



AFTER RECORDING RETURN TO:

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**SECOND AMENDMENT TO DEDICATION AND RESTRICTIONS OF
TIMBERCREEK CANYON UNIT NO. 5**

Cross reference that certain Dedication and Restrictions of Timbercreek Canyon Unit No. 5, a Subdivision out of Sections Nos. 12 and 21, Block No. 6, I. & G.N. R.R. Company Survey, Randall County, Texas, recorded at Volume 519, Page 37, et seq., Deed Records of Randall County, Texas, as amended by that certain Amendment to Dedication and Restrictions, recorded at Volume 709, Page 503, et seq., Deed Records of Randall County, Texas.

**SECOND AMENDMENT TO DEDICATION AND RESTRICTIONS OF
TIMBERCREEK CANYON UNIT NO. 5**

RECITALS:

A. WHEREAS, Timbercreek Canyon Unit No. 5, a subdivision out of Sections Nos. 12 and 21, Block No. 6, I. & G.N. R.R. Company Survey, Randall County, Texas, according to the map or plat recorded at Volume 516, Page 321, Deed Records of Randall County, Texas (the "**Subdivision**"), is subject to and governed by that certain Dedication and Restrictions of Timbercreek Canyon Unit No. 5, a Subdivision out of Sections Nos. 12 and 21, Block No. 6, I. & G.N. R.R. Company Survey, Randall County, Texas, recorded at Volume 519, Page 37, et seq., Deed Records of Randall County, Texas, as amended by that certain Amendment to Dedication and Restrictions, recorded at Volume 709, Page 503, et seq., Deed Records of Randall County, Texas (collectively, the "**Declaration**").

B. WHEREAS, the Subdivision is located within a privately gated development consisting of nine subdivisions known as Timbercreek Canyon Units 1 through 9 (collectively known as the "**Timbercreek Canyon Development**"), within which the gates and roads and other real and personal property are owned and maintained by Timbercreek Canyon Property Owners Association, Inc. (the "**Association**"), a Texas nonprofit corporation whose purpose is to protect and enhance the resources of the Timbercreek Canyon Development and to maintain such gates and roads and other real and personal property for the common use and benefit of the owners of lots within Timbercreek Canyon Development (collectively, referred to as the "**Common Area**").

C. WHEREAS, maintenance and repair of the Common Area serves to benefit all owners of lots and tracts within Timbercreek Canyon Development, including the owners of the lots and tracts in the Subdivision (the "**Owners**"), and a majority of the Owners desire to amend the Declaration for the purpose of ensuring that the Association has sufficient funding to maintain and repair the Common Area consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration.

D. WHEREAS, pursuant to the provision of the Declaration entitled "Duration," the Declaration may be amended by a vote of a majority of the then Owners of the lots and tracts in the Subdivision.

E. WHEREAS, a majority of the Owners, as evidenced by their acknowledged signatures hereon, have agreed to modify the Declaration, as set forth hereinbelow, for the purpose of providing for mandatory membership of the Owners in the Association and vesting the Association with the necessary powers to levy and collect assessments so as to enable it to perform maintenance and repair of the Common Area for the common benefit of the Owners.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Establishment of Property Owners Association. The provision of the Declaration entitled "Name" is hereby deleted in its entirety and replaced with the following:

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Timbercreek Canyon Property Owners Association, Inc., and its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Association.

Section 3. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 4. "Common Area" shall mean all real property (and improvements located thereon) and rights in real property owned by the Association for the common use and enjoyment of the Owners, including without limitation the roads, right-of-ways, bridges, dams, gates, gate houses, and park areas, within or that serve the Development.

Section 5. "Declaration" shall mean and refer to that certain Dedication and Restrictions of Timbercreek Canyon Unit No. 5, a Subdivision out of Sections Nos. 12 and 21, Block No. 6, I. & G.N. R.R. Company Survey, Randall County, Texas, recorded at Volume 519, Page 37, et seq., Deed Records of Randall County, Texas, as amended from time to time.

Section 6. "Development" shall mean and refer collectively to those certain subdivisions located in Randall County, Texas known as "Timbercreek Canyon Unit No. 1," "Timbercreek Canyon Unit No. 2," "Timbercreek Canyon Unit No. 3," "Timbercreek Canyon Unit No. 4," "Timbercreek Canyon Unit No. 5," "Timbercreek Canyon Unit No. 6," "Timbercreek Canyon Unit No. 7," "Timbercreek Canyon Unit No. 8," and "Timbercreek Canyon Unit No. 9."

