

Text

FIFTH AMENDMENT AND RESTATEMENT
OF
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
ROSEBROOK HOMEOWNERS ASSOCIATION, INC.

This Declaration of Covenants, Conditions & Restrictions is made by ROSEBROOK HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation ("Declarant"), on the date signed below.

WHEREAS, effective January 25, 1988, Canaan Land Development Corporation executed a certain Declaration of Covenants and Restrictions affecting Rosebrook Development recorded on May 25, 1990, in Volume 3012 Page 633 of the Land Records of Smith County, Texas; and

WHEREAS, effective July 8, 1991, Canaan Land Development Corporation executed a certain first Amendment to Declaration of Covenants and Restrictions affecting Rosebrook Development recorded July 9, 1991 in Volume 3128, Page 3 of the Land Records of Smith County, Texas; and

WHEREAS, effective May 2, 2000, Canaan Land Development Corporation executed a certain Second Amendment to Declaration of Covenants and Restrictions affecting Rosebrook Development recorded on June 27, 2000, in Volume 5332 Page 65 of the Land Records of Smith County, Texas; and

WHEREAS, the Declarant having the requisite ownership to amend Declarations of Covenants and Restrictions affecting ROSEBROOK HOMEOWNERS ASSOCIATION, INC., has approved certain amendments and restatements contained herein to these declarations; and

Declarant, a non-profit corporation established to govern the residential planned unit development known as ROSEBROOK HOMEOWNERS ASSOCIATION, INC., acting through its duly elected board of directors, is the Owner of all common areas.

Declarant is desirous of amending and restating the Declaration in its entirety in order to more effectively govern ROSEBROOK HOMEOWNERS ASSOCIATION, INC., in a more orderly and efficient manner.

ARTICLE 1

DEFINITIONS

DEFINITIONS. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. "Areas of Common Responsibility" means portions of Lots or Dwellings that are maintained by the Association, as a common expense.

1.2. "Assessment" means any charge levied against a Lot or Owner by the Association, pursuant to the Documents, and include Regular Assessments, Special Assessments, and Individual Assessments, as defined in Article 5 of this Declaration.

1.3. "Association" means the Association of Owners of Lots in the Property, organized as a Texas nonprofit nonstock corporation named ROSEBROOK HOMEOWNERS ASSOCIATION, INC.

1.4. "Board" means the Board of Directors of the Association.

1.5. "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

1.6. "Common Area" means certain real and personal property owned or to be owned by the Association for the use and enjoyment of the Members. The initial Common Area is described in Article 2 below,

1.7. "Declarant" means ROSEBROOK HOMEOWNERS ASSOCIATION, INC., acting through its duly elected Board of Directors.

1.8. "Declaration" means this document, as it may be amended from time to time.

1.9. "Director" means a Member of the Association's Board.

1.10. "Documents" means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws, the Association's Articles of Incorporation, and the Rules and Architectural Restrictions of the Association, as any of these may be amended from time to time.

1.11. "Dwelling" means the single family residence on a Lot, and all other improvements on the Lot. Where the context indicates or requires, "Dwelling" includes the Lot.

1.12. "Lot" means a portion of the Property other than the Common Area, intended for independent ownership, on which there is or will be constructed a Dwelling, as shown on the Plat, Where the context indicates or requires, "Lot" includes the Dwelling.

1.13. "Majority" means more than half.

1.14. "Member" means a Member of the Association, each Member being an Owner of a Lot, unless the context indicates that Member means a Member of the Board or a Member of a committee of

the Association.

1.15. "Mortgagee" means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Lot.

1.16. "Owner" means a holder of recorded fee simple title to a Lot. Contract sellers and Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.17. "Plat" means all Plats, singly and collectively, recorded or in lie recorded in the Real Property Records of Smith County, Texas, and pertaining to ROSEBROOK HOMEOWNERS ASSOCIATION, INC., including all declarations, limitations, restrictions, easements, and reservations shown on the Plat, as the Plats may be amended from time to time.

1.18. "Property" means all the land subject to these Declarations and all improvements, easements, rights, and appurtenances to the land.

1.19. "Resident" means an occupant of a Dwelling, regardless of whether the person owns the Lot.

1.20. "Rules" means rules and regulations adopted by the Board in accordance with the Documents.

1.21. "Underwriting Lender" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (FHA), Federal National Mortgage Association (Fannie Mae), or Veterans Administration (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any institution.

1.22. "Water Resources" means all of the water management system components which may be located wholly within the Property, including the lake, water retention areas, creeks and drainage ditches, swales, and all structures, pipes, conduits, and other connectors among any of the them.

ARTICLE 2

THE PROPERTY

2.1. PROPERTY. The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Appendixes to this Declaration, which run with the real property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. ADDITIONAL PROPERTY. The real property shown on Appendix A described as Additional Property which adjoins the Property described in Paragraph 2.1 may be annexed to the

Property and be subjected to the Declaration and the jurisdiction of the Association by Declarant. The addition of real property to the Property requires the approval of Owners of at least a majority of the Lots. Annexation of additional real property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the county's real property records.

2.3. SUBJECT TO DOCUMENTS. The real property subject to this Declaration is also subject to the Plat, the Bylaws, the Association's Articles of Incorporation, and the Rules and architectural restrictions, if any, of the Association, as any of these may be amended from time to time.

2.5. COMMON AREAS. The Common Areas of the Property consist of the following, and any modification of, replacement of, or addition to these:

2.5.3. Maintenance Easement. The lawns, landscaping, and sprinklers, and the screening wall, regardless of whether on a Lot or a public right-of-way, activity center, and common parking areas, if any.

2.5.4. Property Entrances. If any: (1) security gates; (2) signage; (3) planter boxes and fencing; (4) electrical and water installations on utility meters in the Association's name; (5) grass, shrubs, ground cover, and trees, served by the Association's sprinkler lines.

2.5.5. Street Lamps. Any pole lamps on the Property that are used for street lighting.

2.5.6. Personal Property. Any personal property owned by the Association, such as books and records, office equipment, and furniture.

ARTICLE 3

MAINTENANCE OBLIGATIONS

3.1. OVERVIEW. Generally, the Association alone shall maintain the Common Areas, including the landscaping of common areas, and the Owner shall maintain the interior and exterior of his/her Dwelling not otherwise covered by a maintenance easement to the Association. The exterior and interior of each Dwelling shall be maintained by the Owner. If an Owner fails to maintain his Dwelling, the Association may perform the work at the Owner's expense.

