

SOUTHGATE SUBDIVISION
(A Private Entity)
“A COMMUNITY OF FRIENDS 55 YEARS OF AGE AND OLDER”
Of the City of Pharr, Hidalgo County, Texas

**SECOND RESTATED AND SUPERSEDING DECLARATION
OF COVENANTS, CONDITIONS, AND
RESTRICTIONS OF RECORDS**

Vote Effective on the later of October 1, 2018 or recording in the Hidalgo County Official records.

Document approved by the Membership Hidalgo County Official records.

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**SECOND RESTATED AND SUPERSEDING
DECLARATION OF COVENANTS, AND CONDITIONS,
AND RESTRICTIONS OF THE RECORD**

PREAMBLE

This Second Restated Declaration of Covenants, Conditions, and Restrictions applicable to Southgate Subdivision, City of Pharr, Hidalgo County, Texas, [“The Subdivision”], is signed and agreed to by the undersigned, who constitute the Owners of at least sixty-five percent (65%) of the platted Lots in Southgate Subdivision, and addition to the City of Pharr, Texas, as per map or plat recorded in the records of the office of the County Clerk of Hidalgo County, Texas, and by Southgate Property Owners Association (a Texas non-profit corporation), the successor to John M. Kemp, Jr. and wife, Alice F. Kemp, of legal ownership of the areas in the subdivision owned in common by the Owners of Lots in the Subdivision, as follows:

WHEREAS, Southgate Subdivision and all property therein [“Subdivision”] is a fifty-five (55) years of age and older subdivision located in the City of Pharr, County of Hidalgo, State of Texas; and

WHEREAS, the Subdivision is bound by certain Declaration of Covenants, Conditions, and Restrictions recorded in Volume 1933, pages 497 to 512 [“The Original Covenants”]; and

WHEREAS, the Subdivision, each Lot therein, and all Common Areas are also bound by various amendments to The Original Covenants, including those recorded as follows;

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| a) | Volume 1938, | Pages 476-477, | reference no. 53629; |
| b) | Volume 2133, | Pages 217-235, | reference no. 115397; |
| c) | Volume 2274, | Pages 255-257, | reference no, 159751; |
| d) | Volume 2538, | Pages 861-864, | reference no, 43149; |
| e) | Volume 2573, | Pages 340-346, | reference no, 58872; |
| f) | Document | No. 571023; and | |
| g) | Document | No. 1558695; | |

of the Official Records of Hidalgo County, Texas [“The Amended Covenants”]; and

WHEREAS, the effective version of the Original Covenants and the Amended Covenants are referred to hereinafter as “the Declaration” for convenience; and

WHEREAS, by Warranty Deed from John M. Kemp, Jr. and wife, Alice F. Kemp dated December 29, 1987 and recorded in Volume 2538 at pages 865 to 867 of the Official Records of Hidalgo County, Texas, and by Affidavit as to Property Owners Association signed by said John M. Kemp, Jr. and Alice F. Kemp, the original developers and Declarant in such Original Covenants and Amended Covenants, dated December 29, 1987 and recorded in Volume 2538 at pages 870 to 872 of the Official Records of Hidalgo County, Texas, relinquished and/or transferred all their rights in The Subdivision to Southgate Property Owners Association, including their right to unilaterally or otherwise amend the Declarations and/or withhold their consent to any amendments to the Declarations; and

WHEREAS, Southgate Property Owners Association, a Texas non-profit corporation, was incorporated on December 28, 1987 and succeeded to the rights of the original developers and Declarant; and

WHEREAS, The Subdivision bound by and referenced in this document is legally described as: **SOUTHGATE SUBDIVISION, CITY OF PHARR, HIDALGO COUNTY, TEXAS AND ALL LOTS AND PROPERTIES THERIN**; and

WHEREAS, the Declarations provide that they may be amended or restated “by an instrument signed by the Members of not less than sixty-five percent (65%) of the Lots” which instrument is recorded in the Deed Records of Hidalgo County, Texas. Amendments or Restated Declarations shall be in compliance with Government/Texas applicable law. Therefore to comply with Texas Property Code §209.0041, Amendments or Restated Declarations may be amended only by a vote of sixty-five percent (65%) of the total votes allocated to property owners entitled to vote on the amendment of the declaration, in addition to any governmental approved required by law.