Section 7. "Lot" or "Tract" shall mean and refer to any plot of land, together with all improvements located thereon, shown on the recorded plat of the Subdivision with the exception of the Common Area.

Section 8. "Member" shall mean and refer to any person or entity holding membership rights in the Association.

Section 9. "Owner" shall mean or refer to each person or entity who is the owner, in whole or part, of fee simple title of a Lot in the Subdivision, but excluding any person or entity holding title pursuant to a deed of trust lien.

Section 10. "Subdivision" shall mean Timbercreek Canyon Unit No. 5, a subdivision out of Sections Nos. 12 and 21, Block No. 6, I. & G.N. R.R. Company Survey, Randall County, Texas, according to the map or plat recorded at Volume 515, Page 321, Deed Records of Randall County, Texas.

ARTICLE II

Membership in Association and Voting Rights

Section 1. Membership. Every person or entity who is an Owner of a fee simple title in a Lot, upon acquisition of such fee simple title to a Lot, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the Lot which obligates the Owner thereof to membership in the Association, and membership may not be severed from, or in any way transferred, pledged, mortgaged or alienated, except together with the title to the said Lot.

Section 2. Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of members to the Association's Board of Directors, and on all other matters to be voted on by the Members, shall be calculated as provided by the Association's Bylaws.

ARTICLE III

Powers and Duties of the Association

Section 1. Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper, for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

(A) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such rules and regulations (the "Rules") and Bylaws not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

(B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.

(C) Records. To keep books and records of the Association's affairs.

(D) Assessments. To levy charges and assessments as provided in Article IV below.

(E) Enforcement of Declaration and Rules. To enforce all of the provisions of Declaration and Rules. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

(F) Real and Personal Property. To acquire and own real and personal property and to maintain and repair Common Area and all other real and personal property owned by the Association.

(G) Resale Certificates. The Association may charge a reasonable fee for preparing resale certificates. The Association may refuse to furnish resale certificates until the fee is paid. Any unpaid fees may be assessed against the Lot Owner for which the certificate is furnished.

(H) Professional Services. To retain and pay for legal, accounting and/or property management services necessary or proper in the operation of the Association, the operation and management of its property, the enforcement of the Restrictions or Rules, or in the performance of any other right, duty, power, or authority of the Association.

Section 2. Duties of the Association. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

(A) To accept, own, operate and maintain all Common Area, which may be conveyed, leased or licensed to it, together with all improvements of whatever kind and for whatever purpose which may be located in or on said Common Area; and to accept, own, operate, maintain and repair all other property, real and personal, conveyed, leased or licensed to the Association, and to maintain in good repair and condition all lands, improvements and other Association property owned by or leased to the Association.

(B) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned, leased or licensed by the Association to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(C) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment in the Common Area and any additional insurance coverage deemed necessary or appropriate by the Board. Such insurance shall be in an amount as the Board shall deem appropriate. Additionally, the Board shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the insurable improvement on the Common Area in the event of damage or destruction from any such hazard.

Section 3. Common Area. The Common Area shall be owned and/or held by the Association for the common use and enjoyment of the Owners, and the Owners shall have a right to use and enjoyment of the Common Area subject to the rights of the Board to: (i) prescribe Rules for all use, enjoyment, and maintenance of the Common Area; (ii) borrow money for the purpose of improving the Common Area, or any part thereof, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and (iii) take such steps as are reasonably necessary to protect the Common Area, or any part thereof, against foreclosure.

Section 4. Indemnification. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, committee member,

employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

ARTICLE IV

Assessments

Section 1. Assessments. The Association may from time to time levy charges and assessments (hereinafter referred to as "Assessments") against the Owners of the Lots in the Subdivision and the Owners of such Lots shall pay the Association all Assessments levied by the Association in accordance with this Article IV, as further set forth under the Association's Bylaws.

Section 2. Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration and Bylaws. The funds of the Association must be used solely for purposes authorized by this Declaration and Bylaws, as it may from time to time be amended.

