

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

THE STATE OF TEXAS §
 §
COUNTY OF WALLER §

KNOW ALL MEN BY THESE PRESENTS:

DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS APPLICABLE TO TRACTS 3A, 4, 5, 6 AND 7 OUT OF 104.1340 ACRES OF LAND LOCATED IN WALLER COUNTY, TEXAS; AMENDING THE ORIGINAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AS RECORDED UNDER CLERK’S FILE NO. 1705420, RECORDED JULY 17, 2017 IN THE OFFICIAL PUBLIC RECORDS OF WALLER COUNTY, TEXAS.

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this “Declaration”) is made on the date herein set forth (the “Effective Date”) by **TIMOTHY J. PHELAN** (“Declarant”).

WHEREAS, Declarant is the fee simple owner of the following described real property in the County of **WALLER**, to wit:

A TRACT OR PARCEL OF LAND CONTAINING 104.1340 ACRES OF LAND, (4,536,075 SQUARE FEET), SITUATED IN THE JOHN BAKER SURVEY, ABSTRACT NUMBER 71, WALLER COUNTY, TEXAS, BEING OUT OF AND A PART OF THAT CERTAIN CALLED 325.0000 ACRE TRACT OF LAND AS CONVEYED TO TEXAN CONSTRUCTION CORPORATION BY INSTRUMENT RECORDED IN VOLUME 543, PAGE 583, OF THE DEED RECORDS OF WALLER COUNTY, TEXAS, SAID 104.1340 ACRE TRACT OF LAND BEING THAT CERTAIN CALLED 104.1343 ACRE TRACT OF LAND AS CONVEYED TO TIMOTHY J. PHELAN BY INSTRUMENT RECORDED IN DOCUMENT CF NO.1603346 OF THE OFFICIAL PUBLIC RECORDS OF WALLER COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ON EXHIBIT “A” ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES AND ILLUSTRATED ON THE SURVEY ATTACHED HERETO AS EXHIBIT “B.”

WHEREAS, the above described 104.1340 acres of land includes other lands and the following described five (5) Tracts, said five (5) Tracts are referred to collectively herein for all purposes as the “Property”:

TRACT 3A

A tract or parcel of land containing 11.0000 acres, (479,160 square feet), situated in the John Baker Survey, Abstract Number 71, Waller County, Texas, being out of and part of that certain called 104.1343 acre tract of land as conveyed to Timothy J. Phelan by instrument recorded in document CF No. 1603346 of the Official Public Records of Waller County, Texas, said 11.0000 acre tract of land being designated as Tract 3A and being more particularly described by metes and bounds on Exhibit "C-3A" attached hereto and incorporated herein for all purposes.

TRACT 4

A tract or parcel of land containing 13.0838 acres of land, (569,932 Square Feet) Situated in the John Baker Survey, Abstract Number 71, Waller County, Texas, being out of and a part of that certain called 104.1343 acre tract of land as conveyed to Timothy J. Phelan by Instrument recorded in Document CF NO. 1603346 of the Official Public Records of Waller County, Texas, said 13.0838 acre tract of land being designated as TRACT 4 and being more particularly described by metes and bounds on Exhibit "C-4" attached hereto and incorporated herein for all purposes.

TRACT 5

A tract or parcel of land containing 12.0000 acres of land, (522,720 Square Feet) Situated in the John Baker Survey, Abstract Number 71, Waller County, Texas, being out of and a part of that certain called 104.1343 acre tract of land as conveyed to Timothy J. Phelan by Instrument recorded in Document CF NO. 1603346 of the Official Public Records of Waller County, Texas, said 12.0000 acre tract of land being designated as TRACT 5 and being more particularly described by metes and bounds on Exhibit "C-5" attached hereto and incorporated herein for all purposes.

TRACT 6

A tract or parcel of land containing 12.7971 acres of land, (557,440 Square Feet) Situated in the John Baker Survey, Abstract Number 71, Waller County, Texas, being out of and a part of that certain called 104.1343 acre tract of land as conveyed to Timothy J. Phelan by Instrument recorded in Document CF NO. 1603346 of the Official Public Records of Waller County, Texas, said 12.7971 acre tract of land being designated as TRACT 6 and being more particularly described by metes and bounds on Exhibit "C-6" attached hereto and incorporated herein for all purposes.

TRACT 7

A tract or parcel of land containing 12.7701 acres of land, (556,264 Square Feet) Situated in the John Baker Survey, Abstract Number 71, Waller County, Texas, being out of and a part of that certain called 104.1343 acre tract of land as conveyed to Timothy J. Phelan by Instrument recorded in Document CF NO. 1603346 of the Official Public Records of Waller County, Texas, said 12.7701 acre tract of land being designated as TRACT 7 and being more particularly described by metes and bounds on Exhibit "C-7" attached hereto and incorporated herein for all purposes.

