

# **Revised Declaration of Protective Restrictions**



## REVISED DECLARATION OF PROTECTIVE RESTRICTIONS FOR THE FORT CLARK SPRINGS ASSOCIATION, INC.

### PREAMBLE

Fort Clark Springs Association, Inc., a Texas non-profit corporation and property owners' association subject to the Texas Property Code and the Texas Business Organizations Code (the "Association" herein), is the present owner of the real property described in Exhibit One, and as may be amended from time to time, attached hereto. In addition, this Amended Declaration of Protective Restrictions for the Fort Clark Springs Association, Inc. (Declaration) apply to all parcels of land sold by the Association, the predecessor to the Association, or the Declarant. (See Exhibit One) For the purpose of conferring a direct benefit on each part of such property as it now is or as it may hereafter be divided or subdivided, the Association hereby declares that the following revised provisions and restrictions shall, with respect to every part of, and interest in such property, bind the Association and any holder of any title to or interest in any part of such property. Each provision and restriction herein stated, being for the benefit of every portion of the property, may be enforced by any owner of any portion of the property against anyone who violates in any way, actively or by omission, any provision hereof. The restrictions hereby imposed on the property are intended to constitute a general plan of the Association's property and are intended to be uniform in effect as to all owners, present and future, and as to each interest in the land or any lot or other portion thereof, and shall be construed so as to effect such uniformity. The restrictions hereby imposed shall constitute a covenant by every purchaser and grantee, immediate as well as remote, to be bound by these restrictions, and each interest in the land is subject to these restrictions. Each interest in the fee to the whole or any portion of the property is dominant tenement with respect to every other interest in and every part of the property; each interest in the fee to the whole or any portion of the property is a subservient tenement to every other interest in the property or any portion thereof.

### PART I DEFINITIONS

As used in this Declaration of Protective Restrictions, the following words and phrases shall have the meaning here set forth, unless the context otherwise requires.

1. *Association* means Fort Clark Springs Association, Inc., which is a Texas non-profit corporation and property owners' association governed by the Texas Property Code.
2. *Board* means the Board of Directors, which serves as the Association's governing body.
3. *Capital Improvements* are the addition of permanent structural improvements or the restoration of some aspect of a property that will either enhance the property's overall value or increase its useful life.
4. *Common Property*, formerly defined as "club grounds," means the Property managed by the Association that all Association members may use. Common Property is that part of Real Property up to the whole thereof that the Association intends to make available to members to exercise

membership privileges. The Common Property shall consist of 1600 acres, more or less, unless this Revised Declaration is modified in the manner herein elsewhere provided

5. *Declaration* means this Revised Declaration of Protective Restrictions, including any amendments hereafter made and recorded in the records of Kinney County, Texas.
6. *Lot Owner* means a person who holds record title to a Specialty Lot or to Real Property in a residential subdivision in the Association. A Lot Owner must be a Member but does not include those holding title merely as security for performance of an obligation.
7. *Lot(s)* shall mean all parcels of land initially sold by the Association, the predecessor to the Association, or the Declarant, which is located in the Association subdivisions and subject to these Declarations. Lots shall also include other parcels of real property located in the Association subdivisions sold by someone other than the Association, predecessor to the Association or Declarant and not including the Common Property.
8. *Member* is an owner of a valid membership in the Association.
9. *Off-Site Improvements* mean all water, sewer, and other utility systems installed outside the boundaries of lots owned or to be offered to Lot Owners, and all streets, curbs and gutters, sidewalks, and alleyways in a residential subdivision in the Association.
10. The phrases *the Real Property* and *the Property* are intended to mean the property described in Exhibit One attached hereto.

## PART II MEMBERSHIPS

The Association recognizes three classes of memberships defined below:

*Lot Owner Memberships* are those based on the Lot Owner's ownership of a lot in the Association with a recorded deed. A deed may have an Association Charter Number attached to it. A Lot Owner membership enjoys all privileges and duties of Association membership, including the right to vote in Board elections. Only one vote shall be allowed per lot. Membership will be appurtenant to and may not be voluntarily separated from ownership of a lot.