3.2. ASSOCIATION MAINTAINANCE. The Association's maintenance obligations will be discharged when and in the manner that the Board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.

- A. All common areas as defined in Section 2.5 of these Documents;
- B. Areas of Common Responsibility as defined in Section 3.4 of these Documents;
- C. All Landscaping of the Association.

3.3. OWNER RESPONSIBILITY. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

3.3.1. Lot Maintenance. Each Owner, at the Owner's expense, must maintain the exterior and interior of his/her Dwelling, including any structures on the Lot. Maintenance includes, as needed, preventative maintenance, repairs, painting and replacement. Each Owner is expected to maintain his/her Dwelling at a level, to a standard, and with an appearance that is commensurate with other Dwelling in the Property, with final determination being at the discretion of the Board.

3.3.2. Extermination. Each Owner is responsible for extermination of insects and other pests.

3.3.3. Avoid Damage. An Owner may not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

3.3.4. Responsible for Damage. An Owner is responsible for his/her own willful or negligent acts and those of his/her or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas, the Area of Common Responsibility, or the property of another Owner.

3.3.5. Owner's Default in Maintenance. If the Board determines that an Owner has failed to properly discharge his/her obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may, at the Board's discretion (1) perform the maintenance at Owner's expense, which is an individual Assessment against the Owner and his/her Lot; or (2) refer to legal counsel for enforcement, with said costs being an individual Assessment against the Owner and his/her Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

BEFORE ACQUIRING AN OWNERSHIP INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER IS STRONGLY ENCOURAGED TO CONTACT THE ASSOCIATION TO OBTAIN AND REVIEW THE MOST RECENT DESIGNATION OF AREAS OF COMMON RESPONSIBILITY, WHICH IS SUBJECT TO CHANGE FROM TIME TO TIME.

3.4. AREA OF COMMON RESPONSIBILITY. The Association, acting through its elected Board of Directors has the right but not the duty to designate, from time to time, portions of Lots or Dwellings as Areas of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. The cost of maintaining Areas of Common Responsibility is added to the annual budget and assessed uniformly against all Lots as a regular Assessment, unless Owners of at least a majority of the Lots decide to assess the costs, as individual Assessments.

3.4.1. Change in Designation. The Association may, from time to time, change the designation of Areas of Common Responsibility, or provide for no Areas of Common Responsibility. Because the designation is subject to change, the Association will maintain at all times a dated list of the Areas of Common Responsibility for distribution to Owners and prospective purchasers. Additions, deletions, or changes in designation must be:

- A. Approved by Owners of at least a majority of the Lots;
- B. Published and distributed to an Owner of each Lot upon written request;
- C. Reflected in the Association's annual budget and reserve funds.

ARTICLE 4

ASSOCIATION AND MEMBERSHIP RIGHTS

4.1. THE ASSOCIATION. The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a Property Owners Association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

4.2. MEMBERSHIP. Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for Membership. Membership is appurtenant to and may not be separated from ownership of the Lot. An attempt to separate Membership in the Association from ownership of the Lot is void and will not be recognized by the Association. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association.

4.2.1. Co-Owners. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the Membership rights appurtenant to the Lot. Regardless of whether a Lot is owned by more than one person or entity, each Lot shall be provided one (1) vote, as specified in Section 4.3 of these Declarations.

4.2.2. Contract Purchaser. A Member who sells his Lot under a contract for deed may delegate his Membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to his Lot until fee title to the Lot is transferred.

4.3. VOTING. One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other Lot. Votes may be cast by written proxy, according to the requirements of the Bylaws. Cumulative voting is not allowed. The vote appurtenant to a Lot is not divisible by Co-Owners, who are subject to the following provisions:

4.3.1. Co-Owners Voting at Meeting. If only one of the multiple Co-Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the Co-Owners is present, the Lot's one vote may be cast with the Co-Owners' unanimous agreement. Co-Owners are in unanimous agreement if one of the Co-Owners casts the vote and no other Co-Owner makes prompt protest to the person presiding over the meeting.

4.3.2. Co-Owners Voting by Proxy or Ballot. Any Co-Owner of a Lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other Co-Owners. If the person presiding over the meeting or balloting receives evidence that the Co-Owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

4.3.3. Developer Voting. The Developer shall be entitled to two votes to every one vote of a Lot as defined in Section 4.3 until the earlier of the following events:

- A. When the Developer no longer owns any residential lots or property the Developer intends to subdivide and plat for residential lots in the Association; or January 25, 2018.
- B. After the earlier of one of the above events in 4.3.3(B), the Developer shall be entitled to one vote for each remaining lot in which the Developer holds the interest required for membership in Article 4.2 of the Declaration.

4.4. BOOKS & RECORDS. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 3.151 and 3.152 of the Texas Business Organizations Code, as it may be amended from time to time, or §209.005, of the Texas Property Code. In addition, the Board of Directors has approved and recorded certain policies as to document retention and copies, including costs.

4.5. INDEMNITY. THE ASSOCIATION AGREES TO INDEMNIFY, HOLD HARMLESS, SAVE AND DEFEND EVERY FORMER, CURRENT AND FUTURE OFFICER, DIRECTOR, AND COMMITTEE MEMBER AND ANY OTHER PARTIES REQUIRED TO BE INDEMNIFIED BY THE ASSOCIATION UNDER THE GOVERNING DOCUMENTS OF ROSEBROOK HOMEOWNERS ASSOCIATION, INC., A TEXAS NON-PROFIT CORPORATION, ("INDEMNIFIED PARTIES") AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, LOSSES, EXPENSES, COSTS, LIABILITIES, INJURIES, CAUSES OF ACTION OR JUDGMENTS INCLUDING ATTORNEY'S FEES AND COURT COSTS FOR BODILY INJURY OR DEATH, OR DAMAGE TO PROPERTY (INCLUDING BUT NOT LIMITED TO, ALL CLAIMS OR DEMANDS FOR DAMAGE TO OWNERS, THEIR RESIDENTS, TENANTS, AND/OR GUESTS, CONTRACTORS, SUBCONTRACTORS, THEIR EMPLOYEES, AGENTS OR PROPERTY OWNED OR OCCASIONED, CONTRIBUTED TO OR IN ANY WAY CAUSED OR ALLEGED TO BE OCCASIONED, CONTRIBUTED TO OR IN ANY WAY CAUSED IN WHOLE OR IN PART BY TO OWNERS, THEIR RESIDENTS, TENANTS, AND/OR GUESTS, CONTRACTORS, SUBCONTRACTORS, THEIR EMPLOYEES, AGENTS OR PROPERTY OWNED, OR IN ANY WAY ARISING OUT OF, CONNECTED WITH OR INCIDENT TO THE PERFORMANCE OF THE OBLIGATIONS COVERED BY THESE DECLARATIONS, INCLUDING MISTAKE OF BUSINESS JUDGMENT AND/OR NEGLIGENCE, BY WHOMEVER PERFORMED, REGARDLESS OF WHETHER SUCH INJURY, DEATH OR DAMAGE IS CAUSED OR IS ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF ANY OFFICER, DIRECTOR, AND COMMITTEE MEMBER AND ANY OTHER PARTIES REQUIRED TO BE INDEMNIFIED BY THE ASSOCIATION UNDER THE GOVERNING DOCUMENTS OF ROSEBROOK HOMEOWNERS

