

EX-107 (REVISED)

**FIRST AMENDED AND RESTATED DECLARATION OF  
RESTRICTIONS, COVENANTS AND CONDITIONS**

**FOR**

**HIDE-A-WAY BAY UNIT NO. 1 AND UNIT NO. 2 SUBDIVISION WITH EXHIBITS**

**(PREVIOUSLY FILED WITH SMITH COUNTY ON JUNE 5, 2015**

**5/30/15**

This First Amended and Restated Declaration of Restrictions, Covenants and Conditions for Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision with Exhibits (Previously filed with Smith County on June 5, 2015) is made on the date hereinafter set forth by Hide-A-Way Bay Property Owners, Inc.

Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision is a planned subdivision in Smith County, Texas that was constructed in two phases. This Declaration applies to all lots and blocks located in Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision. All lots located in Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision have been sold and none are currently owned by the original sellers – Patterson Properties, Inc. The Owners of all the Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision properties declare that the real property in Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, conditions, easements, charges, and liens set forth in the First Amended and Restated Declaration of Restriction, Covenants, and Conditions for Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision:

**ARTICLE I  
DEFINITIONS**

**1.1** “**AC or “Architectural Committee”** shall have the meaning provided such terms in Sections 6.2 and 6.3 herein.

**1.2** “**AC Standards”** means standards adopted by the AC regarding architectural and related matters.

**1.3** “**Association”** means Hide-A-Way Bay Property Owners, Inc., established for the purposes set forth herein.

**1.4** “**Board of Directors”** means the board of directors of the Association.

**1.5** “**Common Property”** and “**Common Properties”** shall mean and refer to all land, improvements, and other properties now or hereafter maintained or owned by the Association.

**1.6** “**Common Expenses”** means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas, including attorney’s fees.

**1.7** “**Common Maintenance Areas”** means the Common Properties, if any, and any areas within public rights-of-way, easements (public and private), portions of a Lot, public parks,

boat launch, fence or similar areas that the Board of Directors deems necessary or appropriate to maintain for the common benefit of the Members.

**1.8** “**Corporation**” shall mean and refer to Hide-A-Way Bay Property Owners Inc., a non-profit corporation, organized and existing under the laws of the State of Texas and filed in the Office of the Secretary of State of Texas on August 26, 1977, Charter Number 413461.

**1.9** “**County**” means the County of Smith.

**1.10** “**Declaration**” means this First Amended and Restated Declaration of Restrictions, Covenants, and Conditions for Hide-A-Way Bay Unit No. 1 and Unit No. 2 Subdivision and any amendments and supplements thereto made in accordance with its terms.

**1.11** “**Designated Interest Rate**” means the interest rate designated by the Board of Directors from time to time, subject to any interest limitations under Texas law. If the Board of Directors fails to designate an interest rate, then the interest rate shall be 10% per annum. The Designated Interest Rate is also subject to the limitations in Section 11.6 herein.

**1.12** “**Development**” means the Property.

**1.13** “**Dwelling**” means any residential dwelling situated upon any Lot.

**1.14** “**Front Yard.**” Front yard is defined as that area of a Lot located between the street pavement and the exterior wall of the Dwelling closest to the street pavement, see Exhibit C. For vacant lots, front yard is defined as 45 feet from the street pavement.

**1.15** “**HUD-Code Manufactured Home**” means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

**1.16** “**Lot**” or “**Lots**” shall mean and refer to all those platted properties described in the Hide- A-Way Subdivision as recorded in Volume 6, Pages 49 and 60 of the deed records of Smith County, Texas and additional platted properties, which have been recorded in the deed records of Smith County, Texas.

**1.17** “**Manufactured Home**” means a structure transportable in one or more sections, which is built on a permanent chassis and which is designed for use with or without a permanent foundation when connected to the required utilities. In this document, the term “manufactured home” includes, but is not limited to, HUD-code manufactured homes and mobile homes.

**1.18** “**Member**” shall mean and refer to every person or entity who is a recorded owner of sub-divided property Lot, which is part of Hide-A-Way Bay Unit #1 and Unit #2 subject to the provisions of Article III and Article IV herein.

**1.19** “**Mobile Home**” means a structure, constructed on or before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site is 320 or more square feet, and

which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

**1.20** “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated within Hide-A-Way Bay, which is and becomes subject to the Declaration.

**1.21** “**Property**” means the real property described on Exhibit “A” attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

**1.22** “**Record,**” “**Recording**” or “**Recorded**” means the filing of a legal instrument in the Public Records of Smith County, State of Texas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

**1.23** “**Supplemental Declaration**” means a Recorded instrument, which subjects additional property to this Declaration and/or imposes restrictions and obligations on the land described in the instrument.

**1.24** “**Vacant Lot**” means a Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes.

## ARTICLE II PROPERTY RIGHTS

**2.1 Owners’ Easements of Use and Enjoyment.** Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to any limitations set forth herein, including, without limitation, the following:

**a. Rules.** The right of the Association to establish and publish rules and regulations governing the use of the Common Properties and/or the Lots.

**b. Suspension of Use of Common Properties.** The right of the Association to suspend the right of use of the Common Properties of an Owner for any period during which any assessment against such Owner’s Lot remains unpaid.

**c. Conveyance of Common Property.** The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Properties. However, the Common Properties cannot be mortgaged or liened without a majority vote of the Lot Owners approving such action.

**2.2 Prohibitions on Easement of Use and Enjoyment.** Each Owner’s right and easement of use and enjoyment in and to the Common Properties is further limited as follows:

**a. No Transfer without Lot.** An Owner’s right and easement of use and enjoyment in and to the Common Properties shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner’s Lot and such right and easement of use and enjoyment in and to the Common Properties shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner’s Lot, notwithstanding

that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Properties.

**b. No Partition.** Except as provided in Section 2.1.c herein, the Common Properties shall remain undivided and no action for partition or division of any part thereof shall be permitted.

**2.3 Right to Delegate Use and Enjoyment of Common Properties.** Any Owner may extend his or her right of use and enjoyment of the Common Properties to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the Bylaws of the Association (the "Bylaws"), and any reasonable rules of the Board of Directors. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

### **ARTICLE III MEMBERSHIP AND VOTING**

**3.1 Membership - Owners.** Every Owner by virtue of ownership of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot.

**3.2 Voting Rights.** Each Lot Owner, as defined in Section 1.20, is entitled to one vote on each matter submitted to a vote of the Lot Owners.

**a.** It is especially provided however, that division of ownership of any Lot subject to assessment by the corporation shall not increase the voting rights allocable to the membership of such Lot as hereinafter provided.

**b.** In the event title to any Lot is owned by more than one person or entity, the vote of a majority of such owners shall constitute the vote allocable to such Lot, and any dispute as to what constitutes a majority of such owners shall be determined by the President of the Association and such determination shall be final.

