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RESTRICTIONS

18 Pages

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<p>On: <u>02/16/2023 08:47 AM</u></p> <p>Document Number: <u>2023-000002002</u></p> <p>Receipt No: <u>2302052</u></p> <p>Amount: \$ <u>90.00</u></p> <p>By: <u>Tammy Black</u>, Deputy</p> <p>Elizabeth James, County Clerk Harrison County, Texas</p>	



STATE OF TEXAS

COUNTY OF HARRISON

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the Official Public Records of Harrison County, Texas.

*Elizabeth James*  
Elizabeth James, Harrison County Clerk

Record and Return To:



CLINT JAMES, PC  
815 RICE RD

TYLER, TX 75703

**DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS  
MISSION CREEK UNIT FIVE**

THE STATE OF TEXAS    §  
                                  §           KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF HARRISON  §

This Declaration of Restrictions, Covenants and Conditions is made as of the 4th day of November, 2022, by MISSION CREEK DEVELOPMENT GROUP, LLC. hereinafter called "Developer", as follows:

**RECITALS:**

A.       Developer is the owner of that certain tract or parcel of land situated in Harrison County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes (the "Property"), which Property Developer intends to subdivide as a residential subdivision to be known as Mission Creek Unit Five (the "Subdivision").

B.       Developer desires to provide for the preservation of values and amenities of the properties situated within the Subdivision, and to this end, desires to establish and carry out a uniform plan of development for the Subdivision and subject each lot or tract therein to the various covenants, conditions and restrictions set forth in this Declaration.

NOW, THEREFORE, Developer hereby declares, establishes and adopts the covenants, restrictions, reservations and conditions set forth below, (herein called "Restrictions"), which Restrictions shall be applicable to the ownership, use, development, improvement and sale of each Lot within the boundaries of the Subdivision, and any contract, deed or other instrument covering any Lot within the Subdivision shall be conclusively held to have been executed, delivered and accepted subject to these Restrictions, regardless of whether or not these Restrictions are set out in or incorporated by reference in any such contract, deed or other instrument, to the extent as if fully set forth therein, and each of these Restrictions shall be considered a covenant running with the land and shall inure to benefit of the Developer, its successors and assigns, and all subsequent owners of any Lot within the Subdivision, their respective heirs, legal representatives, successors and assigns.

**ARTICLE I.**

Definitions

As used in these Restrictions, the terms set forth below shall have the meanings indicated:

1.01 Association shall mean the Mission Creek Homeowners' Association, an unincorporated non-profit association whose members shall consist of all Lot Owners, which shall have the duty of maintaining, operating, and managing any Common Area as provided herein. Each Owner shall become a Member of the Association contemporaneously upon purchasing a Lot.

1.02 Board shall mean the Board of Directors of the Association.

1.03 Builder shall refer to any person or entity undertaking the construction of a residence on a Lot.

1.04 Common Area shall mean the common area easement designated by Developer for the use and enjoyment of all Lot Owners within the Subdivision, to be maintained by the Association.

1.05 Corner Lot shall refer to a Lot which abuts on more than one street.

1.06 Developer shall mean MISSION CREEK DEVELOPMENT GROUP, LLC, a Texas limited liability company, its successors and assigns, provided such assigns are so designated in writing by the preceding Developer.

1.07 Declaration shall refer to this Declaration of Restrictions, Covenants and Conditions.

1.08 Dwelling shall refer to any structure constructed on a Lot to be used and occupied as a single-family residence.

1.09 Lot shall mean each separate lot or tract of land subdivided and conveyed out of the Property or shown as a separate lot on any recorded subdivision plat of the Property.

1.10 Member shall mean each Owner of a Lot, and in the event a Lot is owned by more than one person then all Owners of the Lot shall constitute one Member for purposes of voting as a Member of the Association.

1.11 Owner shall mean any person, firm, corporation or other entity which owns a Lot.

1.12 Plat shall mean any recorded subdivision plat of the Property as described in Exhibit A.

1.13 Single-Family Dwelling shall refer to a residential structure designed and constructed for use by a single or one-family only.