ASSOCIATION, INC., A TEXAS NON-PROFIT CORPORATION. THE RIGHT OF INDEMNIFICATION SHALL NOT BE AVAILABLE IN THE EVENT AN INDEMNIFIED PARTY IS FOUND BY A COURT OR JURY TO HAVE COMMITTED A WILLFUL MISFEASANCE, WILLFUL MISFEASANCE, WILLFUL MISCONDUCT, OR ACTED WILLFULLY IN BAD FAITH AGAINST THE ASSOCIATION.

4.6. OBLIGATIONS OF OWNERS. Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

4.6.1. Information. Within thirty (30) days after acquiring an interest in a Lot; within thirty (30) days after the Owner has notice of a change in any information required by this Subsection; and on request by the Association from time to time, an Owner will provide the Association with the following information:

- A. A copy of the recorded deed by which Owner has title to the Lot;
- B. The Owner's address, phone number, and drivers' license numbers;
- C. Any Mortgagee's name, address, and loan number;
- D. The name and phone number of any Resident other than the Owner;
- E. The name, address, and phone number of Owner's managing agent, if any.

4.6.2. Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or his Lot, and will pay regular Assessments without demand by the Association. In the event an Owner fails to comply with this obligation, the Association may take the steps outlined in these Declarations to recover said Assessments.

4.6.3. Comply. Each Owner will comply with the Documents as amended from time to time.

4.6.4. Reimburse. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Lot, or the Owner or Residents family, guests, employees, contractors, agents, or invitees.

4.6.5. Liability. Each Owner is liable to the Association for violations of the Documents by the Owner, a Resident of the Owner's Lot, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees and management fees whether or not suit is filed. Said liability shall include the costs incurred by the Association including but not limited to attorneys fees and costs, management fees, and postage fees.

ARTICLE 5

COVENANT FOR ASSESSMENTS

5.1. PURPOSE OF ASSESSMENTS. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and promoting the recreation, common benefit, and enjoyment of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

5.2. PERSONAL OBLIGATION. An Owner is obligated to pay Assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner is exempt from his/her Assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

5.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of at least 51% of the allocated votes present at the noticed meeting for vote on such amendments. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget.

5.3.1. Veto Increased Dues. At least thirty (30) days prior to the effective date of an increase in regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least a majority of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

5.3.2. Veto Special Assessment. At least thirty (30) days prior to the effective date of a special Assessment, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the special Assessment. The special Assessment will automatically become effective unless Owners of at least majority of the Lots disapprove the special Assessment by petition or at a meeting of the Association.

5.3.3. Approve Certain Special Assessment. The following actions must be funded by a special Assessment approved by Owners of at least a majority of the Lots:

- A. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.
- B. Construction of additional improvements within the Property, but not replacement of original improvements.
- C. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, replacement, legal representation, and property

management.

5.4. TYPES OF ASSESSMENTS. There are three (3) types of Assessments: Regular, Special, and Individual.

5.4.1. Regular Assessments. Regular Assessments are based on the annual budget. Each Lot is liable for its designated share or proportion of the annual budget. If the Board does not approve an annual budget or fails to determine new regular Assessments for any year, or delays in doing so, Owners shall continue to pay the regular Assessment as last determined. If during the course of a year the Board determines that regular Assessments are insufficient to cover the estimated common expenses for the remainder of the year, the Board may increase regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular assessments shall commence as to all lots on the date of conveyance of the first Lot to an Owner. The first Regular Assessment shall be adjusted according to the number of days in the fiscal year. The Board shall fix the amount of the Regular Assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the Regular Assessment shall be sent to an Owner of every Lot subject thereto. For each Lot that has been sold or conveyed, the Regular Assessment shall be a minimum of TWO HUNDRED and FIFTY AND NO/100 DOLLARS (\$250.00) per year, with any increase thereof being directed by the Board. Regular Assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- A. Maintenance, repair, and replacement, as necessary, of the Common Area;
- B. Maintenance, repair, and replacement, as necessary of the Area of Common Responsibility;
- C. Utilities billed to the Association;
- D. Services billed to the Association and serving all Lots;
- E. Taxes on Property owned by the Association, if any, and the Association's income taxes;
- F. Management, legal, accounting, auditing, and professional fees for services to the Association;
- G. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association;
- H. Insurance premiums and deductibles;
- I. Contributions to the reserve funds;

- J. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

5.4.2. Special Assessments. In addition to regular Assessments, and subject to Subsection 5.3.3. above, the Board may levy one or more special Assessments per annum against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds.

5.4.3. Individual Assessments. In addition to regular and special Assessments, the Board may levy an individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to; an additional Assessment as set out in Paragraph 10.5 herein, interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; and 'pass through' expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

5.5. BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses shall be allocated uniformly to each Lot.

5.6. ANNUAL BUDGET. The Board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an owner of each Lot, although failure to receive a budget or summary does not affect or void an Owner's liability for Assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

5.7. DUE DATE. Regular Assessments will be due on a biannual basis. The first installment is due on the last working day of January, per annum, and are delinquent if not received by the Association on or before the first working day of February per annum. The second installment is due on the last working day of July, per annum, and are delinquent if not received by the Association on or before the first working day of August per annum. Special and individual Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within thirty (30) calendar days after notice of the Assessment is given.

5.8. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and use its best efforts to fund reserves out of regular Assessments, including using professional consultation as necessary.