Section 3. Regular Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Declaration and Bylaws, including but not limited to the cost of all Common Area maintenance and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be calculated and levied as provided by the Association's Bylaws, and the amount of any such regular Assessments set by the Board shall be final and binding so long as it is made in good faith and levied in a uniform manner against all Members of the Association. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

Section 4. Special Assessments. In addition to the regular Assessments provided for above, the Board may levy special Assessments, as provided by the Association's Bylaws, whenever in the Board's opinion such special Assessments are necessary to

enable the Board to carry out the mandatory functions of the Association under this Declaration and the Bylaws. The amount of any special Assessments shall be at the reasonable discretion of the Board and shall be final and binding so long as it is made in good faith and levied in a uniform manner against all Members of the Association. Notwithstanding anything to the contrary, in no event shall the amount of special Assessments assessed against Owners of Lots in any single calendar year exceed the amount of regular Assessments assessed against such Lot Owners during the same such year unless approved by a majority of the Association's Members present, in person or by proxy, at a meeting called for such purpose.

Section 5. Individual Assessments. In addition to regular and special Assessments, the Board may levy an individual Assessment against an Owner and the Owner's Lot for reimbursement of costs incurred by the Association to repair damage to Common Area caused by the willful or negligent acts of the Owner or the Owner's family members, tenants, guests, invitees and/or contractors.

Section 6. Owner's Personal Obligation for Payment of Assessments. The regular, special, and individual Assessments provided for herein shall be the personal and individual debt of the Owners against whom such Assessments have been levied and the Lots owned by such Owners. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay to the Association interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and a half percent (1.5%) per month, together with all costs and expenses of collection incurred by the Association, including reasonable attorneys' fees.

Section 7. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid shall, together with interest as provided in Section 6 hereof and the cost of collection, including attorneys' fees as herein provided, be secured by a continuing lien and charge on the Lots owned by each Owner, which shall bind such Lots in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall attach to all Lots upon the recording of this Declaration and shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a mortgage or deed of trust lien of record, securing in either instance sums borrowed for the purchase or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by a duly authorized officer of the Association. To evidence the aforesaid Assessment lien, the Association may, but is not required to, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lots covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the real property records of Randall County, Texas. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments shall attach with the priority above set forth above and may be enforced by the foreclosure on the defaulting Owner's Lots by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as

provided above. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred by the Association. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any holder of a deed of trust lien or by its own decision, the Association may report to said lien holder of a delinquent Lot Owner any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

Section 8. Sale or Transfer of Lot by Delinquent Lot Owner. Except as otherwise provided by applicable law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys his or her Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales proceeds of the Lot, and such sums will be paid in preference to any other charges against the Lot other than charges secured by a first deed of trust lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot to a third party.

ARTICLE V

Architectural Committee

Section 1. Establishment and Composition. There is hereby established an Architectural Committee which shall consist of three members. The members of the Architectural Committee shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

Section 2. Appointment and Removal. The Board shall appoint all members of the Architectural Committee in accordance with the Bylaws of the Association. Notwithstanding any other provisions to the contrary, the right to appoint and remove all members of the Architectural Committee at any time, with or without cause, shall be, and hereby is, vested solely in the Board.

Section 3. Term of Office. The term of each Architectural Committee member appointed shall be for a period of three (3) years, which shall be staggered, so only one member's term shall expire each year. To effect the staggering of terms, the Board shall have the power to appoint initial members to one, two, or three-year initial term(s) of office. Any new member appointed to replace a member who has resigned or been

removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed.

Section 4. Address. Applications for approval of proposed construction, erection, placement, modification and/or removal of any building, fence, wall, utility or other structure, or any other activity that must be approved by the Architectural Committee under this Declaration (hereinafter referred to as a "Improvement Request") shall be submitted to the Architectural Committee at such address as may from time to time be designated by the Architectural Committee by written instrument recorded in the Real Property Records of Randall County, Texas; and the last instrument so recorded shall be deemed the Architectural Committee's proper address.

Section 5. Duties. It shall be the duty of the Architectural Committee to receive, consider and act upon all Improvement Requests for approval of proposed construction, erection, placement, modification and/or removal of buildings, fences, walls, utilities or other structures, or other matters submitted to it pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.