*Charter Memberships* are those defined as having an Association Charter Number without corresponding ownership of a lot in the Association subdivisions with a recorded deed. Holders of a charter membership have the option to exchange their membership for a lot owner membership by selecting a lot owned by the Association and recording the deed. This exchange shall be subject to the availability of lots. Charter members do not have the right to vote in Board elections but are entitled to the privileges of access, use and enjoyment of the Common Property in the same manner as individuals holding Family Recreation memberships and subject to assessments and regulations as determined by the Board in its sole discretion. Charter memberships may be canceled for failure to pay assessments or maintain current contact information with the Association. No new charter memberships shall be sold by the Association, but all current charter memberships will be honored.

*Family Recreation Memberships* are those that give members the privileges of access, use and enjoyment of the Association's Common Property, provided their dues or subscriptions are current. Family recreation memberships do not have any ownership interest in the Association's Property and do not have the right to vote in Board elections. Family Recreation memberships are governed by a separate contract and unless stated otherwise they are not subject to the rights and remedies contained in this Declaration. Family Recreation membership may be canceled for failure to pay assessment or maintain current contact information with the Association. These memberships may continue to be sold provided they do not adversely affect the Association's Common Property, as may be determined by the Board of Directors.

The Board of Directors may designate other memberships or other forms of access to the Association's Common Property from time to time and subject to other rules, regulations or obligations.

### **PART III INTENDED USE OF COMMON PROPERTY**

1. The Common Property shall be used primarily for recreational purposes in accordance with the Association's governing documents and recorded plats.
2. Each Member shall be entitled, subject to such rules and regulations as the Board may make, to all permitted uses of Common Property; but the foregoing shall not be construed to impair, diminish, or restrict the right of the Association to levy and collect dues and assessments, to make rules and regulations, and to charge other appropriate fees for facilities, equipment and similar items.

### **PART IV GOVERNANCE**

1. The purposes of the Association are to carry out the operation of a Texas non-profit corporation and a property owners' association, to perform the functions assigned to it by this Declaration, including the enforcement of this Declaration, and to perform such other functions related to the Property, and not inconsistent herewith, as may be directed or authorized by a vote of at least a majority of the Lot Owners voting thereon, or the Board, as the case may be. The Association may also perform all other acts permitted by law.
2. Each Lot Owner shall be entitled to one vote for each lot. When electing directors, Lot Owners shall be entitled to one vote per lot for each Director position being filled. Voting rights are not cumulative. Every Lot Owner with any interest in any part of the real property and every Member shall comply with all rules of the Board affecting procedures under this Declaration.
3. The Association shall be governed by a Board of Directors consisting of five (5) persons. The Board shall be elected by the vote of the Lot Owners of the Association. Procedures for the exercise of Lot Owners' rights, for elections, and for administering the affairs of the Association are governed by this Declaration, the Association's Bylaws and applicable state law.

4. In addition to keeping other records pertinent to the Association's activities, the Board shall keep written records of all proceedings and shall have custody of all current general schematics, plats and all subdivision maps. Such records and maps shall be maintained at the office of the Association in Kinney County, Texas, and shall be available for inspection by every Lot Owner and/or his/her duly authorized agent.
5. No member of the Board shall be liable for any debts of the Association, or for any errors in judgment or procedure made in good faith.
6. In addition to other powers of the Board herein elsewhere expressed or implied, the Board shall have the following powers and duties:
  - a. To enforce each provision of this Declaration;
  - b. To maintain the Common Property and to repair, improve, and restore the facilities thereon, including utility, landscaping and other services benefitting such property;
  - c. At its discretion, to employ personnel to perform the services herein provided to be performed by the Board, including, but not by way of limitation, engineers, lawyers and accountants;
  - d. To pay taxes and assessments which would otherwise be a lien upon any of the Common Property;
  - e. At its discretion, to delegate its authority to others to perform specific tasks;
  - f. At its discretion, to amend this Declaration if approved by the affirmative vote of a majority of the votes cast by Lot Owners entitled to vote on the amendment;
  - g. To cause an annual, independent audit of all accounts held by or for such Board to be made and to make available copies thereof to the Lot Owners;
  - h. At its discretion, to execute all papers relating to the creation, alteration, and dissolution of utility and improvement districts, and all other districts and governmental and quasi-public entities;
  - i. To formulate, amend, or repeal bylaws containing provisions for the regulation and management of the Association consistent with Texas law and this Declaration, which shall be recorded in the records of Kinney County, maintained in the office of the Association and made available to all Lot Owners and/or their agents;
  - j. To sell and market individual lots or parcels owned by the Association and which are adequate building sites and to that end engage such marketing agencies as the law may permit to render such services; sale of Common Property shall be approved by the affirmative vote of a majority of the votes cast by Lot Owners;
  - k. To sell and market Family Recreation memberships that do not contain the right or privilege to acquire any real property in the Association or vote and to that end engage such marketing agencies as the law may permit to render such services;