5.8.1. Operations Reserves. The Association will maintain operations reserves at a level sufficient to cover the cost of operational or maintenance emergencies or contingencies, including the full amount of deductibles on insurance policies maintained by the Association.

5.8.2. Replacement & Repair Reserves. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Area and Area of Common Responsibility and will utilize professional advice from an appropriate engineer regarding street repair and replacement.

5.9. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association, acting through its Board, is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged Property are subordinate and inferior to the rights of the Owners hereunder.

5.10. ASSESSMENT LIEN. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his/her title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his/her Lot.

5.10.1. Superiority of Assessment Lien. The Assessment lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and Assessments levied by governmental and taxing authorities, (2) any interim construction lien, and (3) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to any mechanic's lien for construction of improvements to the Lot or an assignment of the right to insurance proceeds on the Lot, regardless of when recorded or perfected.

5.10.2. Effect of Mortgagee's Foreclosure. A Mortgagee's foreclosure of its deed of trust lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the Mortgagee's foreclosure sale is liable for Assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

5.10.3. Perfection of Lien. The Association's lien for Assessments is continued from the original restrictions and covenants as to each lot by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the county's real property records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

5.10.4. Power of Sale. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of judicial or non-judicial sale in connection with the Association's Assessment lien. The Board may appoint, from time to time, an Association officer, agent, trustee, substitute trustee, or attorney to exercise the power of

sale on behalf of the Association. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

5.10.5. Foreclosure of Lien. The Assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, as it may be amended from time to time, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees and costs. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 6

EFFECT OF NONPAYMENT OF ASSESSMENTS AND VIOLATION OF THE DOCUMENTS

6.1. COLLECTING DELINQUENT ASSESSMENTS. Owners who honor their obligations to the Association should not be burdened by Owners who default. The Board is responsible for taking action to collect delinquent Assessments. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has, as also specified in the Collection Policy for ROSEBROOK HOMEOWNERS ASSOCIATION, INC.

6.1.1. Delinquency. An Assessment is delinquent if the Association does not receive payment in full by the Assessments due date as specified in Section 5.7.

6.1.2. Notice to Mortgagee. The Board may notify and communicate with the holder of any lien against a Lot regarding the Owner's default in payment of Assessments.

6.1.3. Interest. Delinquent Assessments are subject to interest from the due date, as specified in Section 5.7 until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum. Interest is an individual Assessment.

6.1.4. Late Fees. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time. Late fees are an individual Assessment at a rate of \$25.00 per day for continuing delinquent assessments.

6.1.5. Costs of Collection. The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorney's fees and processing fees charged by the manager. Collection costs are individual assessments, subject to the terms of Section 5.4.3.

6.1.6 Acceleration. If an Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the

Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager. Collection costs are an individual assessment, subject to the terms of Section 5.4.3.

6.1.7. Suspension of Use. If an Owner's account has been delinquent for at least thirty (30) days, the Board may suspend the right of Owners and Residents to use Common Areas and common services during the period of delinquency. The Board may not suspend an Owner or Resident's right of access to the Lot. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

6.1.8. Money Judgment. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

6.1.9. Foreclosure of Assessment Lien. As provided by Article 5 of this Declaration, the Association may foreclose its lien against the Lot by judicial or non-judicial means.

6.1.10. Application of Payments. The Board may adopt and amend policies regarding the application of payments. The Board may refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. Acceptance of payment with attached conditions or directions contrary to the Board's policy for applying payments is not completed through endorsement and deposit, but is contingent upon said payment being posed on the Lot's account.

6.2. ENFORCING THE DOCUMENTS. The remedies provided in this Section for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents:

6.2.1. Nuisance. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation,

6.2.2. Fine. The Association may levy reasonable charges, as an individual Assessment, against an Owner and his Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

6.2.3. Suspension. The Association may suspend the right of Owners and Residents to use Common Areas for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

6.2.4. Self Help. The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any

erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' written notice of its intent to exercise self-help.

6.2.5. No Waiver. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

6.3. NOTICE AND HEARING. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard. The Association's written notice must contain: (1) a description of the violation or property damage; (2) the amount of the proposed fine or damage charge; (3) a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and (4) a stated date by which the Owner may cure the violation to avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional procedures and requirements for notices and hearing.

ARTICLE 7

PROPERTY EASEMENTS AND RIGHTS

7.1. GENERAL. In addition to other easements and rights established by the Documents, the Property is subject to the easements and rights contained in this Article.

7.2. OWNER'S EASEMENT OF ENJOYMENT. Every Owner is granted a right and easement of enjoyment and use over the Common Areas, subject to other rights and easements contained in the Documents, including restrictions and suspension from use of said Common Areas as specified herein.

7.3. OWNER'S MAINTENANCE EASEMENT. Every Owner is granted an easement over adjoining Lots and Common Areas for the maintenance or reconstruction of his Dwelling, subject to the consent of the Owner of the adjoining Lot, or the Association in the case of Common Areas, and provided the easement does not damage or materially interfere with the use of the adjoining Lot or Common Area. Requests for entry to an adjoining Lot or Common Area will be made in advance for a time reasonably convenient for the adjoining Owner, who may not unreasonably withhold consent. If an Owner damages an adjoining Lot or Common Area in exercising this easement, the Owner is

obligated to restore the damaged property to its original condition, at his/her sole expense, within a reasonable period of time not to exceed sixty (60) days after receiving request or notice of reimbursement.

7.4. OWNER'S INGRESS & EGRESS EASEMENT. Every Owner is granted a perpetual easement over the Property, as may be reasonably required, for ingress to and egress from his/her Lot.

7.5. ASSOCIATION'S ACCESS EASEMENT. The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents.

7.6. UTILITY EASEMENT. The Association may grant permits, licenses, and easements over Common Areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

7.7. ENCROACHMENT EASEMENT. If any portion of a Dwelling encroaches upon any Common Area or upon an adjoining Lot now existing or which may come into existence hereafter as a result of construction, overhangs, brick ledges, repair, shifting, settlement, or movement of any portion of a Dwelling, or as a result of condemnation or eminent domain proceedings, a valid easement for such encroachment shall exist and such encroachment shall remain undisturbed so long as the Dwelling stands.

ARTICLE 8

ARCHITECTURAL COVENANTS AND CONTROL

8.1. PURPOSE. Because the Lots are part of a single, unified community, the Association has the right to regulate the design, use, and appearance of the Lots and Common Areas in order to preserve and enhance the Property's value and architectural harmony. The purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is maintained.