**c.** At all Member meetings, each Lot Owner may vote in person, mail, by proxy executed in writing by the Owner or by his duly authorized attorney-in-fact, or as allowed by State Law.

**d.** All Owner proxies shall be in writing and filed with the Secretary prior to the scheduled Member meeting. The Secretary or other Officer shall review and properly present all filed proxies to the votes taken at the member meeting. A Lot Owner proxy shall automatically cease and terminate at the close of the scheduled Member meeting, or upon sale or transfer by the Lot Owner of the specific Lot.

## ARTICLE IV ASSESSMENTS

**4.1 Obligation to Pay Assessments.** Subject to the terms of this Article IV, each Owner of any Lot, by acceptance of a deed therefor, whether or not such covenant will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, (ii) special assessments as provided in Section 4.5 herein, and (iii) specific assessments as provided in Section 4.8 herein.

**4.2 Personal Obligation to Pay Assessments.** Each such assessment, together with interest at the Designated Interest Rate, late charges, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded mortgage or beneficiary of a Recorded deed of trust shall be liable for unpaid assessments which accrued prior to such acquisition of title. In addition, no mortgagee shall be required to collect assessments.

**4.3 Purpose of Annual and Special Assessments.** Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Maintenance Areas.

**4.4 Maximum and Actual Annual Assessment.** The maximum annual assessment shall be \$100.00 per lot per year. The maximum annual assessment may be adjusted as follows:

**4.5 Adjustments With Vote.** Adjustments to annual assessments must be approved by a majority of the Lot Owners who voted at a meeting to consider such purpose. Lot Owners may vote in person, by proxy, by mail, or as allowed by State Law, and the results will be tallied and announced at the annual meeting or a special meeting called for this purpose.

**4.6 Special Assessments.** In addition to the yearly assessments herein provided, the Corporation may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement owned or controlled by the Corporation, including necessary fixtures and personal property related thereto, or for other purposes, provided that any such assessment must be approved by a majority of the Lot Owners who voted at a meeting to consider such purpose. Lot Owners may vote in person, by proxy, by mail, or as allowed by State Law, and the results will be tallied and announced at the annual meeting or a special meeting called for this purpose.

**4.7 Uniform Rate of Assessment.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots.

**4.8 Due Dates for annual and special assessments.** The yearly assessment provided for herein shall become due and payable on the first (1<sup>st</sup>) day of August of each year and the due date of any special assessment shall be fixed in the resolution authorizing such assessment.

**4.9 Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance

with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments or special assessments or interest or late charges related thereto), including, without limitation, fines and transfer fees.

**4.10 Certificate of Assessment Status.** The Association will, promptly after written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

**4.11 Transfer Fees and Fees for Issuance of Resale Certificates.** The Board may enter into contracts with third parties to oversee the daily operation and management of the Association. These third parties may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a Resale Certificate. The Association or its agent shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. Transfer fees and fees for the issuance of a Resale Certificate are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. This Section does not obligate the Board or any third party to levy such fees.

**4.12 Failure to Pay Assessments; Remedies of the Association.** If the assessments provided in this article are not paid when due, then such assessment shall become delinquent, and shall together with interest at the rate of 10% per annum and costs of collection including reasonable attorney fees, become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner or owners to pay such assessment; however, shall remain his personal obligation. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date and the Association may bring an action at law against the owner personally obligated to pay the same and/or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided herein by non-usage of the property subject to the control and management of the corporation, or by abandonment of his property. If by any cause a property with any assessment due is sold or conveyed to another party or persons, that assessment shall become the responsibility of the new owner.

#### **4.13 Lien.**

**a. Creation of Lien.** Thirty (30) days after the due date if the assessment is not paid in full, the Association shall hereby have and is hereby granted a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments) and capitalization contributions, as well as interest at the Designated Interest Rate, late fees, and costs of collection, including, without limitation, court costs and attorneys' fees. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

**b. Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale to be exercised in accordance with Texas Property Code § 51.002, as it may be amended. The Board of Directors may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board of Directors' meeting.

**c. Subordination of Lien.** The lien on any Lot securing payment of the assessments provided for therein or any installment thereof shall be subordinate to the lien of any mortgage or mortgages placed upon the property prior to the due date of such assessment or any installment thereof. Upon transfer of title, the assessment lien against a Lot shall continue in effect, except: 1) Where the lending institution holding the mortgage has purchased property at foreclosure, and 2) Where the lien is extinguished by law. Any assessment becoming due after foreclosure shall be an obligation of the purchaser or other title holder of such property, and shall constitute a lien as provided herein.

**d. Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in the following paragraph. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in the following paragraph.

**e. Effect of Foreclosure.** The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term "**first**" in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

## ARTICLE V THE ASSOCIATION

**5.1 The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation of the Association (the "**Articles of Incorporation**") Bylaws and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate

status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Articles of Incorporation and the Bylaws.

**5.2 Board of Directors.** The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint, in accordance with the Bylaws. The Board of Directors shall have the powers granted in this Declaration and the Bylaws, all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

**5.3 Limitation on Liability.** The liability of an officer, director or committee member of the Association shall be limited as provided in this Declaration and the Bylaws.

**5.4 Indemnification.** Subject to the limitations and requirements of the Texas Nonprofit Corporation Act and Bylaws, the Association shall indemnify every officer, director and committee member (including, without limitation, the member(s) of the AC) against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member. Additionally, subject to the limitations and requirements of the Texas Nonprofit Corporation Act and Bylaws, the Association may voluntarily indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such person in that capacity and arising out of that capacity.

**5.5 Limitations on Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless there is a 66 $\frac{2}{3}$ % or greater vote of Lot Owners approving such action. This Section 5.5 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions to enforce written contracts between the Association and a third party. Except as authorized by said vote, the Board of Directors shall not be liable for failing or refusing to commence litigation.

## **5.6 Insurance.**

**a. Right to Purchase Insurance.** The Association shall have the right and option to purchase, carry and maintain in force insurance covering any and all portions of the Common Properties and/or Common Maintenance Areas, any improvements thereon or appurtenant thereto, for the interest of the Association and of all Members thereof, in such amounts and with such endorsement and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the Common Properties and Common Maintenance Areas. Such insurance may include, but need not be limited to: (i) Insurance against loss or damage by the fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier; (ii) Public liability and property damage insurance on a broad form basis; (iii) Fidelity bond for all officers and employees of the Association having control of the receipts and disbursements of funds and (iv) Officers' and Directors' liability insurance.

b. **Insufficient Proceeds.** If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided in Article 4, Section 4.6 of this Declaration to cover the deficiency.

**5.7 Suspension of Rights to Use Common Properties.** The Board of Directors may suspend an person's or entity's right to use any recreational facilities within the Common Properties; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.