WHEREAS, the necessary number of Lot Owners wish to supersede the existing First Restated Declaration, recorded Original Covenants and seven separate Amendments into The Second Restated Declaration of Covenants, Conditions and Restrictions. [**“The Second Restated Declaration”**] applicable to the entire subdivision and all its Phases, which is this document; and

WHEREAS, the purposes of the Second Restated Declaration is to protect the value and desirability of ownership of Lots and Residences in the Subdivision, and to maintain the Subdivision as an Adult Subdivision (for persons fifty-five (55) years of age or older as allowed by the United States Fair Housing Act); and

NOW THEREFORE, the following conditions, covenants, and restrictions [**“The Second Restated Declaration”**] be and are imposed to run with the land upon the Subdivision, each Lot therein, and all of the Common Areas and Common Recreation Areas of the Subdivision, hereby revoking, replacing, and superseding all the Original and Amended Covenants and Declarations described above previously applicable to the Subdivision, as follows:

ARTICLE I DEFINITIONS:

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| <p>Section 1. 1 Owner (All Owners Are Mandatory Members of the SPOA)
Section 1. 2 Common Area(s)
Section 1. 3 Recreational Common Areas
Section 1. 4 Lot
Section 1. 5 Residence
Section 1. 6 Southgate Property Owners Association (SPOA)
Section 1. 7 Southgate Board of Directors (SBOD)
Section 1. 8 Compliance Control Committee (CCC)
Section 1. 9 Dedicatory Instruments
Section 1.10 Management Certificate
Section 1.11 Notice, Notify, Notification
Section 1.12 Annual Meeting</p> |
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Section 1.1 Owner (hereinafter referred to as “Owner” or “Member”)

Shall mean and refer to any Owner of record of fee simple title to any Lot in Southgate Subdivision. The term “Owner” shall imply a Lot Owner who shall be a required Member of the SPOA with voting rights as provided by Section 3.2 herein. Provided, however, that such Membership is not intended to apply to those persons who hold an interest in any such Lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases.

Section 1.2 Common Areas:

Shall mean and refer to Lot 91 of Southgate Subdivision, walk-ways, utility easements, streets, parking spaces and all real property and improvements thereon owned by the SPOA or in common by the Owners of Lots in the Subdivision, for the common use and enjoyment of the Owners.

Section 1.3 Recreational Common Areas:

Shall mean and refer to the following areas including but not limited to: the clubhouse, pool/spa, exercise room, tennis, shuffle board, pickle ball, and bocce courts.

Section 1.4 Lot:

Shall mean and refer to any numbered residential Lot (i.e., a Lot other than Lot 91), and improvements thereon, shown in the recorded subdivision, map or plat of Southgate Subdivision. Each Lot shall be assessed individually.

Section 1.5 Residence:

Shall mean and refer to a constructed home on any Lot for permanent occupancy which contains eating, cooking, sleeping, and sanitary facilities. Residences shall be built in compliance with the Dedicatory Instruments.

Section 1.6 Southgate Property Owners Association:

Shall mean and refer to as the “SPOA”, A Texas non-profit corporation, its successors and assigns. The SPOA is comprised of all the Owners/Members. The SPOA shall have ownership of the Common Areas and the Common Recreational Areas and all management rights to the Subdivision, as successor to the original Declarant as described in the preamble above.

Section 1.7 Southgate Board of Directors:

Shall mean and refer to hereinafter as the “SBOD.” The SBOD shall consist of five (5) individuals who are each Owners/Members and are elected by the SPOA to manage and control the affairs of the Southgate Subdivision. More than one Co-Owner of a LOT may serve as a Director at the same time. The SBOD Members (“Directors”) shall serve staggered three (3) year terms; the terms shall begin March 1 following the Annual Meeting of the Members. The Directors shall be elected by majority vote of a quorum of the Members present and entitled to vote at the Annual Meeting of the Members under the procedure provided in the Bylaws of the SPOA. In no ballot of the SPOA shall more than one (1) vote per lot be counted. Votes may not be split into fractions or partial votes between various owners of a Lot.

Section 1.8 Compliance Control Committee:

Shall mean and refer to the “CCC” and shall consist of three (3) members of the SBOD. Such committee is provided for in Article V and Section 11.2 herein.

Section 1.9 Dedicatory Instruments:

Shall mean and refer to the instruments as defined by the Texas Property Code §209.002 (4). The Dedicatory Instruments are defined as each governing document covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive Covenants, Bylaws, or similar instruments governing the administration or operation of a Property Owners’ Association, to properly adopted rules and regulations of the

Property Owners' Association, and to all lawful amendments to the Covenants, Bylaws, Rules and Regulations.