OTHER THAN THOSE LOTS EXPRESSLY EXCLUDED HEREIN, THE CONSTRUCTION, MODIFICATION, REPLACEMENT, USE, AND APPEARANCE OF EVERY LOT & DWELLING IS SUBJECT TO THIS DECLARATION, ACC APPROVAL, AND RULES & ARCHITECTURAL RESTRICTIONS ADOPTED BY THE ASSOCIATION.

8.2. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee (the "ACC") consists of three (3) persons or more appointed by the Board, pursuant to the Bylaws, or, at the Board's option, the Board may act as the ACC. If the Board acts as the ACC, all references in the

Documents to the ACC are construed to mean the Board.

8.3. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT. No structure, whether residence, accessory building, tennis court, swimming pool, antennae (on a structure or on a lot), flag poles, fences, walls, exterior lighting, or other improvements, shall be constructed or maintained upon any lot and no alteration or repainting to the exterior of a structure shall be made and no landscaping performed unless complete plans, specifications, and lot plans therefor, showing the exterior design, height, building material and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, location of garbage cans and utility meters, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Architectural Control Committee.

8.4. ACC APPROVAL. To request ACC approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. The ACC will return one set of plans and specification to the applicant marked with the ACC's response, such as "Approved" or "Denied." The ACC will retain the other set of plans and specifications, together with the application, for the Association's files.

8.4.1. DEEMED APPROVAL. If an Owner has not received the ACC's written approval or denial within 60 days after delivering his complete application to the ACC, the Owner may presume that his request has been approved by the ACC. The Owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his/her application, and provided the Owner initiates and completes the improvement in a timely manner.

8.4.2. PRIOR APPROVAL. Notwithstanding the foregoing, no permission or approval is required for work that strictly complies with guidelines, plans, specifications, or policies previously developed and approved for all Lots by the ACC and still in effect at the time work is initiated. Written approval for specified improvements or alterations on certain Lots does not constitute approval for all Lots.

8.4.3. NO APPROVAL REQUIRED. No approval is required to repaint exteriors or exterior trim in accordance with an ACC-approved color scheme, or to rebuild a Dwelling in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a Dwelling, unless such will alter, damage, or modify the exterior of said Dwelling.

8.4.4. BUILDING PERMIT. If the application is for work that requires a building permit from the County of Smith, Texas, the ACC's approval is conditioned on the county's issuance of the appropriate permit. The ACC's approval of plans and specifications does not mean that they comply with the county's requirements.

8.5. ACC GUIDELINES. The Association may publish architectural restrictions, guidelines, and standards developed by the ACC, subject to revision from time to time, including revisions to reflect changes in technology, style, and taste. The Association, acting through the ACC, has the right

to establish and enforce architectural restrictions, guidelines, and standards relating to every aspect of proposed or existing improvements on a Lot, including but not limited to Dwellings, fences, and landscaping, and further including replacements or modifications of original construction or installation.

ARTICLE 9 CONSTRUCTION RESTRICTIONS

9.1. SUBJECT TO ACC RESTRICTIONS. In addition to the restrictions contained in this Article and the following Article, each Lot is subject to any architectural restrictions developed by the ACC and published by the Association. The provisions of this Article may be treated as the minimum requirements for improving a Lot. The ACC may promulgate additional restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article, provided they conform to the original scheme of development and design. An Owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his Lot and Dwelling.

BEFORE MAKING ANY IMPROVEMENT OR ALTERATION TO A LOT OR
DWELLING, AN OWNER SHOULD CONTACT THE ASSOCIATION FOR THE
MOST RECENT ARCHITECTURAL RESTRICTIONS.

9.2. HOUSES. The principle improvement on a Lot must be one single family Dwelling, and at the option of the Owner, an accessory building, either separate from or attached to the main residential building, such building shall not include a kitchen or kitchen equipment such as a sink, stove, or other facilities which would create a separate dwelling unit. Without the ACC's prior written approval for a variance, each residential building must have the following characteristics:

9.2.1. Setbacks. No improvement or building shall be erected or constructed nearer to the side street line than ten (20) feet, or nearer to the side lot line or rear lot line than five (5) feet. "side lot lines" as used in this paragraph, in respect to any two (2) or more contiguous whole and/or fractional lots owned by the same person or persons and used as a single building site, shall thereafter mean each and/or either of the two (2) outermost side lot lines considering said contiguous whole and/or fractional lots as one (1) lot, if the combined width of said contiguous whole and/or fractional lots is at least fifty (50) feet at the widest portion thereof, but no other use may be made of any lot or fractional lot to the extent it has been grouped to alter these minimum setback requirements. No building shall be located nearer to the front lot line than ten (10) feet.

9.2.2. Garage. No outbuilding or garage, other than a boathouse or a tool house shall be erected on any lot before a residence is constructed thereon, and no outbuilding, boathouse, toolhouse, basement or garage erected on any lot shall at any time be used as a dwelling, temporarily or permanently, nor shall any shack be placed on any lot, nor shall any residence of a temporary character be permitted.

9.2.3. Size of Residential Dwelling. The minimum floor square footage of any air-conditioned residential Dwelling, as measured to the outside of exterior walls, exclusive of open porches, garages, patios, and detached accessory buildings, shall be as follows for the respective Section of the Association:

9.2.3.(A) Lots zoned R-2 "PD" must be of a minimum of 1200 square feet, and have a two (2) car garage, set back at least 20 feet from the street.

9.2.3.(B) Lots zoned MF-1 "PD" shall be one to four family dwellings with a minimum of 1200 square feet per single dwelling.

9.2.3.(C) Any dwelling larger than a single-dwelling must be of a minimum 2000 square feet.

9.2.4. Outbuildings, Existing Movable Structures, and Garages.

9.2.5. Exterior Wall Materials. The Dwelling's exterior wall area, must have prior approval of the ACC, and shall be made of new material except stone, brick

9.2.6. Roofing Materials. The Owner must submit an application to the ACC for approval of roofing materials. The pitch shall not be of less than six-twelve (6/12) and shall be constructed of composition shingles.

9.2.7. Accessories. Installation of all exterior items and surfaces, including address numbers, decorative hardware, external ornamentation, lights fixtures, and exterior paint and stain, is subject to the ACC's prior approval, including approval of design, color, materials, and location.