**5.8 Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors. The Board of Directors may employ for the Association a management agent or agents, at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policymaking authority.

**5.9 Books and Records.** The books and records of the Association shall be made available to the Members for inspection and copying as provided by the Inspection and Production of Records Policy. To the extent allowed by applicable law, the Board may withhold information which it deems may violate another Member's right to privacy.

**5.10 Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association shall be conveyed as provided in this Declaration and the Bylaws.

## ARTICLE VI ARCHITECTURAL CONTROLS

**6.1 No Improvements Unless Approved by Architectural Committee.** No building, outbuilding, pool, detached building, structure or improvement will be erected, altered, added onto upon any portion of any Lot without the prior written consent of the AC. However, AC approval is not required for (i) any improvements to the interior of a Dwelling, except as provided herein; (ii) the painting or re-bricking of the exterior of any Dwelling; or (iii) improvements for which the Declaration expressly states that the AC's prior approval is not required. Any improvements pursuant to clauses (ii) and (iii) immediately preceding must be in compliance with any applicable AC standards.

**6.2 Architectural Committee.** The AC shall have the authority to perform the functions contemplated by the AC in this Declaration. The purpose of the AC is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The AC will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses.

**6.3 Architectural Committee.** Will consist of a minimum of three board members, to be appointed by the Board. The Architectural Committee will act by simple majority vote.

**6.4 Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the AC as provided in Section 6.1 above, the Owner will first submit to the AC a completed Building Plan Request form, which is available for download from [www.hideawaybaylakepalestine.com](http://www.hideawaybaylakepalestine.com). The Owner shall also submit a set of plans and specifications for the proposed improvements, including site plans, exterior elevations and any other information deemed necessary by the AC for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. This approval process is separate and independent of any approval process required by a governmental entity.

#### **6.5 Plan Review.**

**a. Authority to Approve.** The Architectural Committee or Board of Directors shall have the authority to approve plans on behalf of the Corporation.

**b. Conditions of Approval.** As a condition of approval by the Architecture Committee for those items listed in Section 6.1 in addition to the repair of shorelines, boathouses, construction of new boathouses or similar work exceeding \$5,000.00, a deposit of \$1,000.00 shall be made with the Corporation by the property owner to defray cost of any repairs to association property required as a result of damages to roads, ditches and surrounding properties caused by heavy equipment or improper containment of soil on Lots being prepared for building. The deposit or portion thereof, if any, will be refunded upon completion of construction and after inspection by the Board of Directors. Construction, including site preparation, shall not commence until plans have been approved.

**c. Timing of Review and Response.** Upon receipt by the AC of all of the information required by this Article VI, the AC will have 10 days in which to review said plans. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the AC in form satisfactory to the AC. If the AC requests additional information and the applicant fails to provide such information prior to the date stated in the AC's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the AC consider the request. If the AC fails to issue its written approval within 10 days after the AC's receipt of all materials requested by the AC to complete the submission, then such failure by the AC to issue its written approval shall be deemed approval.

**6.6 Appeal of AC decision.** The decision of the Architectural Committee may be appealed to the Board of Directors within ten days of receiving a written decision by the Architectural Committee. If appealed, the Board of Director has the final decision.

**6.7 Timing of Completion of Approved Items.** All work approved by the AC shall be completed within one year after the approval by the AC or such shorter period that the AC may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the AC. All work and related improvements shall be in compliance with the items approved by the AC. Plans must be resubmitted if not completed within one year from the date of approval and a \$1,000.00 fee must be paid by the Owner.

**6.8 No Waiver.** The approval by the AC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the AC under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

**6.9 Variances.** The AC may authorize variances from strict compliance with the requirements herein.

**6.10 Enforcement, Non-Conforming and Unapproved Improvements.** If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the AC, such improvements will be in violation of this Article VI to the same extent as if made without prior approval of the AC and shall constitute grounds for the imposition by the AC or the Association of an automatic fine against the Owner of said Lot of One Thousand and No/100 Dollars (\$1000.00). If after thirty (30) days from the date a written notice has been mailed or delivered to the owner of said Lot, the violation has not been corrected, an additional fine of \$5.00 per day may be charged to the Owner of said Lot until the violation has been corrected. The Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alternation to any improvement on any Lot that is not approved by the AC.

**6.11 Limitation of Liability.** Neither the Association, the Board of Directors nor the AC shall have any liability, individually or in combination, for (i) decisions made by (or failed to be made by), the Association, the Board of Directors or the AC, or (ii) decisions in connection with the approval or disapproval or failure to disapprove or approve any plans and specifications submitted. Neither the Association, the Board of Directors nor the AC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, the AC nor any member of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. The AC and its members shall be defended and indemnified by the Association as provided in Section 5.4 and Section 5.5 herein.

## ARTICLE VII USE RESTRICTIONS AND COVENANTS

**7.1 Single Family Residential Use.** All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iii) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iii) above shall be made by the Board of Directors.

**7.2 Size of Living Area.** The total air-conditioned living area of any new Dwelling, as measured to the outside of exterior walls, but exclusive of open porches, garages, patios and detached accessory buildings, shall be no less than 1,400 square feet.

**7.3 Location of structure.** Except as provided in this subsection, no building shall be located on any Lot nearer to the front or rear lot lines than twenty-five (25) feet, and no nearer than fifteen feet (15) from one side lot line and six (6) feet from the other side line, except, however, as to lots which are immediately adjacent to Lake Palestine, building or improvements may be constructed thereon to a point ten (10) feet distance from the 355' elevation line. For a corner Lot, the 25-foot front setback shall apply along the boundary of the Lot which has the street address, and a 15-foot front setback shall apply along the boundary of the Lot which does not have a street address. Lot lines intersecting a street are side lines, see Exhibit C.

**7.4 Ownership of adjacent properties.** A building or structure may be constructed over a Lot line only if both Lots have the same Owner.

**7.5 Removal of Trees.** No soil or trees shall be removed for any commercial use. Cutting of trees shall be limited to the extent necessary for clearing the foundation site for construction; any additional cutting of trees with a trunk diameter greater than twelve (12) inches shall be done only upon written approval of the Architectural Committee, unless dead or diseased.

**7.6 Parking of Motor Vehicles, Boats, Trailers, Commercial and Recreational Vehicles, and Storage of Equipment and Materials.**

(i) Except as provided for in this Article, no motor vehicles, boats, trailers, recreational vehicles, commercial vehicles, machinery, appliances, equipment or tractors will be permitted, which are inoperable, dismantled, abandoned, or without proper registration and inspection stickers on a Lot within the Development unless stored inside a garage or shed and not visible from the street. Except as permitted in this Article, it is not permitted to park any vehicle with carrying capacity in excess of one ton or with three or more axles on a Lot. No trucks or vehicles of any size that transport flammable or explosive cargo may be kept in the Development at any time.