1.14 Street shall refer to any street, drive, boulevard, road, alley, lane, avenue, or any other thoroughfare as shown on the Plat.

1.15 Subdivision shall refer to Mission Creek Unit Five according to the recorded Plat described in Exhibit A.

## ARTICLE II.

### Restrictive Covenants

Each of the Lots within the Subdivision are hereby and shall be impressed with the following restrictions, covenants and conditions for the purposes of carrying out a general plan of development for the Subdivision.

2.01 Residential Use. No Lot shall be used except for residential purposes. No building or structure shall be erected on any individual Lot other than one single-family dwelling and its customary and usual accessory structures, unless specifically prohibited herein. Prohibited structures, uses and operations shall include, but not be limited to, duplex houses, apartments, commercial, and professional uses (except for the initial construction and sale of Single-Family Dwellings). No business, professional, commercial or manufacturing use shall be made of any of said Lots.

2.02 Animals and Livestock. Consistent with its use as a residence, dogs and cats may be kept on a Lot, provided that (a) they are not kept, bred or maintained for any business purposes, (b) that no more than two (2) such pets shall be kept on a Lot, and (c) that the perimeter boundary of the Lot upon which such pets are being kept is fenced with a fence adequate to retain such pets. No dog allowed by this Section shall be allowed outside the Lot upon which it is being kept unless restrained by an appropriate leash. The Developer or Association shall have the authority to authorize capture and removal of any dogs running loose in the Subdivision without a leash. No livestock, swine or poultry shall be kept, raised or bred on any Lot.

2.03 Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter (3/4) ton pickup, motorcycle, or bus shall be parked or kept in the Street, in front of, or side of any Lot. No inoperable or unused automobiles, trucks, trailers, or vehicles shall be parked on any Lot. Boats, trailers, or campers may be kept in the back yard of a Lot as long as fencing is in place that would cause the boat, trailer or camper to be out of sight from adjoining Lots or public open areas. No vehicle of any size which normally transports flammable or explosive cargo may be kept in the Subdivision at any time. Operable automobiles must be parked in the garage or on the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any Street in the Subdivision for more than twenty-four (24) hours at a time and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition. No Owner of any Lot in the Subdivision or any visitor, tenant or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or Streets other than work of a temporary nature. For the purposes of the foregoing term, "temporary" shall mean that the vehicle shall not be worked on in driveways or Streets in excess of twenty-four (24) hours.

2.04 Permitted Hours for Construction Activity. Except in an emergency or when other unusual circumstances exist, as determined by the Architectural Control Committee, outside construction work or noisy interior construction work shall be permitted only between the hours of 6:00 a.m. and 10:00 p.m.

2.05 Disposal of Trash. No trash, rubbish, garbage, manure, debris or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary containers constructed of metal, plastic, or masonry materials with tight-fitting sanitary covers or lids and placed in an area adequately screened by planting or fencing. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by a federal, state, county, municipal and other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense.

2.06 Building Materials Storage. No Lot shall be used for the storage of any materials whatsoever, except that materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced. During initial construction or remodeling of the residences by Builders in the Subdivision, building materials may be placed or stored outside the property lines. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay, after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the street paving.

2.07 Relocation of Buildings. Only construction of new buildings shall be permitted within the Subdivision. It is the intent of this covenant to prohibit the moving of any existing structure onto a Lot and remodeling or converting same into a dwelling unit.

2.08 Resubdivision. Subject to the reserved rights of Developer, no subdivision or resubdivision of any Lot or a combination of Lots shall be permitted except upon prior approval of the Developer; provided, however, that individual Lots may be divided between abutting owners and thereafter each resulting oversize Lot shall be considered as one Lot for all purposes. Nothing herein contained shall prohibit the construction of single residence on two or more Lots, in which case such Lots shall be considered as one for all purposes.

2.09 Building Time. Building construction for a Single Family Dwelling shall commence not later than eighteen (18) months from the date of the original purchase of a Lot, with completion of construction within twelve (12) months from the commencement date unless an extension of time is granted by Developer within Developer's sole and absolute discretion.