9.3. DRIVEWAYS. Without the ACC's prior written approval: (1) a driveway on a Lot must be surfaced with concrete, asphalt, or a base material covered with a chip and seal surface or pea gravel surface. Driveways with Joint Common Easements shall be maintained jointly by such property owners as are joined by these easements. Failure to maintain in a proper and slightly manner will be enforced by the Association. After giving adequate notice, the Association shall be entitled to hire contractors to perform necessary work and shall be entitled to bill the owners adjoining such easement equally, with the charge including all costs incurred by the Association plus reasonable interests.

9.4. FENCES & WALLS. This Section is subject to the ACC's right to adopt specifications for construction or reconstruction of fences. Fences may not exceed ___feet in height without ACC approval. Fences must be made of masonry, wood, or other ACC-approved materials, with chain-link fencing being expressly prohibited. Retaining walls must be constructed entirely with ACC-approved materials, with railroad ties being expressly prohibited on the Property. Fences may not be constructed between a Dwelling's front building line and the street.

9.5. UTILITIES. All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the Smith County; (2) elevated or surface lines or equipment necessary for emergency needs and installed by a public utility; and (3) surface

equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The ACC may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring Lots. Plumbing, including water distribution and sewage, shall be connected to a sanitary sewer approved by the State and Local Health Department prior to occupancy of any dwelling.

9.6. AIR CONDITIONERS. Air conditioning equipment may not be installed in the front yard of a Dwelling. Window units are expressly prohibited on any portion of a Dwelling or other permanent building on a Lot. The ACC may require that air conditioning equipment and apparatus be visually screened from the street and neighboring Lots.

9.7. NO SUBDIVISION. No Lot may be subdivided.

9.8. DEBRIS. No Lot or other part of the Property may be used as a dumping ground for trash, garbage, building materials, or debris, including non-functional vehicles, boats, and recreational vehicles. Subject to the prohibitions in this section, waste materials incident to construction or repair of improvements on a Lot may be stored temporarily on the Lot during construction while work progresses.

9.9. TRASH RECEPTACLES. Trash receptacles shall be covered or screened to prevent access by animals or spillage of trash into the common areas.

9.10. MOTOR HOMES AND TRAVEL TRAILERS. No house trailer, mobile home, camper, boat trailer, or similar wheeled vehicle shall be stored or parked on any street or lot except in a closed garage, except for visitors on a temporary basis.

ARTICLE 10

USE RESTRICTIONS

10.1. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- A. Use of Common Areas.
- B. Hazardous, illegal, or annoying materials or activities on the Property.
- C. The use of Property wide services provided through the Association.
- D. The consumption of utilities billed to the Association.
- E. The use, maintenance, and appearance of portions of Dwellings that are visible

from the street or other Dwellings, such as roofs, windows, doors, porches, and fences.

- F. Landscaping and maintenance of yards.
- G. The occupancy and leasing of Dwellings.
- H. The types, sizes, numbers, locations, and behavior of animals at the Property.
- I. The types, sizes, numbers, conditions, uses, appearances, and locations of motorized and recreational vehicles on the Property.
- J. Disposition of trash and control of vermin, termites, and pests.
- K. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Residents.

10.2. RESIDENTIAL USE. The use of a Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using a Dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the Dwelling as a residence; (2) the uses conform to all applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Lot by employees, clients, customers or the public in quantities that, in the Board's discretion and opinion, materially increase the number of vehicles parked on the street; and (5) the uses do not interfere with Residents' use and enjoyment of neighboring Lots. The use of a Lot for the purposes of a day care, child care, half-way house, or hospice care for profit is expressly prohibited.

10.3. OCCUPANCY. Other than the completed principle Dwelling, no vehicles, camper, recreational vehicle, thing or temporary and/or permanent structure on a Lot (including the garage) may be occupied as a residence at any time by any person.

10.4. CONDITIONS OF LEASE. Whether or not it is so stated in a lease, every lease is subject to the governing Documents. An Owner is responsible for providing his/her tenant with copies of the Documents and notifying him/her of changes thereto. Failure by the tenant or his/her invitees to comply with the Documents, federal or State law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of said tenant's violation, the Owner will promptly obtain his/her tenant's compliance or exercise Owner's rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his/her tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant. The Owner of a leased Dwelling is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his/her tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant. An Owner that enters into a lease agreement with a tenant shall provide the Association a copy of said lease.

10.5. ANNOYANCE. No Lot or Common Area may be used in any way that: (1) may

reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of Residents; (4) may result in the cancellation of insurance on the Property; or (5) will violate any law. The Board has the sole authority to determine what constitutes an annoyance.

10.6. ANIMALS. Unless specifically allowed in these declarations, no animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for a commercial purpose or for consumption as food. Customary domesticated household pets may be kept subject to the Rules. Unless the Rules provide otherwise:

10.6.1. Certain Breeds Prohibited. Pit bull dogs, either mix breed or full-blood, are expressly prohibited by these documents.

10.6.2. Horses. No owner may have more than two (2) horses kept for every 20,000 contiguous square feet by the owner or purchaser of a lot(s) if adequate fences are constructed, kept in good repair, and completely encloses such area where the horse(s) are maintained.

10.6.2.(a). Such fences are to be constructed so that their height is sufficient to keep such horse(s) from reaching over said fence, and such fences are no nearer than thirty (30) feet to any property line of any other lot owned or purchased by another owner.

10.6.2.(b) All lots with horse(s) are to be maintained in a sanitary manner, non-odorous and inoffensive condition, with manure being removed once every other day.

10.6.2.(c) In the event such horse(s) are maintained for commercial purposes, prior written consent from the Architectural Control Committee is required. Such consent may be withdrawn by the committee at any time after ten (10) days written notice to the lot owner.

10.6.3. Disturbance. Pets must be kept in a manner that does not disturb the peaceful enjoyment of Residents of other Lots. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time. Any pet that has previously attacked or bit a resident, guest, tenant, or other individual must be removed from the property within ten (10) days of such action.

10.6.4. Limited Yard Privilege. Dogs must be attended in the Common Area and may not disturb or annoy people on the Property. The Board is the sole arbiter of what constitutes a disturbance or annoyance. If the Board determines that a dog disturbs people, the Board may permanently revoke the privilege of allowing the dog in the Common Area.