(ii) Trucks with tonnage in excess of one ton and equipment used by the owner of a Lot for construction or improvements on the Lot may be parked overnight provided they are used for work approved by the Architectural Committee.

(iii) No vehicles, trailers, tractors, implements or apparatus may be parked on the paved portion of the street right-of-way, unless it is temporarily parked for the purpose of unloading equipment or materials.

## **7.7 Fences.**

**a. Type of Fencing.** All perimeter fences will be chain-linked, ornamental iron, wood, brick, steel, stone and/or masonry. Front yard fences shall be no higher than four (4) feet. All perimeter fences shall not exceed six (6) feet in height unless another height is approved by the AC.

**b. Maintenance of Fencing.** Each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition as determined by the Board on a

case-by-case basis, and shall make all repairs and replacements thereto. The Association shall be responsible for maintaining the Association Fencing.

**c. Sight Lines.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three and six feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any lot within ten feet from the intersection of a street right-of-way line with the edge of a private driveway. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines, see Exhibit C. The Association may direct the Owner to trim any hedge, shrub planting or tree that does not comply with the foregoing provisions, and upon Owner's failure to do so, the Association may, at its option, perform such trimming, whereupon the Owner shall be obligated, when presented with an itemized statement, to reimburse the Association (as applicable) for the cost of such work.

**7.8 Outbuildings, Sheds and Detached Buildings.** No sheds or portable buildings more than 200 square feet in size will be permitted unless approved by the AC. All construction shall be new and no used structures shall be moved in. The location of sheds or portable buildings must comply with Section 7.3.

**7.9 Animals.** Except as provided for in this Section, no animals, livestock or poultry of any kind will be raised, bred or kept on any Lot. Cats, dogs or other generally recognized household pets may be permitted on any Lot subject to Smith County laws; however, those pets that make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board of Directors. If the animal owner fails to remove the animal from the Lot after the Board of Directors' request, the Board of Directors may have the animal removed, in addition to imposing such other sanctions as are authorized by the Declaration and the Bylaws. No more than six (6) domesticated pets will be permitted per household. All persons bringing an animal onto the Common Properties or other Members Lot shall be responsible for immediately removing any solid waste of said animal.

#### **7.10 Signs.**

**a. Definition.** Sign means any device, flag, light, figure, picture, letter, word, message, symbol, plaque, poster, display, design, paint, drawing, billboard, wind device, or other thing visible from outside Lot on which it is located and that is designed, intended, or used to inform or advertise to persons not on that Lot.

**b. Sign Restrictions.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from the street, except the following:

(i) Entry Signs as defined in Section 7.10(c) and signs required to be allowed by law.

(ii) Lot addresses and signs with eight words or less using letters less than six inches in height and no greater than four square feet in size;

(iii) an Owner may erect two signs on a Lot advertising the Dwelling for sale or rent, provided that the sign does not exceed two feet by three feet in size;

(iv) an Owner may temporarily place one sign on a Lot advertising the “open house” of the Dwelling, provided that the sign does not exceed two feet by three feet in size (or as otherwise approved by the AC) and the sign may only be displayed three days prior to the day of the open house and during actual open house hours;

(v) an Owner may temporarily place one sign on a Lot advertising a “garage sale,” provided that the sign does not exceed two feet by three feet in size and the sign may only be displayed during the garage sale hours; or

(vi) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected for a period in advance of the election to which they pertain longer than allowed by law and are removed within the period after the election allowed by law, and to the extent allowed by law only one sign per candidate is permitted;

(vii) temporary holiday decorations;

(viii) landscape features that display no words or symbols;

(ix) works of art or government flags.

**c. Entry Signs.** **Entry Signs** mean any entry feature signs for the name of the subdivision that are placed by the Association or its agents on the Property. The Association shall be responsible for maintaining the Entry Sign.

**d. Enforcement.** Except as provided Section 7.10(b) no banners are permitted without the prior written approval of the AC. A permitted or authorized sign may not contain any language or symbols on the sign that are not directly related to the authorized purpose of the sign. Signs advertising a home occupation, such as music lessons, baby-sitting, or similar activities are prohibited. The Association will have the right to remove any sign, billboard, banner or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal.

**7.11 Trash; Containers and Collection.** No Lot or other area in the Development shall be used as a dumping ground for rubbish. Any compost heaps will be stored in a container acceptable to the AC. No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. All equipment for the storage or other disposal of garbage or trash shall be kept in a clean and sanitary condition. Trash cans must be removed from the street right-of-way (Exhibit C) within twenty-four (24) hours after trash pick-up.

**7.12 Nuisances.** No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics will be carried out on any Lot, which directly affects the

Association, as defined by affecting at least 5 households that are in the area of the nuisance or corroborated by 5 households . The use of fireworks is prohibited between the hours of 11:00 PM to 7:00 AM, except on New Years Eve.

### **7.13 Temporary Structures.**

**a. Residence.** No structure of a temporary character, including, without limiting the generality thereof, any trailer, recreational vehicle, basement, tent, shack, shed, garage, barn, or other out-building will be used on any Lot at any time as a residence, either temporarily or permanently;

**b. Tents and Recreational Vehicles.** Camping in a tent is permitted provided that such activity does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board of Directors. A person may live temporarily in a recreational vehicle or structure outside of the home or camp in a tent no more than two weeks in any six-month period.

**7.14 Miscellaneous Temporary Structures.** Temporary structures, which are visible from the street, including, but not limited to, sheds, dog houses, greenhouses, playground equipment, and play houses must be kept in good repair as determined by the AC on a case-by-case basis. Temporary storage containers cannot be visible from the street for a period longer than 72 hours within a six-month period. A temporary structure in good repair means a structure that is, but is not limited to, painted, structurally sound and has all siding, roofs and doors attached.

**7.15 Manufactured Homes and Mobile Homes.** No manufactured home, mobile home, or HUD-Code Manufactured Home is allowed on any Lot.

**7.16 Yard Maintenance.** All yards must be maintained in a well-kept and clean condition, as determined by the Board of Directors. No trash or debris is allowed on any Lot. All dead, diseased, or fallen trees must be removed if they create a hazard to streets, structures, individuals or utilities. Lawn grass higher than twelve (12) inches is not permitted.

**7.17 Exterior Improvement Maintenance.** All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board of Directors.

**7.18 Garages/carports.** All garages/carports, detached or attached, shall be brick, stone or match the house as determined by the Architectural Committee.

**7.19 Clothes Hanging Devices.** No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot where they are visible from the front street.

**7.20 Window Treatment.** No aluminum foil, newspaper, reflective film or similar treatment will be placed on windows or glass doors of a Dwelling. Bed sheets and similar linens may only be used during the first 30 days after the Owner acquires title to the Lot.