- l. To contract for and to make Capital Improvements;
  - m. At its discretion, from time to time to permit and, for the safety, health, welfare, and preservation of landscape and improvements on the Association's Real Property, to deny access to the Association's Real Property or any portion thereof, and to make reasonable charges for any entry on or use of the Common Property by Lot Owners, and other members and visitors;
  - n. At its discretion, to execute grants to any governmental unit, utility or public or quasi-public entity, and to grant easements and rights of way to facilitate the further development of the Property; the Association, as grantor, will join in all such reasonable grants to the extent of the Association's interest;
  - o. To enact rules and regulations governing Board procedures and privileges and responsibilities of Lot Owners and other members and visitors, which shall be consistent with the other provisions hereof;
7. The enumeration of specific powers and rights of the Board shall not be construed as a limitation thereof.
  8. No Member shall have any proprietary, equitable, or other interest in any of the assets of the Association, either prior to or after its dissolution.
  9. Neither the Board nor the Association shall, directly or indirectly, impede, obstruct, or in any manner diminish the lawful efforts of any Lot Owner to advertise, or sell any interest in the real property they hold recorded title.

## PART V ASSESSMENTS

1. The Board shall have the power to levy assessments on Members, Family Recreation Members and Charter Members:
  - a. For the purpose of paying taxes and assessments for which the Common Property, subdivisions or any portion thereof is or will within the succeeding twelve (12) months become liable to any city, county, state, district, or other governmental entity; assessments levied on the Association; and
  - b. For the purpose of meeting other costs and expenses of the Association, including, without limitation, insurance, materials, supplies, taxes, maintenance, operations and Capital Improvements.
2. Types of Assessments:
  - a. Regular Assessment: There shall be levied a regular assessment, which except on the affirmative vote of a majority of the Property Owner's votes cast in an election called for such purpose shall be tied to the Consumer Price Index (CPI). The regular assessment shall be assessed to Members, Family Recreation Members and Charter Members and be tied to the Consumer Price Index

(CPI). Further provided that without such vote of the eligible membership, the Board may from time to time increase the annual regular assessment no more than 2.5 percent or in an amount equal to the rise in the CPI (U.S. City average 1967 = 100) published by the U.S. Department of Labor, Bureau of Labor Statistics for the then current month over the same index for the month in which such regular assessments were last fixed, whichever is greater.