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property;

NOW, THEREFORE, Declarant hereby declares (i) that all of the Property shall be held, sold, conveyed and occupied subject to the restrictions, covenants, and conditions, as herein set forth, which are for the purpose of protecting the value and desirability of the Property, and which shall constitute covenants running with the Property, and which shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their respective heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof, and (ii) that each contract or deed that may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following restrictions, covenants, and conditions, regardless of whether or not the same are set out or referred to in said contract or deed.

ARTICLE I

PROTECTIVE COVENANTS

SECTION 1.1 *Use Restrictions.* Tracts in the Property are intended for single family residential purposes only, as further described herein, and are additionally subject to all of the restrictions of this Section.

A. Residential Only. Each Tract, (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other occupant shall use or occupy their Tract, or permit the same of any part thereof, to be used or occupied, for any purpose other than as a private single family residence for the Owner, his family, parents of the Owner and/or his children and their spouses, or his tenant and their families and domestic servants (and their families) employed on the premises. As used herein, the term "single family residential purpose" shall be deemed to prohibit specifically, but without limitation, the use of Tracts for duplex apartments, garage apartments or other apartments used for rental purposes, and no room(s) in the dwelling and no space in any other structure shall be rented. This shall not preclude the main residential structure from being leased or rented in its entirety as a single residence to one family or person. However it is prohibited to lease the residence, guest house or living quarters on a short-term basis which is considered to be any term less than one (1) month.

B. No Commercial. No profession, business or commercial activity which is in any way evident from the exterior of any building or which entails visitation by the general public shall be allowed on any Tract. No business or commercial structure of any kind or nature whatsoever shall be built on any portion of the property and no structure, facility, or area on any Tract shall be used for mechanical repair or construction work, manufacturing or production of any product except for (1) repairing one's own vehicles in an area not visible from the road or neighboring properties, or (2) purely for such purposes as would be considered a hobby and not a primary business regardless of whether such hobby shall be done for purposes of profit. This provision will not prohibit owner from having tractors or trucks in an enclosed area or totally shielded from the road. This provision will not prohibit any homeowner from maintaining his/her office in the home however that there should be no visual evidence of any such activity from the exterior of the home, no signage of any kind, no advertising to come to the home and no noise made as a result of the activity. In any case, all activities shall be carried out in a manner and/or in a facility keeping with the intent that said Tract be kept in a neat and presentable manner.

However nothing contained herein shall prohibit the owner from the production or raising of hay for personal use or for sale to the public. It is also allowed to raise horses and/or cattle or to lease

subject property for grazing of horses and/or cattle but only within the limitations set out in SECTION 1.3.A. Feedlots are strictly prohibited.

C. Temporary or Other Structures. No structure of a temporary character, trailer, manufactured home, tent, or shack shall be placed on any Tract, either temporarily or permanently and no previously used residence, house, garage, or other structure appurtenant thereto, shall be moved upon any Tract from another location. Nothing contained herein, however, shall prohibit the construction or installation of permanent out-buildings pertinent to single family use. Such outbuildings must meet all construction requirements of this Declaration and must be of an architectural style similar to or complimentary to the style of the main residence. Barns and outbuildings may be placed on the property prior to the construction of the main residence providing the barn or outbuilding is approved by the Declarant. All barns and outbuildings shall at no time be utilized as a residence, however a living quarters in a barn or outbuilding may be used as a part-time or full-time living quarters once construction on the main residence has begun. No guest quarters or living quarters of any type shall be occupied on a part-time or full-time basis until construction on the main residence has begun.

D. Signs. No signs of any kind shall be displayed to the public view on any Tract except:

1. Builders may display one (1) sign of not more than eight (8) square feet on a Tract and any residential structure situated thereon for sale during the construction period; and

2. Any owner, or owner's representative may display one (1) sign of not more than sixteen (16) square feet on a Tract to advertise sale of the property; and

3. Political, School Spirit, Association Signs

E. Garbage and Refuse Storage and Disposal. All Tracts shall at all times be kept in a healthful, sanitary and attractive condition. No Tract shall be used or maintained as a dumping grounds for garbage, trash, junk, or other waste matter. All trash, garbage, junk, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view except as necessary for garbage pick-up days. No Tract shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that the new building materials used in the construction or improvements erected on any Tract may be placed upon such Tract at the time of construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Tract, or stored in a suitable enclosure on the Tract.