Section 6. Meetings. The Architectural Committee shall meet at its discretion from time to time to perform its duties hereunder. The Architectural Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise. Notwithstanding anything to the contrary, the Architectural Committee may take action without formally meeting by unanimous consent in writing to any matter which they might consider at a formal meeting. Such written consent shall constitute the act of the Architectural Committee. For the purpose hereof, a written consent shall mean a writing signed by all three (3) members of the Architectural Committee, which may be evidence containing all three signatures or multiple subparts each containing one or more signatures. In addition, an email from a member of the Architectural Committee, provided it is dated and evidences the member's affirmation to the proposed act, shall constitute a written consent.

Section 7. Approval or Disapproval by the Architectural Committee. The approval or disapproval of a matter submitted to the Architectural Committee shall be in writing. If the Architectural Committee fails to approve or disapprove an Improvement Request submitted to it for its approval hereunder within thirty (30) days after the date shown on the submittal receipt, it shall be conclusively presumed that the Architectural Committee has approved such Improvement Request as submitted. If the Architectural Committee requests additional information or amended materials or an amended Improvement Request during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such additional information or amended materials are received by and receipted for by the Architectural Committee. An additional fifteen (15) day extension shall occur if further additional information or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Improvement Request to the Architectural Committee shall be deemed automatically disapproved, but may be resubmitted.

Section 8. Basis for Architectural Committee Approval or Disapproval. The Development is intended to be a unique and cohesive development. Toward this end, it is

intended that the Architectural Committee shall have the right to consider as the basis for any approval or disapproval of an Improvement Request: (i) compliance or noncompliance with certain objective standards set out in this Declaration; (ii) the nature and quality of the building materials and methods of construction to be used; (iii) the location of the proposed improvement or structure on the Lot; (iv) the harmony of the design of the improvement or structure with existing improvements and structures in the Subdivision; and (v) the visual impact of the proposed improvement or structure from the standpoint of style and consistency with other improvements previously constructed in the Subdivision. Notwithstanding such discretion, it shall be the goal of the Architectural Committee to be as objective as possible, and to not control or supplant an Owner's subjective architectural preferences.

Section 9. Decisions Conclusive. All decisions of the Architectural Committee shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the Architectural Committee, or any member thereof, for its or such member's approval or rejection of all or any portion of an Improvement Request or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration.

Section 10. Liability. Neither the Architectural Committee, nor any member thereof, shall be liable to any Owner, or any person or association or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or rejection of any Improvement Requests or any materials submitted therewith, whether or not defective; (ii) the location of an approved improvement or structure; (iii) hazards from flooding, or from any other possible hazards whether caused by conditions occurring either upon or off an Owner's Lot; (vi) soil erosion causing sliding conditions; (viii) compliance with governmental laws, ordinances and regulations; or (viii) any decision made or action taken or omitted to be taken under the authority of this Declaration; provided, however, that with respect to the liability of a member of the Architectural Committee, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any Improvement Request submitted to the Architectural Committee.

2. Approval of Improvements by the Architectural Committee. Paragraph 15 of the provision of the Declaration entitled "Restrictions" is hereby amended by replacing the term "Developer" with the term "Architectural Committee."

3. Submission of Plans and Specifications to the Architectural Committee. Paragraph 16 of the provision of the Declaration entitled "Restrictions" is hereby deleted in its entirety and replaced with the following:

16. Prior to the commencement of any excavations, construction or remodeling or adding to any structure theretofore completed, there shall first be filed with the Architectural Committee a complete set of building plans and specifications therefor, together with a block or plat plan indicating the exact part of the Lot the improvements will cover as well as indicating the location of fences, walls, utilities and other structures and said work shall not commence unless the Architectural Committee shall approve such plans in writing.

4. **Duration.** The provision of the Declaration entitled "Duration" is hereby deleted in its entirety and replaced with the following:

DURATION

These restrictions and covenants run with the land and are binding and effective until January 1, 1998, after which time said restrictions and covenants shall be automatically extended for ten year periods unless and until terminated or changed by a recorded vote of sixty percent (60%) of the then Owners of Lots in the Subdivision.

5. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration remain in full force and effect as written, and are hereby ratified and confirmed.

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FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



Renee Calhoun

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Renee Calhoun, County Clerk
Randall County, Texas

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