- b. Improved Residential Assessment: In addition to the above regular assessment, there shall be levied an additional residential assessment not to exceed the amount of the regular assessment for each membership which is allocated to each Improved Lot or parcel of land served by utilities. a residential lot or unit served by utilities.
- c. Special Assessment: In addition to the regular assessment and improved residential assessment, and without the vote of the membership, the Board may establish special assessments in an amount necessary to pay any deficit of the Association for any fiscal year. Such special assessment may be levied only once in any calendar year and may not exceed 10 percent of the then prevailing regular annual assessment as set forth above.
- d. Restricted Fund: The Board may levy assessments for the purpose of establishing a Restricted Fund to defray costs of creating subdivisions, provisions for Off-Site Improvements, Capital Improvements, reserves for replacement and maintenance, historic preservation, and the maintenance of any debt service, public or private. All expenditures from this Restricted Fund must be approved by a majority vote of the Board of Directors.
  - i. Assessments levied under this subsection shall be in an amount determined at the sole discretion of the board and shall not exceed 12 percent of the annual regular assessment per year per membership, from which 25 percent per year, per membership shall be allotted for historic preservation of Association-owned properties in the Fort Clark National Register of Historic Places, and thereafter shall continue at said rate annually or until from time to time increased or decreased by an affirmative vote of the Board, as required to defray costs as set forth herein.
  - ii. The other 75 percent shall be allotted for Off-Site Improvements, Capital Improvements, reserves for replacement, and the payment of any debt service, public or private.
- e. Common Property Assessment: The Board may levy assessments for the purpose of timely paying taxes, rates and expenses on the Common Property to Fort Clark Municipal Utility District of Kinney County, Texas, for which payment the Members and Association are liable, if such taxes are levied by said District to pay the principal of and interest on any bonds, notes and or other obligations of said District issued for the purpose of providing water and sewer facilities to serve the Association.
  - i. Assessments shall be made under this subsection only in the event the Restricted Fund does not contain adequate funds to timely pay said taxes and there are no other funds available to the Board for such purpose.
  - ii. Any assessments levied by the Board shall be determined by the Board and apply to Members, Family Recreation Members and Charter Members. This assessment shall



be in addition to any other assessments levied by the Board under this Declaration, notwithstanding any other provisions of this Declaration

3. Each member shall be personally liable for assessments on his/her membership, and such liability shall be secured by a security interest and a lien on the Member's real property and any certificate evidencing same, and on any other interests or real property of the Member, if any, within the boundaries of the real property (Exhibit One). Such security interest and lien shall be in such form and shall contain such terms and conditions and shall be evidenced by such documents as may be required by the Board and such security interest and lien may be foreclosed judicially or non-judicially in accordance with the provisions of the Texas Property Code and related state law. No Member may waive or otherwise escape liability for the assessments provided for by nonuse of the common area or abandonment of the owner's lot.
4. For Family Recreation Members and Charter Members, any assessment not paid within thirty (30) days after the due date will be deemed in default and will bear interest from the due date at the rate of 10 percent annum. Failure to pay all applicable assessments shall result in the cancelation and revocation of the membership interest and the Family Recreation Members and Charter Members shall be personally liable for said assessments.
5. \*Individual Enforcement Assessment: In addition to other assessments described elsewhere in the Declaration and any Amendments thereto, the Board may levy an individual enforcement assessment, not to exceed \$200.00 per occurrence, on a particular Member or Members for the purpose of enforcing compliance with the Association's rules, regulations, and procedures pertaining to and including, but not limited to: traffic and speed regulations; parking regulations; animal control; trash, junk and litter control; building permits; building violations; swimming pool regulations; and protective restrictions described in this Declaration and any Amendments thereto. Enforcement assessments levied under this subsection shall require prior approval of the Association's Board. Each Member shall be personally liable for enforcement assessments on his/her membership.
6. The Assessment lien provided for in this Declaration will be subordinate to the lien of any first deed of trust. A sale or transfer of any lot will not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a deed of trust, whether judicial or by exercise of power of sale, will extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer will relieve such lot from liability for any assessments thereafter becoming due or from the lien of such assessments.

**PART VI**  
**\*BOARD MEETINGS**

1. Board meeting:
  - a. means a deliberation between a quorum of the voting board of the Association, or between a quorum of the voting board and another person, during which Association business is considered and the board takes formal action; and



- b. does not include the gathering of a quorum of the board at a social function unrelated to the business of the Association or the attendance by a quorum of the board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.
2. Regular and special board meetings must be open to Members, subject to the right of the Board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual Members, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Members, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.
  3. Except for a meeting held by electronic or telephonic means described herein, a board meeting must be held in Kinney County.
  4. The Board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's registered agent at the address appearing on the most recently filed management certificate or, if there is not a registered agent, to the Board.
  5. Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. If the meeting is held solely or in part by using a conference telephone or other communications system, the notice should also indicate the form of communications system to be used for the meeting and the means of accessing the communications system. The notice shall be:
    - a. mailed to each Member not later than the 10th day or earlier than the 60th day before the date of the meeting; or
    - b. provided at least 72 hours before the start of the meeting by posting the notice in a conspicuous manner reasonably designed to provide notice to Association Members:
      - i. in a place located on the Association's Common Property or, with the Members' consent, on other conspicuously located privately owned property within the Association; or
      - ii. on the Association's website or other Internet media; and
      - iii. sending the notice by e-mail to each Member who has registered an e-mail address with the Association.