SECTION 1.10 MANAGEMENT CERTIFICATE:

Shall mean and refer to the SPOA's Management Certificate as required by Texas Property Code §209.004. The SPOA'S, Management Certificate has been duly filed in Hidalgo County and the certificate is displayed in the Southgate Office.

SECTION 1.11 Notice, Notify, Notification:

Shall mean and refer to the various ways the SBOD may Notify the SPOA. The SBOD hereby adopts the following methods of Notice pursuant to §209.0042 of the Texas Property Code, and as expressly stated herein. The SBOD may use any manner of Notification as permitted in Texas Residential Property Code §209.0051(e)(A), as follows:

A. Posting and Emailing:

The SBOD or the Southgate Office may send Notice by email to each Member who has a registered email address with the association. It is the Member's duty to keep an updated email address with the association. Email Notifications must also be posted on the SBOD bulletin board in a conspicuous manner. For Members who do not have access to the internet, it shall be the Member's responsibility to notify the Southgate Office their preference for a delivery method to receive notices and/or documents. If information is posted in a conspicuous manner it will not require further notification for those without email. For out-of-town Members without internet access, the United States Post Office (hereinafter referred to as USPS) will be Southgate's method of delivery.

B. Internet Website:

Posting on any internet website maintained by the association or other internet media.

C. Hand Carry Delivery or Member pick up:

Any Notices may be hand carried for delivery or picked up by the Member.

D. USPS:

Mailing Notices using the USPS.

E. Facsimile: (hereinafter referred to as fax)

Sending via fax.

F. Other means of Notification:

Using any method of Notification permitted by Government/Texas Law.

SECTION 1.12 Annual Meeting:

Shall refer to the meeting of Southgate Property Owners’ Association, conducted once per year, at which the Membership generally elects individuals to the Board of Directors, as well as votes on other items that may be submitted to a Homeowners Association’s Membership for approval. The Annual Meeting shall be held the first Saturday in the month of February.

ARTICLE II OCCUPANCY/AGE RESTRICTIONS:

Section 2.1	Purpose
Section 2.2	Fifty-Five (55) Years of Age or older Requirement
Section 2.3	Resident Occupancy/Registration of Residents/Registration of Trusts/Entities
Section 2.4	Visitation for Minors
Section 2.5	Exception to Age Restrictions
Section 2.6	Owner/Member Responsibilities
Section 2.7	Enforcement of Age Requirements
Section 2.8	Legal Proceedings

Section 2.1 Purpose:

SPOA and its successors and assigns, its Members, the SBOD, and the undersigned, intended for the Southgate Subdivision, and all the Lots therein, to be operated as a community for older adults, and for occupancy by persons fifty-five (55) years of age or older. Each Member and the SBOD is charged with the right and duty of complying with and enforcing this intent.

Section 2.2 Fifty-Five (55) Years of Age or Older Requirement:

Each Residence owned in Southgate Subdivision, when it is occupied, shall be occupied by at least one person who is fifty-five (55) years of age or older.

Section 2.3 Resident Occupancy/Registration of Residents/Registration of Trusts:

A. Registration of Occupants:

- (1) All occupants of each Lot shall be registered with the SPOA (acting through the SBOD) according to the Dedicatory Instrument’s provisions for age verification as required by SPOA prior to occupancy; and
- (2) it is the Member’s responsibility to keep such registration current at all times. Failure to keep records current may result in Lot Specific Fees.

B. Registration of Trusts/Entities:

- (1) All Members are required to register their Trusts or other Entities with the Southgate Office naming the Trustee(s). This registration will certify voting eligibility in all SPOA affairs.
- (2) The page of said Trust, naming the Trustees and the notarized signature pages must be submitted to the Southgate Office.
- (3) It is the Member's responsibility to insure that the Trust or Entity paperwork is kept current at all times.
- (4) If Trusts or Entities are established after the original registration, legal proof of the Trust or Entity naming the Trustees and the notarized signature pages must be submitted to the Southgate Office.