10.6.5. Liability. An Owner is responsible for any property damage, injury, or disturbance caused or inflicted by an animal kept on the Lot. The Owner must compensate any person injured by the animal. The Owner of a Lot on which an animal

is kept is deemed to indemnify and to hold harmless the Board, the Association, and other Owners and Residents, from any loss, claim, or liability resulting from any action of the animal or arising by reason of keeping the animal on the Property.

10.7. APPEARANCE. Both the Lot and the Dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The ACC is the arbitrator of acceptable appearance standards.

10.8. SIGNS. No signs advertising the Lots for sale or lease, other advertising signs, or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Dwelling without the Board's prior written approval from the ACC. ACC approval may specify the location, nature, appearance, dimensions, number, and time period of any advertising sign. The Association may affect the removal of any sign that violates this Section without liability for trespass or any other liability connected with the removal. Signs required by legal proceedings are exempted. Notwithstanding the foregoing, and subject to ACC disapproval, an Owner may erect, per Lot, one professionally made sign of not more than five (5) square feet advertising the Lot for sale, or political advertisement.

10.9. GARAGES. Without the Board's prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose which prohibits the parking of operable vehicles therein. All mechanical and operational aspects of the garage door are to be maintained by its Owner.

10.10. DRIVEWAYS. The driveway portion of a Lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the Board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles. The term "inoperable vehicles" shall be deemed to include, but not limited to vehicles without current inspection, registration, and/or license plates.

10.11. ANTENNA AND OUTSIDE LINES. Outside clothes lines, aerials, antennas, carports, patio covers, free standing basketball boards and other similar structures shall not be allowed unless approved by the Architectural Control Committee.

10.12. NOISE & ODOR. A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Lots. The Rules may prohibit the use of noise-producing security devices and wind chimes.

10.13. VEHICLES. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and Rules adopted by the Board. No truck with tonnage over 3/4 tonnage, vehicle with advertising signage, bobcat trucks, mobile home, motor home, camper, bus, trailer, boat, aircraft, inoperable vehicle, or any other similar vehicle or any vehicular equipment, mobile or otherwise, which the Board deems to be a nuisance, unsightly, or inappropriate, may be kept, parked, or stored anywhere on the Property without Board approval. The foregoing restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a Dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. The Association may affect the removal of any vehicle in violation of this Section or the Rules without liability to the Owner or operator of the vehicle. Vehicles used primarily for business or economic purposes are also prohibited, unless same vehicle is also used as Owner's personal vehicle.

10.15. LANDSCAPING. No person may perform landscaping, planting, or gardening on the Common Area or Areas of Common Responsibility, without the Board's prior written authorization.

10.16. DRAINAGE. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board.

10.17. FIREARMS. Use of firearms in the subdivision is strictly prohibited. Firearms shall include pistols, breach-loaded weapons, rifles, shotguns, or bows.

10.18. MOTELS. Motels and tourists courts shall be deemed a business use, and are expressly prohibited in the subdivision.

10.19. CONSTRUCTION. All construction is to be of new material, except where materials other than new materials, in the opinion of the Board or ACC, believe such materials would conform in appearance with other structures in the subdivision. All construction projects must be completed no later than six (6) months after laying foundation or beginning of construction.

10.21. OUTSIDE TOILETS. No outside toilets shall be installed or maintained on any Lot and all plumbing shall be connected with a sanitary sewer approved by the State and Local Health Department prior to occupancy.

ARTICLE 11

MORTGAGEE PROTECTION

11.1. INTRODUCTION. This Article establishes certain, standards for the benefit of Mortgagees, and is written to comply with Chapter VI of Fannie Mae's Selling Guide in effect at the time of drafting. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or Mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls.

11.2. KNOWN MORTGAGEES. An Owner who mortgages his Lot will notify the Association, giving the complete name and address of his Mortgagee and the loan number. An Owner will also provide that information on request by the Association from time to time. The Association's obligations to Mortgagees under the Documents extend only to those Mortgagees known to the Association. All actions and approvals required by Mortgagees will be conclusively satisfied by the Mortgagees known to the Association, without regard to other holders of mortgages on Lots. The Association may rely on the information provided by Owners and Mortgagees.

11.3. ELIGIBLE MORTGAGEES. "Eligible Mortgagee" shall be deemed to mean a Mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged Lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per Lot will be valid so long as the Eligible Mortgagee holds a mortgage on the Lot. The Board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting that an Owner may attend.

11.4. MORTGAGEE RIGHTS.

11.4.1. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one percent (51%) of Eligible Mortgagees, in addition to the required consents of Owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least sixty-seven percent (67%) of Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within thirty (30) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

11.4.2. Inspection of Books. Mortgagees may inspect the Association's books and records, including the Documents, by appointment, during normal business hours.

11.4.3. Financial Statements. If a Mortgagee so requests, the Association will give the Mortgagee an audited statement for the preceding fiscal year within one hundred twenty (120) days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

11.4.4. Right of First Refusal. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

11.5. INSURANCE POLICIES. If an Underwriting Lender is a Mortgagee or an Owner, the Association will comply with this Section in addition to the other insurance requirements of this Declaration. The following provisions are derived from Chapter 7, Part VI, Fannie Mae's Selling Guide, revised May 12, 1993:

11.5.1. Named Insured. The Association's insurance policies covering the Common Areas must name the Association as the named insured.

11.5.2. Notice of Cancellation. Insurance policies maintained by the Association should require the insurer to notify in writing each Mortgagee named in the mortgage clause at least ten (10) days before the insurer cancels or substantially changes the Association's coverage. Additionally, the Association will use its best efforts to send timely written notice to Eligible Mortgagees of a lapse, cancellation, or material modification of any insurance policy maintained by the Association.

11.5.3. Insurance Carder. The Association's hazard insurance policy must be written by an insurance carder that meets or exceeds the requirements, from time to time, of an Underwriting Lender.

11.5.4. Policy Deductible. The deductible on the Association's hazard insurance policy must not exceed the maximum limits permitted by an Underwriting Lender. Funds to cover the deductible should be included in the Association's operating reserve account.

11.5.5. Full Replacement Cost. The Association's hazard insurance policy should cover one hundred percent (100%) of the insurable replacement cost of the insurable improvements, if required by an Underwriting Lender.

11.5.6. Endorsements. The Association will obtain endorsements to its hazard insurance policy as required by an Underwriting Lender.

11.5.7. Liability Coverage. The amount of the Association's liability insurance should be at least that required by an Underwriting Lender.