6. Notice of a meeting that is:
  - a. mailed is considered to be delivered on the date notice is deposited in the United States mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the Association; and
  - b. transmitted by facsimile or electronic message is considered to be delivered when the facsimile or electronic message is successfully transmitted.
7. It is a Member's duty to keep an updated e-mail, mailing and physical address registered with the Association for purposes of providing notice.
8. If the Board recesses a regular or special board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner described herein within two hours after adjourning the meeting being continued.
9. The Board may meet by any method of communication, including electronic and telephonic without prior notice to Members if each director may hear and be heard by every other director, or the Board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate Board action. Any action taken without notice to Members must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The Board may not, without prior notice to Members under, consider or vote on:
  - a. enforcement assessments;
  - b. damage assessments;
  - c. initiation of foreclosure actions;
  - d. initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
  - e. increases in assessments;
  - f. levying of special assessments;
  - g. appeals from a denial of Architectural Committee approval; or
  - h. a suspension of a right of a particular Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue;
  - i. lending or borrowing money;

- j. the adoption or amendment of a dedicatory instrument;
- k. the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent;
- l. the sale or purchase of real property;
- m. the filling of a vacancy on the Board;
- n. the construction of Capital Improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- o. the election of an officer.

**PART VII**  
**\*MEMBERSHIP MEETINGS**

- 1. Each year the Board shall hold an Annual Meeting of all Lot Owners.
- 2. Notice of the Board's annual meeting must include the date and location of the meeting, and must be sent no earlier than 60 days and no later than 10 days before the annual meeting.
- 3. The agenda for the annual meeting must include a report on the state of the Association, a financial report, and the results of any elections or votes.
- 4. A special meeting of Association Members may be called by:
  - a. the Board president;
  - b. the Board;
  - c. Members having not less than one-tenth of the votes entitled to be cast at the meeting; or
  - d. other officers or persons as authorized by the Association's certificate of formation or Bylaws.

**PART VIII**  
**ARCHITECTURAL COMMITTEE**

An Architectural Committee (Committee) is necessary for the Association because of the nature and variety of the Units (subdivisions) that have been developed over the years. The Committee's purpose is to preserve and protect the value of lots within Units and Units within the Association subdivisions through the use of Covenants, Conditions, Restrictions, and Regulations (CC&Rs) written for each Unit.

There is hereby established an Architectural Committee that shall consist of five (5) to seven (7) owner members from different Units to three-year staggered terms. Association employees may not be voting

members. In the event a vacancy occurs, a replacement shall be appointed by Association Board to serve the unexpired term of the vacated position.

The Architectural Committee will operate and perform its duties independently of the Association Board, except that the Committee may not grant variances and member owners have the right to appeal a determination of the Committee to the Association Board.

The Committee shall have the following authority and duties:

- 1) Process and approve or deny permit requests for construction, or to improve or modify existing construction. Approval or denial shall be based on the existing and applicable CC&Rs for the Unit for which the permit is requested.
- 2) Issue approved permits valid for six (6) months, after which a six (6) month extension may be issued upon request with an acceptable reason for said extension.
- 3) Determine fees for permits and permit extensions and fines for permits requested and issued after work has been started.
- 4) Meet and process permit requests and any other business brought before the Committee once a week.
- 5) Enforce compliance with CC&RS by serving notice via US Postal Certified mail to a non-compliant member to correct the violation within thirty (30) days of the date of the notice. Should the violation not be corrected, an enforcement assessment in an amount determined by the committee beginning on the thirty-first (31<sup>st</sup>) day from the date of the notice and continuing each day the member is in non-compliance shall be levied up to a maximum of \$1,500. This enforcement assessment shall be a personal liability of the non-compliant member and shall be payable upon receipt and subject to collection as all other fees and assessments due the Association are stated elsewhere in this Declaration. The Board of Directors reserve at its discretion the right to seek judicial intervention (injunction or otherwise) to enforce the CC&Rs, and any part of this Declaration and to collect an enforcement assessment upon the recommendations by the Architectural Committee.
- 6) The Committee's scope of jurisdiction and authority shall be limited to enforcing current Unit CC&Rs of the Association and shall not extend to the Common Property.
- 7) Changes in Unit CC&Rs may be recommended to the Board by the Committee or by Lot Owners within their individual Units. The Board of Directors may enact by a majority vote any changes to the Unit CC&Rs.