F. Minimum Tract Area. No Tract shall be subdivided or re-platted into less than five (5) acres of land.

G. Firearms. The use or discharge of firearms on the Property is prohibited.

H. Antennas and Satellite Dishes. Any antenna, satellite dishes or appurtenant structure shall be located behind the residence and shielded from view. Only one antenna taller than the ridgeline of the residence will be permitted.

I. Exterior Appearances. Each owner shall keep the exterior appearance of his residence in a neat and attractive manner. In no case shall windows be covered by sheets, aluminum

foil or other unsightly articles. Any interiors readily visible from any street shall be kept in a reasonably attractive manner or be hidden by decorative draperies.

SECTION 1.2 *Vehicles and Unsightly Articles.*

A. Storage. No article deemed to be unsightly shall be permitted to remain on any Tract so as to be visible from adjoining property or public or private streets. Without limiting the generality of the foregoing, boats, RV's, wagons, motor scooters and garden maintenance equipment shall be kept at all times, except when in actual use, stored behind the back building line of the residence or garage, stored in an out-building, or screened from public view, either within the garage or behind a privacy fence.

B. Repair. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street or driveway or visible from the street except such work that is of temporary nature. Any regularly recurring repair or dismantling work shall take place within a garage or other building screened from public view.

C. SUV's. Motor bikes, motorcycles, motor scooters, "go-carts", 4-Wheelers or other similar vehicles shall be permitted to be operated in the Property, unless such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or annoyance. Race tracks are not permitted.

SECTION 1.3 *Animals*

A. Farm Animals.

1. There shall be a limit of one (1) large farm animal per acre of land (two (2) miniature horses will count as one (1) horse). Natural offspring shall be exempt until one (1) year old.

2. No hogs shall be permitted within the properties except for a bonafide FFA or 4-H project and only for the duration of the project.

3. There shall be a limit of twelve (12) chickens or any manner of fowl per Tract in addition to any bonafide FFA or 4-H project.

B. Pets. All dogs shall be kept in a fenced area and no animal will be allowed to roam at large beyond the limits of their owner's property. There shall be a limit of six (6) pets per Tract.

C. Exotic Animals. Dangerous exotic animals are prohibited, including, by way of example only, and without limitation, tigers, lions, leopards, panthers, mountain lions and bears.

D. Nuisance. Nothing herein contained shall ever be construed so as to permit the keeping of animals or pets to become an unreasonable annoyance or be obnoxious to the occupants or owners of neighboring property, or to become a hazard to the health, welfare and well-being of the community, and all animal owners are responsible for any property damage, mess, injury, and disturbances their pet(s) may cause or inflict.

SECTION 1.4 *Nuisance.* Noxious, destructive, offensive activities, or any activity constituting a nuisance shall not be carried on in any Tract or any part thereof, and any other property owner in the Property shall have standing to initiate legal proceedings to abate such activity. Each owner shall refrain from any act or use his or her Tract which could cause unreasonable embarrassment, discomfort, or annoyance to other Owners.

ARTICLE II
TRACT IMPROVEMENTS

SECTION 2.1 *Minimum Set-Back Lines.* No structure of any kind and no part thereof shall be placed within these set-back lines:

- A. Front Tract Line. One hundred (100) feet for the main residence, including garage; Two hundred (200) feet for outbuildings.
- B. Rear Tract Line. Fifty (50) feet.
- C. Side Tract Line. Twenty-five (25) feet.

1. Exclusions. The following improvements are expressly EXCLUDED from these set-back restrictions:

- a. Driveways.
- b. Hedges not to exceed nine (9) feet in height and walls and fences not to exceed six (6) feet in height.
- c. Landscaping.

SECTION 2.2 *One Residence.* Only one residence shall be constructed or permitted to exist on each Tract. Said residence shall be completed within one year from when construction has begun.

SECTION 2.3 *Minimum Square Footage.* Any residence constructed on said property shall have a minimum square feet of living area exclusive of the area of attached garages, unairconditioned porches, patios, breezeways, or other appurtenances or appendages of two thousand five hundred (2500) square feet for a single story residence and three thousand (3000) square feet for a two story residence.

A. *Guest Quarters.* Guest quarters or garage apartments that are attached to the main residence or living quarters in a barn or outbuilding that are allowed shall not be counted as part of the minimum square footage.

SECTION 2.4 *Guest House.* It shall be permissible for a guest house to be constructed and located on a subject property if and only if the same comply with the terms hereof and are ancillary to an existing single family residential structure which complies with the terms hereof. A guest house must have a first floor living area of at least 1,000 square feet and a total air conditioned living area of not more than 50% of the square footage of the main dwelling. Said guest house may not be constructed until construction on the main residence has begun.

SECTION 2.5 *Fences.* All perimeter fences located along FM 1736, Giboney Rd. & Springhill Rd. shall be

- A. Three (3) Board wood fences on wood posts on eight (8') foot centers. All material shall be painted black.

