

The Committee may designate a representative to act for it. In the event of death or resignation of either member of the Committee, the remaining member shall have full authority to designate a successor. Neither the members of the Committee nor its representatives shall be entitled to any compensation for services performed pursuant to this covenant. The herein granted powers and duties of the Architectural Control Committee shall cease and terminate ten (10) years after the date of this interment, and approval required by this paragraph shall not be required unless, prior to said date and effective thereon, the then record owners of a majority of the lots subject hereto shall execute and file for record an instrument appointing a representative or representatives, who shall thereafter exercise the same powers and duties granted herein to the Architectural Control Committee. The Committee's approval or disapproval as required herein, shall be in writing. If the Committee, or its designated representative, fails to give written approval or disapproval within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction as been commenced prior to the completion of the improvements, approval will not be required and the related covenants shall be deemed to have been fully satisfied. The Architectural Control Committee, at its sole discretion, is hereby permitted to approve deviations in building area and location in instances where, in their judgment, such deviation will result in a more commonly beneficial use. Such approval must be granted in writing and when given will become a part of these restrictions.

3. DWELLING SIZE

The livable area of such main residential structure, exclusive of open screened porches, open terraces, garages, or detached servant quarters, shall not be less than that shown below:

<u>Minimum Structure Size</u>	<u>Block</u>	<u>Lot No.</u>
2000 sq. ft.	Nine (9)	1-8
	Ten (10)	1-24
	Eleven (11)	1-11
2500 sq. ft.	Eleven (11)	12-21
	Twelve (12)	1-7

4. BUILDING LOCATION

No building or fence shall be located on any lot nearer to the front lot line or nearer to the side street lot line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any residential building plot nearer than 25 feet to the front lot line, nor shall any residential building be located nearer than fifteen (15) feet to any side street line, nor nearer than twenty (20) feet to the rear lot line or nearer than seven feet six inches (7 ft., 6 in.) to any side lot line. For the purpose of this covenant, eaves, steps, and uncovered porches shall not be considered a part of the building.

No fence, wall, stoop, hedge, or other detached structure shall be erected, grown or maintained on any part of any lot forward of the front or side building line of any corner lot on side facing street. No chain link or wire constructed fences shall be erected on any properties whatsoever located in Emerald Forest, Phase VIII. All fences shall be approved by the Architectural Control Committee.

5. FACING OF GARAGES

No garage (or carport) shall face and open to the street at less than a ninety (90) degree angle unless the door is located forty (40) feet or more from the front lot line.

Garages on corner lots may open to the front or may optionally open directly towards, and have driveway access from, the streets at the sides of the lots, except that no garage shall face and open at less than a ninety (90) degree angle to the side street unless the approval for same shall be given in writing by the Architectural Control Committee. No access from garages will be allowed onto Appomattox Street.

6. FACING OF RESIDENCES

Residences on corner lots shall face the street from which the greater building line setback is shown on the recorded plat. This requirement may be waived by the Architectural Control Committee if, in its opinion, the conditions warrant the change.

7. BUILDING MATERIALS

The main residential structures shall have not less than 51% of the exterior wall areas constructed of brick or wood products approved by the Architectural Control Committee. The Architectural Control Committee may modify this requirement when the design and appearance as proposed, are deemed to be of such nature as to be equally attractive and permanent.

8. LOT AREA AND WIDTH

Lots may be re-subdivided into building sites comprised of one or more lots as platted, provided that no dwelling shall be erected or placed upon any building site having a width less than 60 feet at minimum building setback line or having an area less than 11,000 sq. ft.

9. NUISANCES

No noxious or offensive activity shall be permitted upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

10. TEMPORARY STRUCTURES

No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence either temporarily or permanently, except for a temporary construction and sales office to be used by the developer. Such structure will be removed upon completion of the subdivision.

Storage buildings or work shops which are not part of the residence must be approved by the Architectural Control Committee and must be constructed of acceptable brick or wood material and must be painted to match the residence structure. The roof must be of similar roofing material used on residence.

11. YARD APPEARANCE

All lots shall be kept at all times in a sanitary, healthful and attractive condition, and the owner or occupant of all lots shall keep all weeds and grass thereon cut and shall in no event use any lot for storage of material and equipment except for normal residential requirements, incidental to construction of improvements thereon as herein permitted or permit the accumulation of garbage, trash, or rubbish. All clothes lines, yard equipment, wood piles or storage piles shall be kept screened by a service yard, drying yard or other similar facility as herein otherwise provided, so as to conceal them from a view of neighboring lots, streets or other property.

12. PARKING OF VEHICLES

Overnight parking of vehicles or trailers owned by or under the control of residents of said installment is prohibited on the public streets within the subdivision.