**PART IX**  
**BUILDING SITES**  
(RESIDENTIAL USE ONLY]

1. A building site consists of a single residential dwelling, apartment, condominium, mobile home, or a self-contained recreational vehicle. A building site may be located only in a lot designated as a performance unit, which is a unit that has streets and utilities that are present.

2. The Association recognizes that certain Members may hold deeds to property defined as non-performance lot(s). There are no guarantees for utility services, roads, trails or development attached to non-performance lots and Members who own non-performance lots are only assured of membership in the Association and the right to vote in elections. Members who own non-performance lots may not restrict access to their lots. Sales, marketing or use of non-performance lots are governed by applicable state laws regulating colonias.

Notwithstanding the above, the Association will allow Members holding clear title to a non-performance lot to exchange said lot(s) for a lot in a performance unit within the Association. The Association can give no assurance that the number of performance lots will be adequate to meet every Member request to exchange a non-performance lot for a performance lot, and a Member's right to exchange a non-performance lot for a performance lot is not contractually guaranteed. A Member who desires to make such an exchange shall notify the Board in writing by certified mail to the Association's main office. All such exchange requests shall be accommodated on a first come, first serve basis and shall be processed as promptly as possible.

### **PART X RESTRICTIONS**

No owner of a building site within the Real Property shall cause or suffer a lien or encumbrance to be imposed on any portion of the Common Property or Real Property (Exhibit One) owned by the Association; nor shall such owner do anything on or to the Real Property, including on his/her building site, which shall impair or diminish the rights of other owners to come upon and use the Common Property in the manner herein.

### **PART XI ENFORCEMENT**

1. Any owner of any interest in any part of the Real Property and the Association, respectively, shall have the right to enforce the provisions of these restrictions in every manner permissible by law, including by injunction. Failure by Declarant, the Association, or by any owner to enforce any covenant or restriction so imposed will in no event be deemed a waiver of the right to do so thereafter.
2. Prior to commencing any action at law to enforce this Declaration or for damages for its breach, a notice in writing shall be sent by Certified Mail to the offender demanding that he/she cure his/her breach of this Declaration and desist from any further breach. Such notice shall precede any action in any court by at least ten (10) days, except where substantial damage is imminent and could not be adequately compensated by money, in which case an appropriate action in court may be filed on shorter notice or without prior notice. Damages awarded in any such proceeding shall be used to compensate each owner of any interest in any part of the Real Property who has been injured by the breach. Any excess shall belong to the Association.

3. Notwithstanding anything herein to the contrary, no breach of any of the provisions hereof shall affect or otherwise impair the rights of a mortgagee, trustee, or beneficiary of a deed of trust who became such in good faith and without notice of such breach, provided that any subsequent owner of any part of the Real Property shall be bound by this Declaration.
4. If any part of this Declaration is invalid or unenforceable, the remainder shall be unaffected by such invalidity or unenforceability and shall be binding with the same force and effect as though the invalid or unenforceable portion has been omitted.
5. All provisions hereof shall be binding upon and inure to the benefit of all Members, their heirs, personal representatives, successors and assigns, and the Association, its successors and assigns.