2.10 Type of Residence. The types of residences permitted shall be one detached Single Family Dwelling per Lot not more than two stories in height. No other type of residential construction will be permitted to be constructed on the Lots. Carports are prohibited on any Lot. All structures shall be of new construction. No mobile home, trailer, manufactured home,

modular or prefabricated homes shall be delivered or erected on any Lot in this Subdivision. The intent of this clause shall be to preclude the use of "manufactured" houses either delivered in whole or in components for erection on site. All residences must be kept in good repair and must be painted when necessary to preserve, their attractiveness. Upon any failure to do so the Developer and/or Association shall have the remedies available in Section 2.29.

2.11 Living Area Requirements. The living area of any Single-Family Dwelling that is enclosed for heating and/or air conditioning (exclusive of open porches, storage rooms and garages) shall contain not less than 1,000 square feet.

2.12 Location of Residence on Lot. No building shall be located on any Lot nearer to the front Lot line or nearer to the side street than the minimum building setback lines designated on the Subdivision Plat. For the purposes of this Covenant, eaves, steps, and patios shall not be considered as part of the building; provided, however, that this shall not be construed to permit any portion of a building on any Lot to encroach upon another Lot. For the purpose of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. Each main residence building will face the front of the Lot.

2.13 Garage and Accessory Buildings. Each dwelling erected will include a minimum of a two car garage. All garages shall be a part of the residence or shall be attached thereto by a breezeway or porte-cochere. Set back restrictions herein provided shall likewise apply to such garage. Provided, however, that garages may be detached with written approval of the Architectural Control Committee. No garage or accessory building shall exceed in height of the dwelling to which it is appurtenant without the written consent of the Committee. Every garage or permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant.

2.14 Temporary Building. Temporary buildings or structures shall not be permitted on any Lot. Developer may permit temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences. Builders in the Subdivision may use garages as sales offices for the time during which such Builders are marketing homes within the Subdivision. At the time of the sale of a residence by a Builder, any garage appurtenant to such residence used for sales purposes must have been reconverted to a garage.

2.15 Driveways. On each Lot the Builder shall construct and the Owner shall maintain at his expense the driveway from the garage or garages to the abutting Street, including the portion of the driveway in the street easement, and the Builder shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto. No driveway shall be wider than 20 feet in width or less than 16 feet in width. All driveways shall be constructed with concrete material and shall not be less than four (4) inches thick.

2.16 Roofs. All buildings constructed on said property will provide for a roof pitch of 6" in 12" minimum and 12" in 12" maximum. Any deviation of roof pitch must be approved by the Architectural Control Committee. The roof may be constructed with concrete tile or 20 year bondable limited warranty composition shingles.

2.17 Minimum Masonry. The exterior walls of each building, exclusive of doors, windows and gable areas, shall not be less than 65% brick or brick veneer construction, including 65% on two story buildings. The term "masonry" as used herein shall mean brick, stone, all of which the Architectural Control Committee must approve the type and color.

2.18 Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as designated on the Subdivision Plat or approved by the Architectural Control Committee. No chain link, barbed wire, hog wire, chicken wire, rail or similar type fencing shall be permitted. Privacy fences between lots shall be of wood not to exceed six (6) feet in height. Fences along property lines that abut public streets or public open areas shall be six (6) foot solid board fences, that is with no spaces between the boards so as to create maximum privacy. All fences must be approved by the Architectural Control Committee.

2.19 Grass, Shrubbery and Fencing. The Owner of each Lot used as a residence shall spot sod, seed, hydromulch or sprig with grass the area between the front of his residence and the curb line of the abutting Street within nine (9) months from the date of purchasing the completed residence. The grass shall be of a type and within standards prescribed by the Committee. Grass and weeds shall be kept mowed to prevent unsightly appearance. If not mowed and edged by the Owner after written request to do so is made by the Association, then the Association and/or the Developer shall have the right to cause the mowing and edging to be performed at the Owner's expense. Dead or damaged trees, which might create a hazard to property or persons within the Subdivision shall be promptly removed or repaired. If not removed by Owner upon request, then the Developer or Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. Vacant Lots shall be mowed and maintained in appearance by the Owner and shall not be used as dumping grounds for rubbish, trash, rubble or soil, except that Developer may designate fill areas into which materials specified by Developer may be placed. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view for drying of clothes, yard equipment and wood piles or storage piles. All shrubbery and/or hedges that adjoin public open areas are to be kept trimmed not to exceed four (4) feet in height.

