right having a radius of 3,500.00 feet;

THENCE, with said north right-of-way line of said Oak Creek Boulevard, and along said curve to the right having a radius of 3,500.00 feet, a central angle of 02°58'25", and a chord bearing and distance of North 61°20'17" West, 181.63 feet, an arc length of 181.65 feet to a ½" iron rod set for a corner and the end of said curve;

THENCE, North 59°51'05" West, with the revised north right-of-way line of said Oak Creek Boulevard, a distance of 403.56 feet to a ½" iron rod set for a corner, same being the beginning of a curve to the left having a radius of 1,826.20 feet;

THENCE, continuing with said revised north right-of-way line of said Oak Creek Boulevard, and along said curve to the left having a radius of 1,826.20 feet, a central angle of 15°30'58", and a chord bearing and distance of North 67°36'33" West, 493.04 feet, an arc length of 494.54 feet to a ½" iron rod set for a corner and the end of said curve, same being the beginning of a curve to the right having a radius of 220.00 feet;

THENCE, continuing with said revised north right-of-way line of said Oak Creek Boulevard, and along said curve to the right having a radius of 220.00 feet, a central angle of 27°21'44", and a chord bearing and distance of North 61°41'10" West, 104.07 feet, an arc length of 105.06 feet to a ½" iron rod set for the southwest corner of the herein described tract and the end of said curve, same being in the east line of a proposed street (Club Drive), same being the beginning of a curve to the left having a radius of 226.50 feet;

THENCE, with said east line of said proposed street, and along said curve to the left having a radius of 226.50 feet, a central angle of 44°09'22", and a chord bearing and distance of North 20°17'28" East, 170.270 feet, an arc length of 174.56 feet to a ½" iron rod set for a corner and the end of said curve;

THENCE, North 01°47'13" West, continuing with said east line of said proposed street, a distance of 48.37 feet to a ½" iron rod set for a corner;

THENCE, North 10°59'20" East, continuing with said east line of said proposed street, a distance of 56.53 feet to a ½" iron rod set for a corner;

THENCE, North 01°47'13" West, continuing with said east line of said proposed street, a distance of 106.51 feet to a ½" iron rod set for the northwest corner of the herein described tract, same being in the south line of a proposed street (West Cumberland Road Extension);

THENCE, North 88°12'49" East, with said south line of said proposed street, a distance of 571.40 feet to a ½" iron rod set for the northeast corner of the herein described tract;

THENCE, South 23°42'09" East, a distance of 33.80 feet to a ½" iron rod set for a corner;

Exhibit "B" - Page 2

THENCE, South 02°02'35" East, a distance of 165.70 feet to a ½" iron rod set for a corner;

THENCE, South 14°03'20" East, a distance of 162.86 feet to a ½" iron rod set for a corner;

THENCE, South 35°27'06" East, a distance of 125.36 feet to a ½" iron rod set for a corner;

THENCE, South 49°55'35" East, a distance of 290.09 feet to a ½" iron rod set for a corner;

THENCE, North 85°28'04" East, a distance of 67.96 feet to a ½" iron rod set for a corner;

THENCE, South 00°22'04" West, a distance of 276.76 feet to the POINT OF BEGINNING and containing 10.000 acres of land.

The above description was prepared from an actual survey made on the ground under my direction and supervision during the Month of August, 2015. (Reference is hereby made to the plat of survey, Job No. 15-193. Bearings are based on the Texas Coordinate System, North Central Zone, NAD83 Map Datum)

Robert Matush – August 27, 2015
Registered Professional Land Surveyor
Texas Registration No. 3683

EXHIBIT "C"

DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

- A. **"Architectural Control Committee"** shall mean the Declarant or such other person, persons or entity who shall be named to serve by Declarant, either in conjunction with, separate from, or as the successor to Declarant, provided, however, that such change shall not be effective for purposes of these Covenants until a statement of such change has been duly recorded by the Declarant, or Declarant's successors or assigns, in the Official Public Records of Smith County, Texas. The Declarant, or Declarant's successors or assigns, shall have the right at any time to change the number of members comprising the Architectural Control Committee and the persons forming the membership of the Architectural Control Committee at the sole discretion of said Declarant, or Declarant's successors or assigns, by the filing for record in the Official Public Records of Smith County, Texas of a statement to such effect as provided herein.
- B. **"Assessment"** means any general or special assessment at any time imposed by the Association as provided in Article IX of the Declaration.
- C. **"Assessment Lien"** shall mean the lien created and imposed against each Lot by Article VI of this Declaration.
- D. **"Association"** means The Tyler Oak Creek POA, Inc., a Texas non-profit corporation, its successors and assigns, to be established for the purpose set forth herein.
- E. **"Board"** means the Board of Directors of the Association.
- F. **"Covenants"** shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements set forth herein.
- G. **"Declarant"** shall mean Tyler Oak Creek Development, LLC, a Texas limited liability company, and its successors or assigns of any or all rights and powers hereunder, but with respect to any such successor or assignee (i) such successor or assignee shall not be deemed to be a "Declarant" unless such successor or assignee is designated as such pursuant to a written instrument signed by Declarant, which written instrument shall be filed of record in the Official Public Records of Smith County, Texas, designating that part of the Property to which it relates, and (ii) such successor or assignee shall only have those rights and powers of Declarant that are specifically assigned to such successor or assignee pursuant to such written instrument.
- H. **"Declaration"** shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements as amended or supplemented from time to time as herein provided.
- I. **"Deed"** shall mean a deed or other instrument conveying the fee simple title to all or any portion of the Property, including but not limited to a Lot.
- J. **"Dwelling Unit"** shall mean a residential unit or structure, and any portion thereof, situated on a Lot designed and intended for use and occupancy as a residence by a single family.
- K. **"Fines"** shall mean the fines that may be imposed as provided in Section 8.02 of this Declaration.
- L. **"Lot"** shall mean each of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 of the Oak Creek Addition, Unit 1, as shown on the Plat of the Property recorded in Cabinet E, Slide 339-B of the Plat Records of Smith County, Texas, together with any lots which may, from time to time, result from the resubdivision, replatting, amendment, correction, combination or division of any of the lots as may be shown upon the Plat or Plats of Unit 1 and any other plats of the Property, or any part thereof, hereafter filed for record in the Plat Records of Smith County, Texas. **"Lot"** shall also mean such additional lots as shall be shown or described on any additional Plats that shall hereinafter be filed in the Plat Records of Smith County, Texas expanding the Oak Creek Addition.

M. "Maintenance Charges" shall mean any and all costs assessed as provided in Article V of this Declaration.

N. "Member" means every person or entity who holds membership in the Association.

O. "Oak Creek Addition" means the real property described on Exhibit "A" to this Declaration which is attached hereto and incorporated herein for all purposes.

P. "Owner" shall mean the person or persons, entity or entities, who, individually or jointly, own record title to any part of portion of the Property. The term "Owner" shall exclude any person or persons, entity or entities, having an interest in a Lot or any such parcel merely as security for the performance of an obligation. The term "Owner" shall include Declarant if Declarant is a record title owner of a Lot.

Q. "Permanent Improvements" shall mean with respect to any Lot or any other portion or parcel of the Property, any and all buildings, improvements, structures, pools and other materials and things located thereon, including, without limitation, a residential structure, a Dwelling Unit, trees, berms, shrubs, hedges and fences.

R. "Plat" shall mean the plat of the Property presently on file in Cabinet E, Slide 339-B of the Plat Records of Smith County, Texas, as such plat may be amended from time to time, and such additional Plats as shall be filed by Declarant for real property that is a part of the Oak Creek Addition, as provided for expansion in Article XIII of this Declaration.

S. "Property" shall mean all of the real property described on Exhibit "A" which is attached hereto and incorporated herein for all purposes. The Property includes all of the Lots.

T. "Subdivision" shall mean the residential subdivision located in Smith County, Texas, and known as the Oak Creek Addition according to the Plat, as the same may be amended or supplemented from time to time, and such other Plats as shall be hereinafter filed in the Plat Records of Smith County, Texas expanding the Oak Creek Addition.

Filed for Record in
Smith County, Texas
10/23/2015 10:39:41 AM
Fee: \$134.00
20150100050346
BY LAWS
Deputy -Brenda Calhoun
I hereby certify that this instrument was
filed and duly recorded in the Official
Public Records of Smith County, Texas

Karen Phillips

Karen Phillips
County Clerk