**7.21 Mining.** No oil or water drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted in the Development, nor will oil wells, tanks, tunnels, mineral excavations or shafts be permitted in the Development. No derrick or other structure

designed for use in boring for oil or natural gas will be erected, maintained or permitted in the Development. Except for propane tanks, water cisterns or similar containers used for domestic purposes, no tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground. Water drilling is allowed for the personal use of a Member.

**7.22 Above-Ground Pools.** Above ground-level swimming pools may be installed on any Lot only if screened from all streets by a six-foot solid fence or wall and may not be visible from the front street view.

**7.23 No Lot Consolidation or Division.** No Owner may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof unless approved by the Board of Directors.

**7.24 Drainage Alteration Prohibited.** Unless approved by the AC, no Owner will: (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the developer or any Builder. All drainage ways must be clear of any obstruction, which may impede the flow of water.

**7.25 Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board of Directors in its judgment, the Board of Directors will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board of Directors may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

**7.26 New Construction Only.** No building larger than 200 square feet and previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

**7.27 Burning.** Burning of yard debris and/or tree limbs is permitted. Burning of household trash or other items is not permitted.

**7.28 No Interference with Easements.** Within easements on each Lot, no structure, planting or materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities.

**7.29 Burglar Bars.** No burglar bars or similar attachments may be made to any Dwelling at any time.

**7.30 Leaf Blowing.** Blowing leaves into the street, a neighbor's Lot or the lake is prohibited.

**7.31 Firearms.** The discharge of firearms is prohibited unless used to eliminate snakes or similar pest.

**7.32 Grandfathered (Non-Conforming) Structures.** Any structure compliant with previously approved Restrictions, Covenants, and Conditions, and made non-compliant with the provisions of Article VII are grandfathered and deemed non-conforming structures and may be renovated, remodeled, repaired, rebuilt, or enlarged if the work does not cause the structure to become more non-compliant as to yards, floor area, lot, and space regulations unless approved by the Board. The right to rebuild a grandfathered structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent unless approved by the Board.

## **ARTICLE VIII ENFORCEMENT OF USE RESTRICTONS AND COVENANTS**

**8.1 Enforcement.** The Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the following procedures:

**a.** A Member may submit to the Board of Directors at a Board Meeting a complaint regarding a violation of this Declaration or the Bylaws.

**b.** The complaint must be in writing and cite the specific section(s) of the Declaration or Bylaws that is alleged to be violated. If it is a Nuisance complaint, it must contain the signatures of Members of five (5) households within the part of the neighborhood affected by the nuisance or corroborated by 5 households.

**c.** The Board will meet in executive session to review the complaint and investigate the violation. The name of the alleged violator will not be printed in the minutes.

**d.** If the Board determines that there is a violation, the president of the Association will write a letter to the Member citing the specific violation(s). The Member will have thirty (30) days to cure the violation(s).

**e.** If the violation(s) has not been cured to the satisfaction of the Board after thirty (30) days from the date the first letter was received by the Member, the president will send a second notice letter.

**f.** If the violation has not been cured to the satisfaction of the Board after seven (7) days from the date the second letter was received by the Member, the Member will be fined at a rate of \$5.00 per day until the violation(s) has been cured or the fine has reached \$500.00 (equivalent to 100 days of non-compliance).

**g.** When the fine amount reaches \$500.00 (equivalent to 100 days of non-compliance), the president will send a final letter to the Member and the Member will have seven (7) days from the date the letter is received to cure the violation(s). If the violation(s) is not cured, a lien will be placed on the Property.

**8.2 Discretion of Board.** The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Board of Directors,

except that the Board of Directors shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board of Directors may determine that, under the circumstances of a particular case;

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources;

(iv) it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

## ARTICLE IX EASEMENTS

**9.1 Easement for Utilities on Common Maintenance Areas.** The Association has the right to grant perpetual, nonexclusive easements as reasonably necessary for the benefit of the Association, upon, across, over, through and under any portion of the Common Maintenance Areas for the construction, installation, use and maintenance of utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements.

**9.2 Easement for Right to Enter Lot.** In the event of an emergency, the Association will have the right to enter upon the Lot to make emergency repairs. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence. The foregoing release is intended to release the association from liability for its own negligence.

**9.3 Easement for Association Fencing.** The Association reserves for the benefit of the Association an exclusive easement for the purpose of placing and maintaining the Association Fencing on the perimeter of the boat ramp.

## ARTICLE X COMMON PROPERTIES

**10.1 Association to Hold and Maintain.** The Association will own all Common Properties in fee simple title. The Association shall maintain the Common Properties and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas to the extent the Board of Directors determines that such maintenance is desirable.

**10.2 Use of Common Properties at Own Risk.** Each Owner, by acceptance of a deed to a Lot, acknowledges that the use and enjoyment of any Common Property recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, and its Board of Directors and committees, are not insurers of personal safety and that each person using the Common Properties assumes all risks of personal injury and loss of or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Properties. Each Owner agrees that neither the Association, the Board of Directors and any committees, shall be liable to such Owner or any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from or otherwise relating to the use of any recreational facility or other portion of the Common Properties, including, without limitation, any claim arising in whole or in part from the negligence of the Association. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.**

**10.3 Condemnation of Common Properties.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Properties, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board of Directors determines, in its business judgment, including, without limitation, (i) to purchase additional Common Properties to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Properties any improvements that were on the condemned Common Properties, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

**10.4 Damage to Common Properties.** If the Common Properties or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a 66 $\frac{2}{3}$ % or greater vote of Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (all classes counted together) within 90 days after the loss not to repair or reconstruct. If said 66 $\frac{2}{3}$ % vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate shall be retained by and for the benefit of the Association.

## **ARTICLE XI MISCELLANEOUS**

**11.1 Declaration Term - Perpetual.** Unless the Lot Owners holding 66 $\frac{2}{3}$ % of the votes approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless recorded.

**11.2 Amendments to Declaration.** This Declaration may be amended by a written consent by 51% of the Lot Owners. Any amendment to this Declaration shall be effective upon recording.

**11.3 Enforcement by Association and/or Owner.** The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants,

reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

**11.4 Remedies; Cumulative.** In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

**11.5 Notice to Association of Sale or Transfer.** Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board of Directors written notice of the name and address of the purchaser or transferee within 30 days after the date of such transfer of title and such other information as the Board of Directors may reasonably require.

**11.6 Limitation on Interest.** All agreements between any Owner and the Association are expressly limited so that the amount of interest charged, collected or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association, then such excess shall be refunded to the Owner.

**11.7 Construction and Interpretation.** This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

**11.8 Notices.** Except as otherwise provided in the Bylaws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally, by mail or email. Notices that are mailed shall be deemed to have been duly given three days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Lot Owner at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Lot Owner shall be deemed the equivalent of proper notice.