2.20 Sewage Disposal. Each Single Family Dwelling shall be required to connect and use the municipal sewer system provided for the Subdivision. Individual septic disposal systems are strictly prohibited on individual Lots.

2.21 Signs. No signs, billboards, posters or advertising devices of any kind shall be permitted on any Lot without the prior written consent of the Committee other than one sign of not more than six (6) square feet advertising the particular Lot and house on which the sign is situated for sale or rent. The right is reserved by Developer to construct and maintain, or to allow Builders within the Subdivision to construct and maintain signs, billboards, and advertising devices as is customary in connection with the sale of newly constructed residential dwellings. The Developer shall have the right to erect identifying signs at each entrance to the Subdivision.

2.22 Exterior Antennae. No radio or television wires or antennae shall be placed on any Lot between the Dwelling and adjoining Street. There shall be no free standing antennas.

Antennae located upon a Dwelling shall be located behind, and not higher than, the center ridge line of the roof of the Dwelling and shall not be located on that portion of the roof of a Dwelling fronting a street, and shall be placed so that same are not visible from any street.

2.23 Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalk and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

2.24 Air Conditioning. No window or wall type air conditioners visible from the Street shall be permitted.

2.25 Dwelling Destruction. If any Single Family Dwelling is destroyed or partially damaged by fire, wind, flood or other acts of God, the Dwelling must be either rebuilt, repaired and/or the debris from such damage be removed from the Subdivision within six (6) months from the date of the damage.

2.26 Exterior Paint. The exterior surfaces of Dwellings shall not be painted unless the Architectural Control Committee gives its prior written approval of the color of paint to be used. The purpose of this covenant is to maintain consistency of the exterior paint colors of the Dwelling throughout the Subdivision. All exterior wood shall receive at least two coats of paint or sealer at the time of construction. Accordingly, the Committee shall not be obligated to approve of any color or exterior paint that is different from the original paint applied to the exterior of the Dwellings.

2.27 Exceptions to Residential Use. Notwithstanding anything to the contrary herein, Developer reserves unto itself, its heirs, successors and assigns, and its or their designated agent or agents, the right to use any unsold Lot or Lots for storage and use of construction equipment and materials.

2.28 Enforcement of Covenants and Restrictions. In the event of violations of any covenant or restriction herein by any Owner or occupant of a Dwelling on any Lot and the continuance of such violation after ten (10) days written notice thereof or in the event the Owner or occupant has not proceeded with due diligence to complete appropriate repairs, painting and Lot maintenance after such notice, the Developer and/or the Association shall have the right (but not the obligation), through its agents or employees, to repair, maintain, and restore the Lot and the exterior of the Dwelling or any other improvement located thereon. Developer and/or the Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. Each Owner agrees by the purchase of a Lot to pay such statement immediately upon receipt. The cost of such work, attorneys fees, plus interest thereon at the maximum rate permitted under the laws of the State of Texas, and payment thereof shall be secured by a lien retained herein favor of the Developer or Association, and enforceable as provided in Article 3 of these Restrictions. The Architectural Control Committee shall have the authority to inspect the construction of each Dwelling, and to require the Owner and Builder to discontinue the



construction of such dwelling until the above requirements have been complied with. The Developer and/or the Architectural Control Committee, its agents and employees shall not be liable, and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of their duties and other work authorized herein.

2.29 Access to Adjoining Property. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or land unless the express written consent of the Developer within the Developer's sole and absolute discretion shall have been first obtained.

2.30 Exterior Lights. No exterior light shall be installed or maintained on any Lot which is objectionable to Developer or the Association. Upon being given written notice by Developer or the Association that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or have it shielded in such a way that it is no longer objectionable to Developer or the Association.