## **PART XII ENFORCEMENT ACTION**

1. Before the Association may suspend a Lot Owner's right to use the Common Property, file a suit against a Lot Owner (other than a suit to collect a regular or special assessment or foreclose under an Association lien), charge a Lot Owner for property damage, or levy an enforcement assessment for a violation of these restrictions, bylaws or rules of the Association, the Association or its agent must give written notice to the Lot Owner by certified mail.
2. The notice must:
  - a. describe the violation or property damage that is the basis for the suspension action, charge, or enforcement assessment and state any amount due the Association from the Lot Owner; and
  - b. inform the Lot Owner that the Lot Owner:
    - i. is entitled to a reasonable period, with a specific cure date specified in the notice, to cure the violation and avoid the enforcement assessment or suspension unless the violation poses a threat to public health or safety, or the Lot Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months;
    - ii. may request a hearing pursuant to state law on or before the 30th day after the date the notice was mailed.

## **PART XIII DURATION OF DECLARATION WITH RESPECT TO COMMON PROPERTY**

This Declaration shall run with and bind the land, and will inure to the benefit of and be enforceable by the Association or a Lot Owner and remain in effect for twenty (20) years and shall automatically renew for additional twenty (20) year periods until at least a majority of the property owners voting on the Declaration shall otherwise determine. This Declaration may be amended by a majority of the Lot Owners voting. If such vote shall terminate or amend this Declaration, the results of such vote shall

acknowledged certified by two officers of the Association shall be recorded in the real property records of Kinney County.

**PART XIV  
USE AND DISPOSITION OF ASSETS**

No part of the net earnings of the Association shall be paid or distributed to any Member of the Association or any other individual; nor shall any part of such net earnings inure for the benefit of any Member or other individual. All of the assets of the Association are and shall be perpetually dedicated to the performance of the Association's duties hereunder, and shall continue to be so dedicated notwithstanding any dissolution of the Association or the impossibility of performing the specific purposes of the Association; in the event of any such dissolution or impossibility of performance of the Association's purpose, the assets of the Association shall be distributed to an organization which is exempt under Section 501(c)(3) of the Internal Revenue Code or as determined by judicial proceeding.

**PART XV  
SAVING PROVISIONS**

1. The Association makes no representations concerning future requirements of law for subdivisions, dwellings, or land use, the costs of creating a subdivision, or for the condition of the land or its availability for any specific usage.
2. All rights, duties and privileges created, reserved, or granted hereunder, whether express or implied, are subject to and shall be governed by paramount applicable law, regulations, and ordinances (herein called Law) in effect from time to time during the life of these Restrictions; no person shall be liable for failure to perform any provision hereof by reason of any law forbidding or penalizing such performance or declaring such performance to be a crime.
3. The terms, conditions, and provision of this Declaration shall be governed, controlled and construed by the laws of the state of Texas. The undersigned parties expressly agree that venue for all purposes shall be Kinney County, Texas.



**EXHIBIT ONE**

Two tracts of land, containing 2,667.32 acres of land, more or less, being portions of Fort Clark Properties at Brackettville, Kinney County, Texas, all out of Survey 234, to Samuel A. Maverick, original Grantee, Abstract No. 491, Certificate No. 293, in Kinney County, Texas, said two tracts being more particularly described by the metes and bounds as follows, to wit:

**TRACT 2:**

Lying South of U.S. Highway No. 90, and West of County Road, designated on plat as North part of "Tract B", containing 457.21 acres;

BEGINNING at 10 inch corner post fence, set at the point of intersection of the West line of Survey No. 234, with the South line of U.S. Highway No. 90;

THENCE with fence along the South right-or-way line of said highway, as follows:

South 73°48' East 46.0 varas;  
South 71°54' East 167.8 varas;  
South 69°26' East 828.6 varas;  
South 57°58' East 420.2 varas to corner;

THENCE along the West line of a County Road, South 16°38' East 54.8 varas and South 26°15' West 1691.1 varas to an iron pin in same, for the Southeast corner;

THENCE North 58°00' West along the North line of a 1000.0 acre tract, 1650.1 varas to an iron pin in fence, set in the West line of Survey No. 234;

THENCE with said line, and along fence North 32°00' East 1501.9 varas to the PLACE OF BEGINNING.