**11.9 Not a Condominium.** This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

**11.10 Severability.** Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions, which will remain in full force and effect. Any invalidated provision shall be automatically reformed in such a way so as to be legal and to carry out as near as possible such invalidated provision.

**11.11 Rights and Obligations Run With Land.** The provisions of this Declaration are covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed.

**11.12 Disclaimer Regarding Security.** The Association shall in no way be considered insurers or guarantors of security within the Property, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system can not be compromised or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees and licensees that the Association, its Board of Directors and committees are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

**11.13 Attorneys' Fees and Court Costs.** If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

**11.14 Gender.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

**11.15 Headings.** The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

**11.16 Conflicts.** In the event of conflict between this Declaration and any Bylaws, rules, or regulations, this Declaration will control.

**11.17 Exhibits.** All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

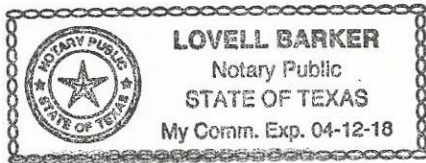
IN WITNESS WHEREOF, Hide-A-Way Bay Property Owners, Inc. has caused this instrument to be executed on this 2 day of July, 2015

HIDE-A-WAY BAY PROPERTY OWNERS, INC.

By: *Elizabeth Langford*

STATE OF TEXAS §  
COUNTY OF Smith §

The foregoing instrument was acknowledged before me on this the 2<sup>nd</sup> day of June, 2015 by Elizabeth Langford, President of Hide-A-Way Bay Property Owners, Inc., on behalf of said entity.



*Lovell Barker*  
Notary Public in for The State of Texas

AFTER RECORDING RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

EXHIBIT "A"

THE PROPERTY

HIDE-A-WAY BAY PROPERTY OWNERS, INC.

Attached are copies of the plats filed in Smith County for Hide-A-Way Bay Unit No. 1 and Unit  
No.2

EXHIBIT A

No. 5678

5678

THE STATE OF TEXAS  
COUNTY OF SMITH  
That PATTERSON PROPERTIES, INC., a Texas corporation,  
being the owner of the land shown and described in the above  
and attached Plat of HIDE-A-WAY BAY UNIT NO. 1 SUBDIVISION,  
does hereby amend the foregoing Plat for subdividing the same,  
according to the lines, lots, building lines, parks, trails,  
streets, playground and recreational areas, and easements there-  
on shown and designated such Subdivision as HIDE-A-WAY BAY UNIT  
NO. 1 SUBDIVISION.

FILED  
ERNEST CHRISTIAN  
COUNTY CLERK  
JUN 3 10 55 AM '70  
SMITH COUNTY, TEXAS  
Ernest Christian  
DEPUTY

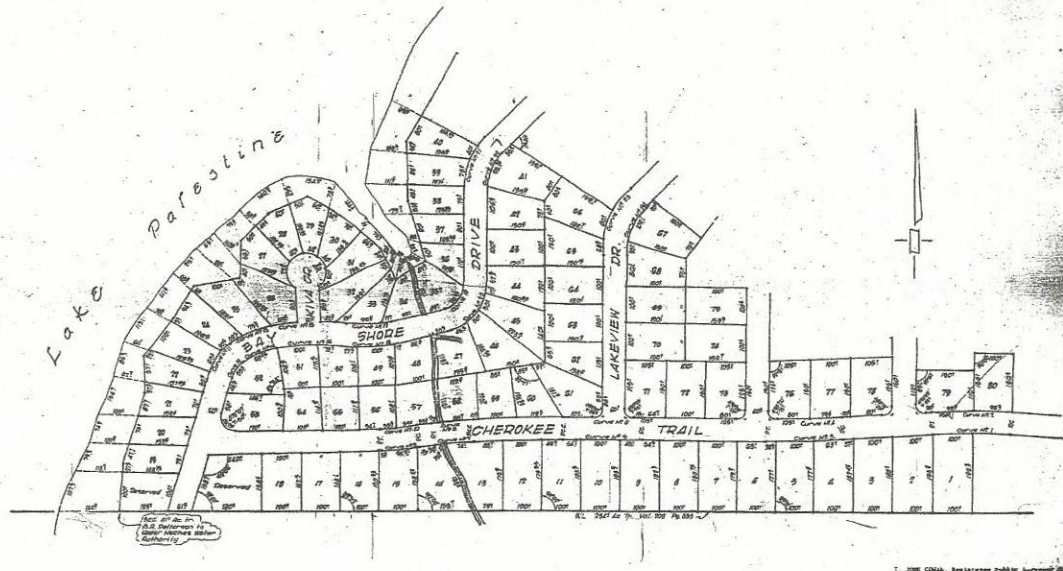
PATTERSON PROPERTIES, INC., in executing said Plat of  
HIDE-A-WAY BAY UNIT NO. 1 SUBDIVISION, has designated cer-  
tain areas of land as streets, roads, trails, parks, beaches,  
playgrounds, tennis courts, boat facilities and other recrea-  
tional facilities intended for use by the owners, guests, and  
licensees of Hide-a-Way Bay Club, Inc., its successors and as-  
signs. The above described areas are not dedicated hereby for  
use by the general public, but are dedicated for the common use  
and enjoyment by the members of Hide-a-Way Bay Club, Inc., its  
successors and assigns, and except that there is hereby re-  
served unto PATTERSON PROPERTIES, INC., its successors and as-  
signs, the following rights and easements:

1. The full free right and liberty as all times hereafter in common with all others who may hereafter have a like right to have and use the said parks, trails, playground and recreational facilities, streets, and easements as shown and designated on said Plat.
2. The right to use the streets, roads, trails, parks, playground and other recreational facilities and easements shown on said Plat for the installation and/or maintenance of utilities and C&G Systems, including but not limited to gas, water, electricity, telephone, drainage and sewerage and any appurtenances to the supply lines thereof.
3. The right to use the streets, roads, trails, parks, playground and other recreational facilities and easements shown on said Plat for the establishment and maintenance of surface drainage.
4. An easement of right-of-way over a ten-foot wide strip within the site, road, and street necessary lines of all lots designated on said Plat in said subdivision for the purpose of installation and/or maintenance of utilities and C&G Systems, including but not limited to gas, water, electricity, telephone, drainage and sewerage, and any appurtenances to the supply lines thereof, including the right to remove said trees, shrubs or plants.

Reservations 1 and 4 above shall not be construed as creating an obligation on the part of Patterson Properties, Inc., its successors or assigns, to install or furnish any of the utilities or services therein mentioned, said rights being reserved for the purpose of providing for the practical installation of such utilities or telephone services, as, if, and when any public or private authority, utility company, person, or firm may desire to serve said lots upon due authorization from Patterson Properties, Inc., its successors and assigns.

Nothing herein contained shall be deemed or construed to be a public dedication of any of the roads, streets, trails, parks, playground and other recreational facilities and easements shown on said Plat.