2.31 Insurance. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the improvements located thereon without the prior written approval of the Association.

2.32 Sports Related Structures. No permanent sports-related structures such as baseball backstops, tennis courts, football goal posts, etc. shall be permitted in front of any residence.

2.33 Offensive Activity. No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Area nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. No repair work on or dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street or driveway or on any-portion the Common Areas. No motor bikes, motorcycles, motor scooters, "Go-carts", 4-wheelers or other vehicles shall be permitted to be operated on the Property if such operations, by reason of noise or fumes emitted, or by reason of manner in use, shall constitute a nuisance as determined by Developer or the Association within their sole and absolute discretion.

2.34 Hazardous Materials. The placement, holding, locating, disposal, manufacture, storage, or dumping of any Hazardous Materials on any Lot is prohibited.

2.35 Swimming Pools. No above ground swimming pool shall be permitted on any Lot.

2.36 Mailboxes and Yard Art. All mailboxes must be compatible with the architecture of the dwelling, and at Developer's sole and absolute discretion may include without limitation, cluster mailboxes for the Development or double mailboxes at the Lots. Decorative mailboxes and yard art including, but not limited to items such as fountains, statues, bird baths, feeders and the like shall not be erected, installed or placed on any Lot, except within enclosed fenced area to rear of a dwelling and not visible from the street, without the prior written approval of the Developer within the Developer's sole and absolute discretion.

2.37 Alterations to Lot. The digging of dirt or the removal of any dirt from any Lot, and the alteration of the grade of a Lot, is prohibited, except as necessary in conjunction with landscaping or construction of improvements. No quarrying or surface mining operations of any kind shall be permitted on any Lot.

2.38 Delegation of Authority. Developer may delegate to the Association the Developer's authority to approve or disapprove requests for waivers or variances permitted by these Restrictions. In the event Developer delegates its authority to the Association pursuant to this paragraph, the Board of the Association shall have the authority to act on the behalf of the Association to approve or disapprove requests for variances or waivers.

**ARTICLE III.**

Homeowner's Association

3.01 The Owners of Lots within the Subdivision shall be members of and constitute the Association. Association membership shall be appurtenant to the ownership of a Lot. Ownership of a Lot is the sole criterion for membership in the Association and membership in the Association by each Lot Owner is mandatory.

3.02 Membership in the Association can be transferred to the purchaser of a Lot and may not be assigned, pledged or transferred in any other manner. Any attempt to make a prohibitive transfer shall be void and of no force or effect.

3.03 The Association shall be an unincorporated non-profit association created pursuant to the Texas Uniform Unincorporated Non-profit Association Act. The Association shall be managed by its Board subject to these Restrictions, Articles of Association and By-laws established by the Association.

3.04 Each Owner shall have one vote for each Lot owned.

3.05 The Board shall have the following powers and duties:

1. To adopt rules and regulations to implement the Restrictions and the Association's By-laws;
2. To enforce these Restrictions, the By-laws and its rules and regulations;
3. To elect officers of the Board;
4. To prepare financial statements for the Association;
5. To establish and collect regular assessments in the initial sum of \$10.00 per month payable annually to defer the expenses attributable to the

Association's duties, to be levied against each Lot Owner, provided that such Lot Owner is not the Developer or a builder who purchased the Lot(s) from the Developer for the purpose of constructing a residence for sale to a Lot Owner;

6. To establish and collect special assessments for capital improvements or other purposes; provided, however, that all such assessments shall be divided between the Owners in accordance with the number of Lots owned, with each Owner being responsible for the payment of assessments in proportion to his Lot ownership with relation to the total number of Lots within the Subdivision;
7. To receive complaints regarding violations of the Restrictions, By-laws or the rules and regulations;
8. To pay the cost of any liability insurance for the Association and members of the Board;
9. To manage and maintain the Common Area; and
10. To pay taxes and assessments that are or could become a lien on the Common Area.