OR

- B. Four (4) rail pipe fence painted black.

ARTICLE III

CONSTRUCTION AND STANDARDS

SECTION 3.1 *General.* All buildings or structures within the Property shall meet the following requirements:

A. New Construction. All buildings or structures placed upon any Tract in the Property shall be constructed of all new materials excepting for used brick or other decorative accessories that are commonly used in the construction of new residences. All exterior material other than those which are not commonly decorated or painted, shall be stained or painted with at least two (2) coats of paint.

B. Roofing. All roofs shall be constructed of (1) concrete, (2) tile, (3) slate, (4) high grade minimum twenty-five (25) year warranty shingle composition or (5) high quality painted metal. In no case shall lightweight or flat composition shingles be allowed on any structure.

C. Masonry. There shall be NO minimum percentage of masonry imposed upon the construction.

D. Materials on Tract. No construction materials shall be stored upon any Tract prior to the commencement of construction. During construction all Tracts must be maintained in a neat, orderly manner.

SECTION 3.2 *Garages.*

A. Two Car Minimum. All residences must have an attached enclosed garage or carport, architecturally similar to the residence. The garage or carport must be at least a two car garage or carport and have a concrete parking pad the same width as the garage or carport and a minimum of twenty (20) feet in depth shall be constructed immediately in front of the garage or carport. This paragraph shall not prohibit the construction or use of porticos in addition to the garage or carport which are architecturally similar or complimentary to the residence.

B. Use. No garage or carport shall be permitted to be enclosed for living or used for purposes other than storage of automobiles and other common uses, unless another approved garage or carport is built.

SECTION 3.3 *Guest House.* Any guest house shall be architecturally similar or complimentary to the residence.

SECTION 3.4 *Outbuildings.* No unfinished tin or aluminum materials may be used in the construction of any outbuildings. All structures not matching the residence in architectural design, materials, and color must be finished in basic earthtone colors to blend in with the surroundings. See SECTION 1.1.C. for additional details.

SECTION 3.5 *Utilities.* Utilities serving each Tract must be run underground to all service points on the Tract; no above ground utility lines shall be permitted on or over any Tract except for any existing above ground utility lines on TRACT 1 and TRACT 2 and for any new above ground utility lines along the FM 1736 frontage on TRACT 6 and TRACT 7.

ARTICLE IV
MAINTENANCE

SECTION 4.1 *Duty of Maintenance.* Owners and occupants (including lessees) of any part of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that Tract or portion of the Property so owned or occupied, including buildings, improvements and grounds in connection therewith in a well maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following:

- A. Prompt removal of all litter, trash, refuse, and waste.
- B. Prompt removal of any trees or vegetation afflicted with communicable diseases or parasites and dead or unsightly trees or vegetation.
- C. Regular mowing of all cleared areas. Land used for grazing shall be mowed periodically if necessary for weed control.
- D. Tree and shrub pruning after completion of improvements.
- E. Keeping lawn and garden areas alive, free of tall weeds, and attractive.
- F. Keeping parking areas, driveways, roads and drainage ways in good repair.
- G. Complying with all restrictions or requirements of this Declaration.

ARTICLE V
GENERAL PROVISIONS

SECTION 5.1 *Duration.* This declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by every owner of any part of the Property, including beginning on the date this Declaration is recorded, and continuing through and including December 31, 2036, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an amendment (the word amendment including additions, deletions, or modifications thereto, in whole or in part) is approved.

SECTION 5.2 *Amendments.* These protective covenants can be amended by the action of at least 75% of the current owners of Tracts in the Property.

SECTION 5.3 *Rights of Waller County.* Notwithstanding anything herein to the contrary, any officials of Waller County shall have the right to enforce any of the provisions of this Declaration for the benefit of the public or any other affected individual by any action defined under this Declaration or any action which shall be legally available to the County.

DATED this ____ day of _____, 201 ____.

DECLARANT:

TIMOTHY J. PHELAN

THE STATE OF TEXAS §
 §
COUNTY OF WALLER §

This instrument was acknowledged before me on this ____ day of _____, 201 ____,
by **TIMOTHY J. PHELAN**, in the capacity therein stated.

(Seal)

Notary Public, State of Texas

Attachment(s):
Exhibit "A" – Field Notes for 104.1340 acres
Exhibit "B" – Survey of 104.1340 acres
Exhibit "B-1" – Survey of Tract 3A, 11.0000 acres
Exhibit "C" – Field Notes for Tracts 1-7

After recording, please return to:
TIMOTHY J. PHELAN
32804 GROVE PARK DRIVE
WALLER, TEXAS 77484