Section 2.4 Visitation for Minors:

- A. No person younger than eighteen (18) years of age shall visit any Residence in Southgate Subdivision for more than thirty (30) days cumulative in a six (6) month period.
- B. The purpose of this Section 2.4 (A)(B)(C)(D) is not to prevent visits by minor guests, but rather to prevent occupancy by minors.
- C. No child or children under the age of eighteen (18) years shall be permitted to use the Recreational Common Areas unless supervised by an Owner/Tenant.
- D. No Person younger than eighteen (18) years of age shall establish Residency in the Southgate Subdivision.

Section 2.5 Exception To Age Restrictions: (Reference: 24 CFR Part 100 Housing for Older Persons Act of 1995 (HOPA). §100 (300-308)

- A. **The Exception:** The age/occupancy requirements of Section 2.2 herein shall not apply to any Residence with all the occupant(s) being younger than fifty five (55) years of age in ONLY the following situations:
 - (1) The requirements contained in this Declaration are intended to comply with the exemption requirements under the above referenced Acts and any regulations now or hereafter issued. Notwithstanding anything herein contained to the contrary, it is acknowledged and agreed that it is the intent of the SPOA that the Residences are intended to be owned by persons fifty-five (55) years of age or older in compliance with the Fair Housing Acts which exempts "housing for older persons" from the prohibition against discrimination based on familial status.

- (2) The SBOD, may amend the provisions of this Declaration to the extent that it deems necessary or appropriate, without the approval of the Members, in order to comply with the exception requirements under the Fair Housing Act or any other regulations now or hereafter issued therefore, as they may be amended from time to time, with respect to “housing for older persons.”
- (3) The only qualifying occupant expires or ceases occupancy of the Residence for some other reason and thus no longer occupies the Residence, leaving one or more occupant(s) under the age of fifty-five (55) years occupying the Residence; and
- (4) In the event of death of the only qualifying occupant, the surviving or remaining occupant(s) under the age of fifty-five (55) years who are allowed to continue to occupy the Residence despite the provisions of Section 2.2 must have been properly and currently registered with the SPOA as an occupant of the Residence at time of death of the qualifying occupant; and
- (5) In the event of termination of occupancy by the only qualifying occupant due to reasons other than death, each non-qualifying occupant under the age of fifty-five (55) years is allowed to continue to occupy the Residence despite the provision of Section 2.2, **IF AND ONLY IF** they were properly and are currently registered with SPOA as an occupant of the Residence at time of, and at least twelve (12) months prior to, the termination of the occupancy by the qualifying occupant; and
- (6) Prior to the death or termination of occupancy by the only qualifying occupant, the occupancy of the Residence was in compliance with Section 2.2; and
- (7) In no event shall the exception apply to allow occupancy by children or persons less than eighteen (18) years of age.

B. Termination of the Exception:

If all of the above conditions are met, each surviving or remaining occupant is allowed to temporarily occupy the Residence despite non-compliance with Section 2.2 until the earlier of either when compliance with Section 2.2 is attained (at which time the exception shall terminate) or when any of the following conditions occur:

- (1) All instances of any exception shall cease upon any subsequent conveyance by sale, lease, inheritance, becoming in compliance herewith, or otherwise, of the Lot or Residence that previously qualified as an exception (Section

2.5 “Exception to Age Restriction.”) The SBOD, in its sole and absolute discretion, shall have the right and power to determine when a person “occupies or resides” in a Residence.

- (2) The surviving or remaining occupant terminates or interrupts his or her continuing occupancy of the Residence or fails to continuously occupy the Residence as his or her primary and legal Residence; or
- (3) The surviving or remaining occupant ceases to be properly and currently registered with the SPOA as an occupant of the Residence; or
- (4) The surviving or remaining occupant allows additional occupants to reside in the Residence who were not registered at the time of the exception.
- (5) The SBOD shall have the right to cancel the exception if the exceptions becomes conflicting with the rules set forth in 24 CFR Part 100 Housing for Older Persons Act of 1995 (HOPA). §100.305.

SECTION 2.6 OWNER’S Responsibilities:

The Owner/Member is responsible for conduct/damages incurred by or caused by their tenants, renters, lessors, and guests as follows:

- A. Any violations of this Article II by any occupant thereof.
- B. Registration of all occupants thereof as required by Section 2.3.
- C. The Owner/Tenant is responsible for conduct/damages incurred by their guests.

Section 2.7 Enforcement of Age Requirements:

The SBOD may create, impose, and enforce any rules and procedures it deems necessary to enforce and/or verify compliance with this Article II, including but not limited to, verifying occupancy, requesting and requiring affidavits and proof of age from occupants of any Residence.