3.06 The Association shall have and is hereby granted a lien upon each Lot for the purpose of securing any regular or special assessments levied against each Lot Owner. Such lien shall be subordinate to any valid mortgage against any Lot to secure the purchase of a Lot or improvements constructed thereon. In the event any legal action becomes necessary to collect assessments or foreclose the assessment lien by judicial action, then the Association shall be entitled to recover all costs and expenses incurred including reasonable attorney's fees and costs of court.

3.07 Notwithstanding anything to the contrary herein, the Association described herein shall be the same Mission Creek Homeowners' Association that manages Mission Creek Unit I and Mission Creek Unit 2 for so long as the Developer agrees. Alternatively, upon decision of the Developer, the Association may be a new association created for the purposes described herein concerning Mission Creek Unit Five and subsequent development. Developer reserves all rights for such determination of who is the association until Developer has sold all its Lots to first purchasers and has no remaining contiguous land to add to these restrictions for subsequent development of subsequent phases.

#### **ARTICLE IV.**

##### Architectural Control Committee

4.01 Creation, Purpose and Duties. There is hereby created an Architectural Control Committee (herein referred to as the "Committee") comprised initially by three (3) people

appointed by Developer, all whom shall serve until his/her successor is appointed. A majority of the Committee may designate one member to act for it. In the event of the death or resignation of any person serving on the Architectural Control Committee, the remaining person(s) serving on the Committee shall designate a successor, or successors, who shall have all the authority and power of his or their predecessors. Until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans submitted or to designate a representative with like authority. No person serving on the Committee shall be entitled to compensation for services performed. No member of the Committee shall be personally liable for any actions committed in the scope of services performed as a member of the Committee. The Committee shall be limited to three (3) persons.

4.02 Powers of the Committee. No building, dwelling or structure shall be erected, placed or altered on a Lot in the Subdivision until two complete sets of building plans (including front, side and rear elevation) and specifications and two plot plans showing the location of the structure and the finish grade elevations for the Lot shall have been delivered to the Committee; and until such building plans, specifications and plot plan shall have been approved in writing by the Committee as being in conformity and harmony with the external design and location of the structure and in compliance with the restrictions herein contained. One copy of such plans, specifications and plot plan shall be retained by the Committee and the second copy shall be returned to the Owner of the Lot with the approval of the Committee appropriately endorsed thereon.

In the event the Committee, or its designated representative, fails to approve or disapprove any building plans and specifications within fifteen (15) days after the same are submitted to it, and if all terms contained in these Restrictions have been complied with, the Committee shall be deemed to have approved such plans within fifteen (15) days after the same are submitted to it.

The Developer shall have authority to appoint the members of the Committee and to remove without cause any person serving on the Committee. The Committee shall be limited to three (3) members, and the Developer shall also have the authority to fill any vacancies in the Committee. The Committee is authorized to delegate to one or more representatives the authority to perform the duties of the Committee as set forth herein. In the event the Developer should at any time fail or refuse to appoint a successor member of the Committee, the Owners of the majority of the total Lots in the Subdivision, including all units or phases platted, shall have the right to elect or appoint, from time to time, a successor member to the Committee.

The Committee shall have the authority to inspect the erection of each building upon any Lot in the Subdivision, and to require the Owner of the Lot and Builder to discontinue the erection of such building until the above requirements have been complied with, and the Committee, in so doing, shall not be guilty of any trespass, tort or interference with the terms or performance of any contract. The Committee shall in no event be liable in damages for any action or failure or refusal to act pursuant to the provisions here.

The Committee shall receive no fees or compensation for its services.

## ARTICLE V.

### Easements Reserved

5.01 Common Area Easements. Developer reserves, for the benefit of the Developer and the Association, a perpetual Common Area easement as designated on the Plat, if any Common Area is so described on the Plat. The Association shall maintain the Common Area as needed. Developer shall have the right, but not an obligation, to maintain the Common Area at Developer's sole and absolute discretion.

5.02 Utility Easements. Developer reserves a utility easement as shown on the recorded Plat of the Subdivision for the installation, maintenance and replacement of utilities serving the Subdivision, including, without limitation, water, gas, electricity, telephone and cable. Developer shall have the right to dedicate such utility easement to the public or any utility service provider.