ARTICLE 12

AMENDMENTS

12.1. CONSENTS REQUIRED. Except as otherwise provided by this Declaration, amendments to these Declarations shall be in compliance with the requirements of Texas Property Code 209.0041, as amended and enacted on September 1, 2011. Pursuant to these Declarations and Texas Property Code 209.0041, amendments are valid only by a vote of 675 percent of the total votes allocated to property owners in the property owners' association.

12.2. METHOD OF AMENDMENT. This Declaration may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives an Owner of each Lot the substance if not exact wording of the proposed amendment, a description in layman's terms of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

12.3. EFFECTIVE. To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; and (3) recorded in the real property records of every county in which the Property is located.

ARTICLE 13

INSURANCE

13.1. GENERAL PROVISIONS. All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply:

13.1.2. Insurer. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas.

13.1.3. Insured. The Association must be the named insured on all policies obtained by the Association.

13.1.4. Association as Trustee. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

13.1.5. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least ten (10) days' prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

13.1.6. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or

omission of an Owner or Resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

13.1.7. Mortgage Clause. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns."

13.2. CASUALTY OR HAZARD. The Association will obtain blanket all-risk insurance, if reasonably available, for all Common Area improvements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard, excluding land, foundations, and excavations.

13.2.1. Common Area Insured. The Association will insure Common Areas, including personal property owned by the Association, such as records, furniture, fixtures, equipment, and supplies. Also, the Association will insure any Lot owned by the Association.

13.2.2. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its hazard insurance policy as required by the "Endorsements" paragraph of the Mortgagee Protection article of this Declaration.

13.3. GENERAL LIABILITY. The Association will maintain a commercial general liability insurance policy over the Common Areas - expressly excluding the liability of each Owner and Resident within his Lot - for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners. If available, the Association may obtain liability insurance over the Area of Common Responsibility for bodily injury and property damage resulting from the maintenance of the Area of Common Responsibility.

13.4 DIRECTORS & OFFICERS LIABILITY. To the extent it is reasonably available, the Association will maintain Directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's Directors, officers, committee Members, and managers against liability for an act or omission in carrying out their duties in those capacities.

13.5. OTHER COVERAGES. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to the following:

13.5.1. Worker's Compensation. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of State law or if the Board so chooses.

13.5.2. Fidelity Coverage. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of (1) the estimated maximum funds, including reserve funds that will be in the Association's custody at any time the policy is in force; or (2) an amount equal to three (3) months of regular Assessments on all Lots. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverage.

13.6. The Association does NOT insure the contents of Dwellings. The Association strongly urges each Owner and Resident to adequately insure such property. The policies maintained by the Association are NOT for the benefit of individual Owners and Residents.

ARTICLE 14

RECONSTRUCTION CONDEMNATION & TERMINATION

14.1. ASSOCIATION AS TRUSTEE. By accepting an interest in or title to a Lot, each Owner appoints the Association, acting through its Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or a substantial part of the Property. As trustee, the Association has full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

14.2. RESTORATION AFTER DAMAGE.

14.2.1. Common Area. The Association will promptly repair or restore any damaged or destroyed portion of the Property which the Association owns or is obligated to insure. Common Areas will be repaired and restored substantially as they existed immediately prior to the damage or destruction, unless alternate plans and specifications are approved by Owners of at least a majority of the Lots. If insurance proceeds or condemnation awards are not sufficient to restore the damaged Property, the Board may levy a special Assessment to fund the deficiency.

14.2.2. Dwellings. The Association is not responsible for the repair or reconstruction of each Dwelling and Lot.

14.2.3. Insurance Deductibles. If repair or restoration of Common Areas is required as a result of an insured loss, the Board may levy an individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the repair in the absence of insurance.

14.3. CONDEMNATION. If any part of the Property is condemned, the Board may execute an amendment of this Declaration to describe the altered parameters of the Property. If the Association replaces or restores Common Areas taken by condemnation by obtaining other land or constructing additional improvements, the Board may execute an amendment without the prior consent of Owners to describe the altered parameters of the Property and any corresponding change of facilities or improvements.

14.4. TERMINATION. Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions:

14.4.1. Substantial Taking. In the event of substantially total damage, destruction, or

condemnation of the Property, an amendment to terminate must be approved by Owners of at least sixtyseven percent (67%) of the Lots, and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration.

14.4.2. Total Taking. In the event of condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees.

14.4.3. Other Circumstances. In all other circumstances, an amendment to terminate must be approved by Owners of at least eighty percent (80%) of the Lots and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration.

ARTICLE 15

GENERAL PROVISIONS

15.1. COMPLIANCE. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and all applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

15.2. FAIR HOUSING COMPLIANCE. The Association affirmatively desires and intends to comply with the spirit and letter of fair housing laws and ordinances. The provisions of this Declaration and the Rules promulgated by the Board may not be used to discriminate against any class of people protected by fair housing laws and ordinances,

15.3. NOTICE. All demands or other notices required to be sent to an Owner or Resident by the terms of this Declaration may be sent by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's Lot, and the Owner is deemed to have been given notice whether or not he actually receives it.

15.4. SEVERABILITY. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

15.5. CAPTIONS. The captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

15.6. INTERPRETATION. Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

15.7. DURATION. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

15.8. PREPARER. This Declaration was prepared in the law office of Ladd & Thigpen, P.C.,

235 S. Broadway Suite 200, Tyler, Texas 75702.

15.9. SUPERSEDING CLAUSE. This Declaration of Covenants, Conditions & Restrictions supersedes any and all previous Declaration of Covenants, Conditions & Restrictions governing ROSEBROOK HOMEOWNERS ASSOCIATION, INC.

**FIFTH AMENDMENT TO DECLARATIONS
OF COVENANTS AND RESTRICTIONS
ROSEBROOK DEVELOPMENT**

EXECUTED, this the 21st Day of March, 2014.

Rosebrook Homeowners Association Inc.

By: *Stephen E. Conaway*
Stephen E. Conaway, President

ATTEST:

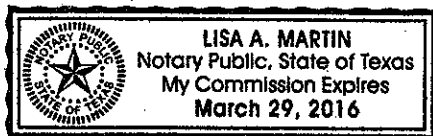
By: *Lashley Bell*
Lashley Bell, Secretary

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF SMITH

This instrument was acknowledged before me on the 21st day of March, 2014, by Stephen E. Conaway, President and Lashley Bell, Secretary of the Rosebrook Homeowners Association Inc.



Lisa A. Martin
Notary Public, State of Texas