13. SIGNS

No signs of any kind shall be displayed to the public view on any lot except on sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

14. OIL AND MINING OPERATIONS

No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structures designed for used in boring for oil or natural gas shall be erected, maintained, or permitted on any lot.

15. LIVESTOCK AND POULTRY

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that not more than two (2) dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes.

16. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

17. LAND NEAR PARKS AND WATER COURSES

No building shall be placed nor shall any material or refuse be placed or stored on any lot within 7-1/2 feet of the property line of any parks or edge of any open water courses, except that clean fill may be placed nearer provided that the natural water course is not altered or blocked by such fill.

18. SEWAGE DISPOSAL AND WATER SUPPLY

No water well, cesspool or other individual sewage system shall be constructed or used on any lot, but each lot owner must use the water and sewer services provided by State, County, Municipal or other government authorities.

19. DRAINAGE

All drainage ditches shall be maintained and mowed so as to remain unobstructed at all times. Any bridge or culvert constructed over property line ditches shall be of concrete pipe and a minimum of 18 inches in diameter, unless the depth of the ditch shall require a larger size for proper drainage.

20. TERMS

These covenants and restrictions are to run with the land and shall be binding on all owners of lots in Emerald Forest, Phase VIII, and all persons claiming under them for twenty (20) years after which time, said covenants and restrictions shall automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots is filed for record in Brazos County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part.

21. RIGHTS OF MORTGAGEE

Any violation of any of these easements, agreements, restrictions, or covenants contained herein shall not have the effect of impairing or affecting the rights of any mortgagee, guarantor, or trustee under any mortgage or deed of trust outstanding against the lot, at any time that the easements, agreements, restrictions, reservations or covenants are violated.

22. ENFORCEMENT

The covenants, reservations, easements and restrictions set out herein are for the benefit of the undersigned, their heirs, successors and assigns, and equally for the benefit of any subsequent owner of any lot or lots in Emerald Forest, Phase VIII, and his heirs, executors, and administrators, and assigns. Accordingly, all of the covenants, restrictions, easements, and reservations contained herein shall be construed to be covenants running with the land, enforceable at law or in equity, by any one or more of said parties.

23. SEVERABILITY

The invalidity, abandonment or waiver of any one of these covenants, reservations, easements, and restrictions shall in nowise affect or impair the other covenants, reservations, easements, and restrictions which shall remain in full force and effect.

24. EASEMENTS

There are dedicated and reserved permanent and unobstructed easements as shown on the recorded plat of Emerald Forest, Phase VIII across certain designated portions of various

lots therein upon, under and through which to construct and maintain drainage easements, water, gas, telephone and electric light services and other public utilities, which said easements shall be a burden and charge against such lots in Emerald Forest, Phase VIII, by whomsoever owned.

25. RESERVATIONS

The following reservations and easements shall be considered a part of and be constructed as being adopted in each and every contract, deed or other conveyance executed or to be executed in the conveyance of the various lots in Emerald Forest, Phase VIII.

It is agreed and understood that the title conveyed to any lot or parcel of land in said subdivision by contract, deed or other conveyance shall not in any event be held or construed to include the title to the water, gas, sewer, electric light, electric power or telegraph or telephone lines, poles, or conduits or any other utilities or appurtenances thereto constructed by the Developer or any public utilities companies through, along or upon any portion of the hereinabove mentioned streets, drives, lands, roads, easements, and reserve areas, and the right to maintain, repair, sell or lease such lines, utilities and appurtenances is hereby expressly reserved by the Developer.

26. EMERALD FOREST COMMUNITY IMPROVEMENT ASSOCIATION

The the developer of prior Phases of Emerald Forest, Haldec, Inc., has applied and obtained a charter for a non-profit corporation known as Emerald Forest Community Improvement Association. The owner of each lot in Emerald Forest, Phase VIII, excluding builders, agree to become and shall be a member of said Association. The membership of said Association shall be limited to the owners of lots in Emerald Forest. In furtherance of said purpose, Allen R. Swoboda, the owner and developer of the 26.10 acre tract known as Emerald Forest, Phase VIII, hereby declares that said real property, and any further addition to said property shall be and are hereby subject to and shall hereafter be subject to the following covenants:

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to Emerald Forest Community Improvement Association.
- (b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.
- (c) "Common Properties" shall mean any tract of land described and set forth by Developer as such and intended to be devoted to the common use and enjoyment of the owners of The Properties.

- (d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of The Properties with the exception of Common Properties as heretofore defined.
- (e) "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.
- (g) "Builder" shall mean an individual or company who buys a lot from the developer solely for the purpose or intent of building a house for resale. This term shall not include a building contractor who purchases a lot or lots from an owner other than developer.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION:

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the State of Texas, County of Brazos, and will be described in instruments filed for record in the future expressly subjecting said property to the terms and conditions of this Declaration.