5.03 Additional Easements. If additional utility or drainage easements, whether or not contemplated or mentioned in this Declaration, between or across portions of the Subdivision are necessary and desirable to effectuate the purposes of this Declaration, then, upon the request of Developer, and provided said proposed additional easements will not unreasonably interfere with the development, use, access to and occupancy of any Lot, each Owner agrees to grant such additional easements across such Owner's Lot, without charge therefor, subject to such reasonable terms and conditions as shall be agreed upon between Developer and such Owner. Any such new easement or easements shall be signed by Developer and/or all Owners of portions of the property which compose the land within such new easements and shall be recorded in the Official Public Records of Harrison County, Texas.

5.04 Drainage Retention Facility. Developer reserves for the benefit of the Association an easement for any drainage retention facility shown on any Plat of the Subdivision and such drainage retention facility shall be maintained by the Association.

## ARTICLE VI.

### Rights Reserved by Developer

6.01 Reserved Rights of Developer. Notwithstanding any other provisions contained in the Declaration to the contrary, the Developer reserves the right, upon application and request of the Owner of any Lot, to waive, vary or amend (by an appropriate letter to that effect addressed and delivered to such applicant/Owner by Developer) the application of any of these Restrictions to such Lot if, in the sole and absolute discretion of the Developer, such action is necessary to relieve a hardship or to permit good architectural planning and development to be effected. Developer further reserves the right:

1. To re-subdivide any Lot;

- 2. To change the location of streets and easements prior to the time the same are actually opened for public use or availed of by the public or public utilities; however, in no case shall any such change deprive an Owner to reasonable access; and
- 3. To alter and amend this Declaration in Developer's sole and absolute discretion until such time that all construction and development activity has been completed and all Lots have been sold by the Developer to a first purchaser.

6.02 Exemption of Developer. Exempted from these Restrictions are activities carried on by the Developer in connection with Developer's development of the Subdivision and regular pursuit of construction, maintenance and sales within the Subdivision until all construction and development activity has been completed and all Lots have been sold by the Developer to a first purchaser.

**ARTICLE VII.**

Duration of Restrictions; Amendments

These Restrictions shall run with and bind the land, and inure to the benefit of, and be enforceable by the Developer, the Association and the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, and, unless amended as provided herein, shall be effective for a period of twenty (20) years from the date this Declaration is recorded, after which time these Restrictions shall be automatically extended for successive periods of ten (10) years each. These Restrictions may be amended by an instrument signed by sixty-seven percent (67%) of the Lot Owners. No amendments shall be effective until recorded in the official public records of Harrison County, Texas, or until the approval of any governmental regulatory body, if required by law, shall have been obtained.

**ARTICLE VIII.**

General Provisions

8.01 Assignment. Developer shall have the right to assign to any person or persons, corporation or other legal entity any or all rights, powers, reservations and privileges herein reserved by and to Developer, and any such assignee shall have the right to assign.

8.02 Enforcement. In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of these Restrictions, Developer, the Association and/or each purchaser, grantee or Owner of any Lot may institute and prosecute any proceeding at law or in equity or both to abate, prevent or enjoin any such violation or attempted violation or to recover damages. In the event any such proceedings are initiated, the party initiating any such proceedings shall be entitled to recover against any violator all expenses incurred in connection therewith, including court costs and attorney fees. No delay in enforcing the provisions of this Declaration as to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or

repetition of such breach or violation or similar breach or violation thereof at any later time or times. Further, the failure by any party entitled to enforce these Restrictions shall in no way be deemed a waiver of the right to do so thereafter for the same or similar violation. Developer has no duty and shall not be responsible for enforcement of these Restrictions, and Developer shall not be liable or subject to any recourse for any failure to enforce these Restrictions.