Section 2.8 Legal Proceedings:

- A. **Any violations of this Article II:** will cause SPOA, Southgate Subdivision, the individual Owner(s) of any Lot, and/or the Owner(s) of any Lots as a group, immediate and irreparable damage.
- B. **Violation Fees/Fines:** The SPOA, acting by and through the SBOD and/or any Member(s) have the right to enforce compliance and prevent and recover damages for any violation of this Article II by legal proceedings (including, but not limited to, actions for restraining orders, injunctions, and damages, including any legal fees), against the violator or any Owner whose residents or tenants commit such violation(s).

ARTICLE III PROPERTY RIGHTS:

Section 3.1 Easement of Enjoyment:

Section 3.2 Voting:

Section 3.3 Suspension of Rights:
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Section 3.1 Easement of Enjoyment:

Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. Such rights are subject to the provisions of Section 3.3.

Section 3.2 Voting:

Unless otherwise provided in the Dedicatory Instruments, or mandated by Texas law, voting on matters of the SPOA by the Members shall be as provided within this Declaration, Articles of Incorporation and the Bylaws.

A. One Vote may be cast Per Lot:

- (1) Although there may be multiple Owners of single Lot, such Owners shall be entitled to one single and unified vote in SPOA affairs for each Lot owned, as they among themselves determine. Votes may not be split into fractions or partial votes between various Owners of a Lot. In no ballot of the SPOA shall more than one vote be counted with respect to any Lot.

B. Voting Quorum:

- (1) Unless otherwise provided in the Dedicatory Instruments a majority vote of a quorum of the Members entitled to vote on SPOA affairs at a meeting of Members shall determine the outcome of any issue before the Members. For purposes of voting at meetings, a quorum shall be considered the Members representing more than fifty percent (50%) of the Lots entitled to vote in SPOA affairs. Voting entitlement is based upon current Hidalgo County Warranty Deed Tax Roll Documents.

Section 3.3 Suspension of Rights:

Suspension from use of Recreational Common Areas:

- A.** For infractions of the Dedicatory Instruments, the SBOD shall have the authority to suspend the rights of any Members(s) occupants, tenants, and/or guests of said Member(s) from the use of any part of the Recreational Common Areas, including but not limited to: the clubhouse, exercise room, pool/spa, tennis, shuffle, pickle ball and bocce courts and any other similar facility.
- B.** Such rights may be suspended after two (2) calendar months of delinquency for all assessment(s) owed. Such suspension shall continue until all such delinquencies are satisfied.

- C. More information on due dates, delinquencies and suspensions are further addressed in Section 4.5 and 4.6 herein.
- D. Written notice pursuant to and in compliance with Texas Property Code §209.006 shall be given prior to any and all suspensions under this section.

ARTICLE IV COVENANT FOR ASSESSMENTS:

<p>Section 4.1 Personal Obligation of Assessments and Creation of a Lien:</p> <p>Section 4.2 Types and Purposes of Assessments:</p> <p>Section 4.3 Amount of Assessments:</p> <p>Section 4.4 Uniform Rate of Assessments:</p> <p>Section 4.5 Due Dates of Assessments:</p> <p>Section 4.6 Effect of Delinquent Assessments/Remedies:</p>
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Section 4.1 Personal Obligation of Assessments and Creation of a Lien:

- A. Members(s) Assessment and Dedicatory Instruments Compliance to the SPOA:** The Owner of any Lot, by acceptance of a Deed thereof, whether or not it shall be so expressed in such Deed, is deemed to Covenant and agrees to:
 - (1) Pay to the SPOA Annual Assessments; and
 - (2) pay to the SPOA Special Assessments; and
 - (3) comply with the provisions of the Dedicatory Instruments as they exist or may be amended.
- B. Unpaid Assessments:** Together with Notification mailing costs and legal fees incurred by the SPOA in collecting them and enforcing any lien(s) upon any Lot, shall be a charge upon and a continuing lien upon the Lot against which each unpaid assessment is made.
- C. In addition to the lien on each Lot:**
 - (1) To secure payment of any and all assessments and charges provided in this Declaration or rules enacted pursuant to the Declaration, the Owner(s) of each Lot shall be personally, jointly and separately liable for any and all unpaid assessments and consequential charges coming due each respective Owner(s)' period ownership.