Section 2. Additions to Existing Property. The Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties thereby subjecting such additional lands to this Declaration, by filing of record a Supplementary Declaration of covenants and restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Members of the Association agree that as said additions are made, that said Association will accept same to be owned and managed pursuant to the terms, and conditions of this Declaration.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association provided that any builder who purchases a lot solely for the purpose of

building a house for resale, or any such person or entity who holds such interest merely as a security for the performance of any obligations shall not be a member

Section 2. Voting rights. The Association shall have two (2) classes of voting membership.

Class A. Class A Membership shall be all those owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1. When more than one (1) person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Section 1, provided that the Class B Membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total value outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) January 1, 1975.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in which he holds the interests required for membership under Section 1.

Section 3. Members Meeting.

(a) There shall be an annual meeting of the Members of the Association. The first annual meeting will be held within 90 days after facilities are opened and Developer will notify all Members at least one (1) week in advance of the exact time and place. Subsequent annual meetings will be determined by the Board of Directors and provided for in the Bylaws.

(b) The initial Board of Directors shall serve until said annual meeting, at which time a new Board of Directors shall consist of at least three (3) persons, and not more than nine (9), as will be determined by Members voting at the first annual meeting, and subsequently, as will be provided in the Bylaws.

(c) The Board of Directors shall be responsible for the affairs of the Association and shall adopt such Bylaws and regulations as necessary to carry out its functions, but cannot adopt Bylaws or regulations which are contrary to provisions as set out herein.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every lot.

This applies to both existing and additional lands, in that all the Common Property is for the use of all Members when and if said land is developed in accordance with the provisions contained herein.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey the Common Properties to the Association at the time 70% or more of the total development of all phases of Emerald Forest have been sold by Developer.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender shall have a right, after taking possession of such properties, to charge admission and other fees as a condition to continued employment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(b) The right of the Association to take such steps, as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Owner of any Lot, with the exception of builders, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association; (1) monthly or periodic assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The monthly and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot or lots. (See Section 12).

Section 2. If a lot owner claims to be a builder, and purchases a lot or lots for purpose of building a house to be sold, assessment dues will not be owed, if construction is begun on each lot within 6 months of purchase date, and continued in good faith. If construction is not begun within said 6 months, said builder will be required to pay any assessments due for the time since purchase and dues for the next year. If construction is begun within 6 months of purchase no dues or assessments will accrue until the house is sold or occupied, at which time the dues or assessment will be due and payable for the forthcoming year.

Section 3. In the event of ownership of more than one lot, but the owner resides on one or more of said lots, said owner may be permitted by the Board of Directors of the Association to pay dues and assessments only as the owner of a single lot. Said Board may place additional obligations on said owner pertaining to the potential conveyance of one or more of said additional lots.

Section 4. Any lots unsold and still owned by Developer shall not be subject to membership dues and assessments.

Section 5. Purpose of Assessments. The assessment levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties and in particular for the improvements and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, but excluding repair, maintenance and replacement of any property that is privately owned.

Section 6. Basis and Maximum Assessments. The annual assessment may be set by the Board of Directors of the Association in an amount not to exceed \$144.00 per year. Any increases beyond said amount must be approved by the membership pursuant to Section 8, below. At the time each lot is purchased, the owner thereof automatically becomes a member of the Association and the dues and/or assessments set forth by the Association are due and payable.

The Board of Directors of the association may, after consideration of current maintenance costs and further needs of The Association, fix the annual assessment for any period year at a lesser amount.

Section 7. Special Assessments for Capital Improvements. In addition to the assessments authorized by Section 6 thereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvements upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 8. Change in Basis and Maximum of Monthly Assessments. Subject to the limitations of Section 6 hereof, the Association may change the maximum and basis of the assessments fixed by Section 6 hereof (prospectively) for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 9. Quorum for Any Action Authorized Under Section 7 and 8. The quorum required for any action authorized by Section 7 and 8 hereof, shall be as follows:

At the first meeting called, as provided in Section 7 and 8 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 7 and 8, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10. Date of Commencement of Special Assessment. The due date of any special assessment under Section 7 hereof shall be fixed in the resolution authorizing such assessment.

Section 11. Duties of the Board of Directors. The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment herein stated to have been paid.

Section 12. Effect on Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association. If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency date, at the rate of ten (10) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, and such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

Section 13. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon The Properties subject to assessment; provided, however, that such subordination shall apply only to

the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 14. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein;

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) All Common Properties as defined in Article I, Section 1, hereof;

(c) Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessment, charges and liens.

By: Allen R. Swoboda
Allen R. Swoboda, Developer

FIRST CITY, TEXAS - Bryan / College Station

By: A. J. Nelson, Pres.

ATTEST:

Brenda Lawrence