WITNESSED my hand and the seal of said County, this 3rd day of May, 1970.  
James W. Fair  
President



UNIT No. 1  
HIDE-A-WAY BAY  
ON  
LAKE PALESTINE

SCALE: 1" = 100'

Lot	Area	Owner	Remarks
1	0.12		
2	0.12		
3	0.12		
4	0.12		
5	0.12		
6	0.12		
7	0.12		
8	0.12		
9	0.12		
10	0.12		
11	0.12		
12	0.12		
13	0.12		
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31	0.12		
32	0.12		
33	0.12		
34	0.12		
35	0.12		
36	0.12		
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46	0.12		
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54	0.12		
55	0.12		
56	0.12		
57	0.12		
58	0.12		
59	0.12		
60	0.12		
61	0.12		
62	0.12		
63	0.12		
64	0.12		
65	0.12		
66	0.12		
67	0.12		
68	0.12		
69	0.12		
70	0.12		
71	0.12		
72	0.12		
73	0.12		
74	0.12		
75	0.12		
76	0.12		
77	0.12		
78	0.12		
79	0.12		
80	0.12		
81	0.12		
82	0.12		
83	0.12		
84	0.12		
85	0.12		
86	0.12		
87	0.12		
88	0.12		
89	0.12		
90	0.12		
91	0.12		
92	0.12		
93	0.12		
94	0.12		
95	0.12		
96	0.12		
97	0.12		
98	0.12		
99	0.12		
100	0.12		

I, JOHN EDGAR, Registrar Public Land Office, do hereby certify that the plat shown herein was duly filed in the office of the County Clerk of Smith County, Texas, and that the same is a true and correct copy of the original as shown and filed in the office of the County Clerk of Smith County, Texas, this 3rd day of June, 1970.

WITNESSED my hand and the seal of said County, this 3rd day of June, 1970.

John Edgar  
Registrar Public Land Office  
Smith County, Texas

Filed for record on the 3rd day of June A. D. 1970, at 10:56 o'clock A.M.  
Recorded this 4th day of June A. D. 1970, at 9:36 o'clock A.M.  
By Bernice Posters Deputy Ernest Christian, Co. Clerk  
Clerk, County Court, Smith County, Texas

No. 6893

UNIT NO. 2  
 COMP. BY  
 THE PATTON PROPERTY, INC., a Texas corporation,  
 being the owner of the land shown and described on the above  
 and attached plat of HIDE-A-WAY BAY UNIT NO. 2, SHERIFF COUNTY,  
 TEXAS, more fully shown on the attached plat for subdividing the same,  
 according to the lines, lots, including lines, parts, lots,  
 streets, playground and recreational areas, and easements thereon  
 as shown and designated on the plat of HIDE-A-WAY BAY UNIT  
 NO. 1, SHERIFF COUNTY, TEXAS.

PROFESSION FROSTBERG, INC., in recording said plat of  
 HIDE-A-WAY BAY UNIT NO. 2, SHERIFF COUNTY, TEXAS, has designated cer-  
 tain areas of land as streets, roads, trails, walks, bridges,  
 playground, tennis courts, pool facilities and other recrea-  
 tional facilities designed for use by the members, guests, and  
 licensees of HIDE-A-WAY BAY CLUB, INC., its successors and as-  
 signees. The above described areas are not dedicated hereby for  
 use by the general public, but are dedicated for the common use  
 and enjoyment by the members of HIDE-A-WAY BAY CLUB, INC., its  
 successors and assignees, here and except that there is hereby re-  
 ceived unto PATTON PROPERTY, INC., its successors and as-  
 signees, the following rights and easements:

1. The full four right and easement at all times hereafter in common with all others who may hereafter have a like right to have and use the said streets, roads, trails, walks, bridges, playground and other recreational facilities, streets, and easements as shown and designated on said plat.
2. The right to use the streets, roads, trails, walks, playground and other recreational facilities and easements shown on said plat for the installation and/or maintenance of electric and gas lines, including but not limited to gas, water, electricity, telephone, drainage and sewer and any improvements on the empty lines hereafter.
3. The right to use the streets, roads, trails, walks, playground and other recreational facilities and easements shown on said plat for the establishment and maintenance of surface drainage.
4. An easement or right-of-way over a certain strip being the lake, road, and street boundary lines of all lots depicted on said plat to said subdivision for the purpose of installation and/or maintenance of electric and gas lines, including but not limited to gas, water, electricity, telephone, drainage and sewer, and any improvements, and any easements, to the supply lines conductors, including the right to cross and take stress, struts or poles.

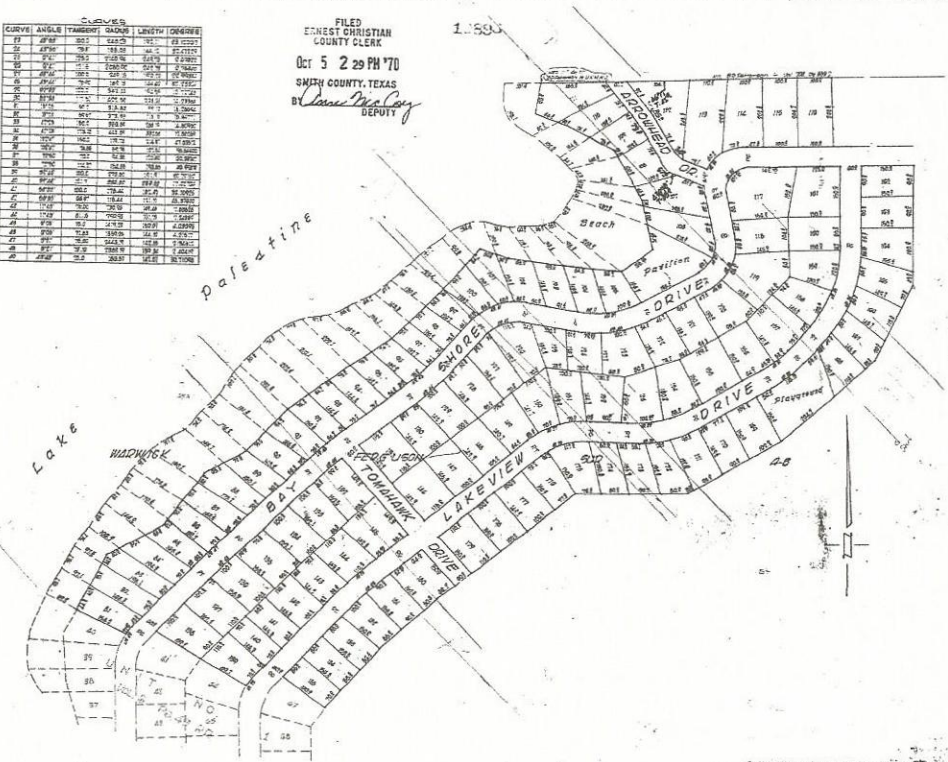
Section 3 of the above shall not be construed as creating an obligation on the part of PATTON PROPERTY, INC., its successors or assignees, to install or furnish any of the utilities or services therein mentioned, said rights being reserved for the purpose of providing for the practical installation of such utilities or services hereafter, or to, and then any public or private authority, utility company, person, or firm may desire to serve said lots with the utilities or services mentioned herein.