Section 4.2 Types and Purposes of Assessments:

- A. Annual Assessments:**
 - (1) Shall be used to promote the recreation, health, safety and welfare of the residents of Southgate Subdivision.

- (2) Shall be used to maintain a contingency fund for operating capital.
- (3) Shall be used to improve, repair, operate, and maintain the Common Areas and Common Recreational Areas including, but not limited to, the office, clubhouse, lights, streets, curbs, sidewalks, gate, perimeter walls/fencing, pool/spa, exercise room, tennis, shuffle board, pickle ball and bocce courts, covered walkways and similar facilities.
- (4) Shall be used to acquire the necessary professional, accounting, legal, utility, and other services and supplies for the conduct of business affairs of the SPOA, including collection of assessments.
- (5) The SBOD Treasurer shall be responsible for reporting monthly Member Notifications of the Financial Statement to include a balance sheet and a profit and loss statement.

B. Special Assessments:

- (1) For Capital Improvements:
 - (a) Shall be used to defray in whole or part, including but not limited to: the cost of any construction, reconstruction, repair, replacement or removal of a capital improvement upon the Common Areas and Recreational Common Areas. This includes, but is not limited to: the office, clubhouse, lights, streets, curbs, sidewalks, gate, perimeter wall(s)/fencing, pool/spa, exercise room, tennis, shuffle board, pickle ball and bocce courts, esplanades, and similar facilities serving the Lots, including fixtures and personal property.
 - (b) Surplus funds from any such assessment shall be placed in a contingency fund for other capital improvements.
 - (c) Contingency funds shall be separately tracked in the savings account. Each capital improvement shall have its own contingency fund.
 - (d) When the capital improvement project is completed if there are funds in reserve, they shall be deposited into any open capital improvement project or placed in the Insurance Deductibles Contingency fund which shall not exceed the insurance deductibles.
 - (e) Capital improvement contingency funds may not be used for the general operation of Southgate.
 - (f) The SBOD Treasurer shall be responsible for reporting to the Members Contingency Fund Balances on the monthly Financial Statement.

- (2) For Legal Proceedings:
 - (a) Shall be used for defending legal proceedings against the SPOA and its agents, for prosecuting legal proceedings for enforcing and obtaining compliance with the Dedicatory Instruments, for seeking or obtaining legal advice and legal services for the benefit of the SPOA, for collecting monies and assessments due the SPOA, for challenging tax appraisals and assessments on Common Areas and SPOA property, for seeking or obtaining other legal relief as the SBOD may deem necessary in upholding the provisions of the Dedicatory Instruments herein, and/or for any legal proceedings by the SPOA.
 - (b) Surplus funds from such assessment shall be placed in a contingency fund for other legal proceedings and may not be used for the general operation of Southgate.
- (3) There shall be an ongoing contingency fund for insurance deductibles not to exceed the deductible.
- (4) The SBOD Treasurer shall be responsible for reporting to the Members Insurance Contingency Fund Balances on the monthly Financial Statement.

C. Lot Specific Fees:

- (1) Shall be charged against each Lot for any expense incurred thereof to reimburse the SPOA for such expense and it may vary from Lot to Lot.
- (2) Shall be in addition to Annual Assessments and any other Special Assessments.
- (3) The SBOD may, by majority vote, determine the amount of any fines to be assessed for non-compliance, with and/or violation of the Dedicatory Instruments. The goal is for deterring non-compliance, according to the procedures set out in the applicable Rules and Regulations.
- (4) Shall be used to pay expenses, costs and/or fees incurred during enforcement by the SPOA on behalf of the Owners of any particular developed or undeveloped Lot, which includes, but is not limited to: mowing, weeding, shrub trimming, tree trimming, tree debris, pest control, or other expense, costs or fees incurred relating to the general appearance of said Lot and/or Residence; and

- (5) the SPOA, acting through the SBOD, may take action to enforce provisions of the Dedicatory Instruments and assess the costs of doing so against the Owner(s) of the offending Lot; and
- (6) such fees include direct costs and damages incurred by the SPOA, as well as charges and fines allowed or authorized by the Dedicatory Instruments; and
- (7) such charges, fines and assessments resulting from or imposed for non-compliance with the Dedicatory Instruments will be applicable only to a specific Lot and are not required to be uniform between Lots.