**TRACT 3:**

Lying South of U.S. Highway No. 90, and East of County Road, designated on plat as Tracts G, H, I, J, K, L, M, N, O and Motor Pool Area, containing a total of 2210.11 acres, described in one body as follows:

BEGINNING at a 15 inch square rock marked U.S. set at the Southeast corner of Survey No. 234, for the Southeast corner of this tract;

THENCE, with fence along the South line of Survey No. 234, North 58°00' West 2048.3 varas to a 10 inch corner post of fence, in the East line of a County Road;

THENCE, with fence along the East line said road, as follows:

South 10°44' East 47.2 varas;  
North 10°16' West 1201.5 varas;  
North 8° 14' East 89.2 varas; and  
North 26°15' East 3634.3 varas to corner;

THENCE North 71°05' East 47.0 varas to a 10 inch corner post of fence set in the South right-of-way line of U.S. Highway No. 90;

THENCE along the South right-of-way line said highway, as follows:

South 57°48' East 846.4 varas;  
South 60°31' East 36.0 varas;  
South 58°15' East 271.0 varas;  
South 57°43' East 355.5 varas;  
South 57°54' East 369.8 varas to corner;

THENCE with a curve to the right, along the West line of State Highway No. 131, as follows;

South 46° 15' East 65.8 varas;  
South 38°12' East 84.7 varas;  
South 27°20' East 82.6 varas;  
South 18°46' East 89.2 varas;  
South 7°17' East 87.8 varas;  
South 2°13' West 83.2 varas to end of curve;

THENCE with fence as follows:

South 6°18' West 897.3 varas;  
South 7°30' West 1051.0 varas;  
South 7°00' West 174.8 varas; and  
South 4°47' West 185.7 varas to corner;

Thence leaving Highway No. 131, and with fence along the East line of Survey No. 234, South 32°00' West 2295.5 varas to the PLACE OF BEGINNING. The plat referred to above being the one prepared by Hilmar J. Koch, licensed Land Surveyor, from a Survey dated July 1967, made for The Brown Foundation.

**CERTIFICATE OF FORT CLARK SPRINGS ASSOCIATION, INC.**

I, the undersigned do hereby certify:

That I am the duly elected and acting President of the Board of Directors of Fort Clark Springs Association, Inc., a Texas Non-Profit Corporation, and;

WHEREAS, the foregoing Revised Declaration of Protective Restrictions comprised of sixteen pages was approved by a vote of the Fort Clark Springs Association, Inc. membership at the 46<sup>th</sup> Annual Membership Meeting held on March 25, 2017; and

NOW THEREFORE, the aforementioned Revised Declaration of Protective Restrictions are hereby ratified by the Board of Directors of the Fort Clark Springs Association, Inc.

IN WITNESS WHEREOF, the Association has caused its corporate name and seal to be affixed hereto by its President this 28 day of March, 2017.

FORT CLARK SPRINGS ASSOCIATION, INC.

*Myrna Cassel*  
\_\_\_\_\_  
Myrna Cassel, President

ATTEST:

*William Herman*  
\_\_\_\_\_  
William Herman, Vice President

*Daniel Sullivan*  
\_\_\_\_\_  
Daniel Sullivan, Secretary

*Sandra Hagen*  
\_\_\_\_\_  
Sandra Hagen, Treasurer

*Ann Barron*  
\_\_\_\_\_  
Ann Barron, Director

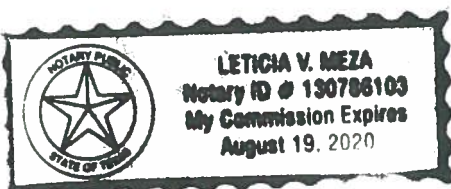
STATE OF TEXAS

COUNTY OF KINNEY

BEFORE ME, the undersigned authority, on this day personally appeared Myrna Cassel, President of the Board of Directors of the Fort Clark Springs Association, Inc., known to be to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 28 day of March, 2017.

*Leticia V. Meza*  
\_\_\_\_\_  
Notary Public



Book 0223 Page 0499  
Doc# 00000023752  
#pages 17  
3/29/2017 10:40:58 AM  
Official Public Records of  
Kinney County  
Honorable Isela Fannon  
Kinney County & District Clerk  
Fees: \$0.00