THE STATE OF TEXAS  
 COUNTY OF SHERIFF  
 I, James Fair, Notary Public,  
 do hereby certify that the above and attached plat of HIDE-A-WAY BAY UNIT NO. 2, SHERIFF COUNTY, TEXAS, was duly recorded in my office on the 5th day of Oct. 1920, at 1:30 o'clock P.M., and that the same was duly filed for record in the office of the County Clerk of Sheriff County, Texas, on the 5th day of Oct. 1920, at 1:30 o'clock P.M.

James Fair  
 Notary Public

CURVE	ANGLE	TANGENT	CHORD	LENGTH	ORDINATE
1	90	0.00	0.00	0.00	0.00
2	90	0.00	0.00	0.00	0.00
3	90	0.00	0.00	0.00	0.00
4	90	0.00	0.00	0.00	0.00
5	90	0.00	0.00	0.00	0.00
6	90	0.00	0.00	0.00	0.00
7	90	0.00	0.00	0.00	0.00
8	90	0.00	0.00	0.00	0.00
9	90	0.00	0.00	0.00	0.00
10	90	0.00	0.00	0.00	0.00
11	90	0.00	0.00	0.00	0.00
12	90	0.00	0.00	0.00	0.00
13	90	0.00	0.00	0.00	0.00
14	90	0.00	0.00	0.00	0.00
15	90	0.00	0.00	0.00	0.00
16	90	0.00	0.00	0.00	0.00
17	90	0.00	0.00	0.00	0.00
18	90	0.00	0.00	0.00	0.00
19	90	0.00	0.00	0.00	0.00
20	90	0.00	0.00	0.00	0.00
21	90	0.00	0.00	0.00	0.00
22	90	0.00	0.00	0.00	0.00
23	90	0.00	0.00	0.00	0.00
24	90	0.00	0.00	0.00	0.00
25	90	0.00	0.00	0.00	0.00
26	90	0.00	0.00	0.00	0.00
27	90	0.00	0.00	0.00	0.00
28	90	0.00	0.00	0.00	0.00
29	90	0.00	0.00	0.00	0.00
30	90	0.00	0.00	0.00	0.00
31	90	0.00	0.00	0.00	0.00
32	90	0.00	0.00	0.00	0.00
33	90	0.00	0.00	0.00	0.00
34	90	0.00	0.00	0.00	0.00
35	90	0.00	0.00	0.00	0.00
36	90	0.00	0.00	0.00	0.00
37	90	0.00	0.00	0.00	0.00
38	90	0.00	0.00	0.00	0.00
39	90	0.00	0.00	0.00	0.00
40	90	0.00	0.00	0.00	0.00
41	90	0.00	0.00	0.00	0.00
42	90	0.00	0.00	0.00	0.00
43	90	0.00	0.00	0.00	0.00
44	90	0.00	0.00	0.00	0.00
45	90	0.00	0.00	0.00	0.00
46	90	0.00	0.00	0.00	0.00
47	90	0.00	0.00	0.00	0.00
48	90	0.00	0.00	0.00	0.00
49	90	0.00	0.00	0.00	0.00
50	90	0.00	0.00	0.00	0.00
51	90	0.00	0.00	0.00	0.00
52	90	0.00	0.00	0.00	0.00
53	90	0.00	0.00	0.00	0.00
54	90	0.00	0.00	0.00	0.00
55	90	0.00	0.00	0.00	0.00
56	90	0.00	0.00	0.00	0.00
57	90	0.00	0.00	0.00	0.00
58	90	0.00	0.00	0.00	0.00
59	90	0.00	0.00	0.00	0.00
60	90	0.00	0.00	0.00	0.00
61	90	0.00	0.00	0.00	0.00
62	90	0.00	0.00	0.00	0.00
63	90	0.00	0.00	0.00	0.00
64	90	0.00	0.00	0.00	0.00
65	90	0.00	0.00	0.00	0.00
66	90	0.00	0.00	0.00	0.00
67	90	0.00	0.00	0.00	0.00
68	90	0.00	0.00	0.00	0.00
69	90	0.00	0.00	0.00	0.00
70	90	0.00	0.00	0.00	0.00
71	90	0.00	0.00	0.00	0.00
72	90	0.00	0.00	0.00	0.00
73	90	0.00	0.00	0.00	0.00
74	90	0.00	0.00	0.00	0.00
75	90	0.00	0.00	0.00	0.00
76	90	0.00	0.00	0.00	0.00
77	90	0.00	0.00	0.00	0.00
78	90	0.00	0.00	0.00	0.00
79	90	0.00	0.00	0.00	0.00
80	90	0.00	0.00	0.00	0.00
81	90	0.00	0.00	0.00	0.00
82	90	0.00	0.00	0.00	0.00
83	90	0.00	0.00	0.00	0.00
84	90	0.00	0.00	0.00	0.00
85	90	0.00	0.00	0.00	0.00
86	90	0.00	0.00	0.00	0.00
87	90	0.00	0.00	0.00	0.00
88	90	0.00	0.00	0.00	0.00
89	90	0.00	0.00	0.00	0.00
90	90	0.00	0.00	0.00	0.00

FILED  
 ERNEST CHRISTIAN  
 COUNTY CLERK  
 Oct 5 2 29 PM '20  
 SHERIFF COUNTY, TEXAS  
 Ernest Christian, Deputy



UNIT NO. 2  
**HIDE-A-WAY BAY**  
 ON  
 LAKE PALESTINE

SCALE: 1" = 100'

I, JOHN CHAMBERLAIN, Registered Public Surveyor, do hereby certify that the above and attached plat of HIDE-A-WAY BAY UNIT NO. 2, SHERIFF COUNTY, TEXAS, was duly recorded in my office on the 5th day of Oct. 1920, at 1:30 o'clock P.M., and that the same was duly filed for record in the office of the County Clerk of Sheriff County, Texas, on the 5th day of Oct. 1920, at 1:30 o'clock P.M.

John Chamberlain  
 Registered Public Surveyor

Filed for record on the 5th day of Oct. A.D. 1920, at 1:30 o'clock P.M.  
 Recorded this 6th day of Oct. A.D. 1920, at 1:30 o'clock P.M.  
 By Ernest Christian, Deputy  
 Ernest Christian, Clerk  
 Clerk, County Court, Sheriff County, Texas

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