8.03 Fine for Violation. In addition to and without limiting the enforcement rights and remedies set forth in Section 8.02 of these Restrictions, in the event of any violation of these Restrictions, the Association shall have the right to impose a fine against the violating Lot Owner in an amount not exceeding \$50.00 per day for each violation during the continuance of any violation of these Restrictions, and the Association's decision regarding the imposition of any such fine shall be final and binding on all concerned parties; provided, that upon written request to the Association by the violating Lot Owner, the Association shall call a special meeting of the Board of the Association to consider an appeal by the affected Lot Owner of the fine imposed against the Lot Owner, and in the event of an appeal a majority vote of the Board shall be final and binding upon all concerned parties. Any fine imposed by the Association pursuant to these Restrictions shall be paid within thirty (30) days of the date of written notice from the Association to the affected Lot Owner. In the event the affected Lot Owner fails to make payment of any fine within such thirty (30) day period, the Association shall have the power and authority to make and declare a special assessment against the affected Lot Owner to collect such fine in the same manner as provided for other special assessments under Article 3 of these Restrictions.

8.04 Interpretation. Developer's interpretation of the meaning and application of the provisions of this Declaration and these Restrictions shall be final and binding on all interested parties at any time in question.

8.05 Invalidation and Severability. The invalidation by any court of any reservation, covenant or restriction herein or in any contract or deed shall not impair the full force and effect of any other reservation, covenant, or restriction.

8.06 Acceptance of Declaration. The provisions hereof are hereby made a part of each contract and deed in respect to any Lot to the same effect as if fully set forth therein, and each such contract and deed shall be conclusively held to be executed, delivered and accepted upon and subject to the provisions and conditions herein set forth, and each Lot Owner contracting for or accepting a conveyance of any Lot agrees to fully comply with and be bound by all of the provisions in this Declaration.

8.07 Gender. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

8.08 Captions. The captions used in connection with all articles and paragraphs contained in this Declaration are for convenience only and shall not be controlling in the construction of any provisions hereof or limit the meaning of the language used in any article or paragraph.

8.09 Limitation of Developer's Liability. Developer, as well as its members, principals, officers, agents and employees, shall not be liable to any Owner of any Lot or any other party for any loss, claim or demand in connection with any breach of any provisions of this Declaration by any other party.

8.10 Restrictions Not Applicable to Other Lands. These Restrictions apply only to the land described in Exhibit "A" to be known as Mission Creek Unit Five Subdivision. Developer is not obligated to impose any restrictions on other lands owned by Developer, whether contiguous or noncontiguous, provided that Developer reserves the right within Developer's sole and absolute discretion to supplement these Restrictions by adding additional lands which Developer desires to be governed by these Restrictions.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed as of the date and year above set forth.

DEVELOPER:

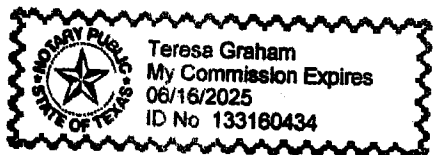
MISSION CREEK DEVELOPMENT GROUP,  
LLC, a Texas limited liability company

By: *Daniel Kessinger*  
Daniel Kessinger, authorized member

STATE OF TEXAS       §  
                                  §  
COUNTY OF SMITH   §


This instrument was acknowledged before me on the 15<sup>th</sup> day of February, 202~~2~~<sup>3</sup>, by Daniel Kessinger, Authorized Member of Mission Creek Development Group, LLC a Texas limited liability company, on behalf of said limited liability company.

*Teresa Graham*  
Notary Public, State of Texas






MISSION CREEK DEVELOPMENT GROUP,  
LLC, a Texas limited liability company

By:   
Matthew Rannals, authorized member

STATE OF TEXAS       §  
                                  §  
COUNTY OF SMITH   §

This instrument was acknowledged before me on the 15<sup>th</sup> day of February 202<sup>3</sup>7, by Matthew Rannals, Authorized Member of Mission Creek Development Group, LLC a Texas limited liability company, on behalf of said limited liability company.



  
Notary Public, State of Texas

**EXHIBIT A**

All lots in Mission Creek Unit Five, an addition to the City of Longview, Harrison County, Texas, as shown by the plat thereof recorded in Cabinet C, Slide 4-A of the Plat Records, Harrison County, Texas.