Section 4.3 Amount of Assessments:

A. Annual Assessments:

- (1) Shall be levied for each calendar year by majority vote of the SBOD and they may adjust and vary the amount from year to year.
- (2) Prior to any change in the amount of any upcoming Annual Assessment, a Notice shall be sent to each Member at least thirty (30) days in advance of the date of such assessment.
- (3) Annual Assessments shall be charged per Lot.

B. Special Assessments:

- (1) For Capital Improvements or Legal Proceedings:
 - (a) May be levied as circumstances require, by majority vote of the SBOD.
 - (b) Shall be in addition to Annual Assessments and Lot Specific Fees.
 - (c) In excess of one hundred dollars (\$100.00) per Lot per assessment shall require the prior written or electronic assent of the Members of at least sixty-five percent (65%) of the Lots.
 - (d) Special Assessments shall be charged per Lot.

C. Resale Certificate of Assessments Owed:

- (1) Upon written demand, the SBOD Treasurer shall cause a Resale Certificate to be issued in compliance with Texas Property Code §207 setting forth the status of all current assessments, against any Lot, owed to the SPOA. The Resale Certificate shall be conclusive evidence of such status.
- (2) Such Resale Certificate shall not be issued until proof of age of potential Owner(s) is received in the Southgate Office. All Owners hereby expressly

agree that a written request for subdivision information pursuant to Texas Property Code §207.003 will not be valid and all Owners expressly waive all statutory Owner's Remedies available under Texas Property Code §207.004 until the official proof of age of potential Owners is received in the Southgate office.

- (3) The SBOD acting on behalf of the SPOA shall also cause to be recorded in the office of the County Clerk of Hidalgo County, Texas, a statement of any delinquencies due the SPOA and the current lien amount claimed by the SPOA as to each Lot.

Section 4.4 Uniform Rate of Assessments:

A. Developed Lots:

Shall be assessed equally for each Annual and/or Special Assessment levied by the SBOD, except for Lot Specific Fees.

B. Undeveloped Lots:

- (1) Beginning January 1, 2009, and thereafter, shall be assessed equally and uniformly for Annual Assessments as are developed Lots; and
- (2) beginning January 1, 2009, shall be assessed equally and uniformly for Special Assessments for Capital Improvements and Legal Proceedings as are developed Lots; and
- (3) shall be assessed as provided in this Second Restated Declaration for Lot Specific Fees.

Section 4.5 Due Dates of Assessments:

A. Notice of Due Dates:

- (1) Prior to any **change** in the amount of any upcoming Annual Assessment, and upon enactment of any Special Assessment, Notice shall be given to each Member and such Notice posted in a conspicuous Common Area, at least thirty (30) days but not more than sixty (60) days in advance of the date of each Assessment. Notices shall not be given to Members for Annual Assessments that remain unchanged from the previous year.
- (2) Once Notice of any assessment and its due date for payment has been given as stated in Section 4.5 (A)(1), no further Notices are required to be sent.

B. Annual Assessments:

- (1) Shall be levied each calendar year for a period running from January first (1st) of each year to the last day of December of that year.

- (2) Shall be paid in twelve (12) equal monthly installments on or before the first (1st) day of each month of the year.
- (3) Any monthly installment(s) may be paid in advance of its due date with no penalty for early payment.

C. Special Assessments:

- (1) The SBOD shall Notify the Members of the date of any Special Assessment at least thirty (30) days in advance of the due date of the assessment but not more than sixty (60) days in advance.
- (2) Special Assessments are due on the date that the Notice specifies. Late Fees shall be assessed to any late Special Assessment.
- (3) For Capital Improvements and/or Legal Proceedings shall be due and payable on the date(s) directed in the assessment Notice. Members shall be Notified and the assessment Notice shall be posted in a conspicuous Common Area at least thirty (30) but not more than sixty (60) days before the assessment is due.

D. Lot Specific Fees: Shall be due as follows:

- (1) Mowing shall be paid, in advance, on or before the first (1st) day of the month for which the fees are incurred. Payments are considered late after the due date.
- (2) Other Lot Specific Fees shall be due on the first (1st) day of the month, after such expenses or fees are incurred and the Member has been Notified. Payments are considered late after the due date.
- (3) Lot Specific Fees Notice:
 - (a) Members shall be Notified describing the violation or property damage that is the basis for the Recreational Common Areas suspension action, charge, or fine and state any amount due the association from the Member;
 - (b) Notification to the Owner regarding the violation shall specify the date by which the Owner must cure the violation. The Owner is entitled to a reasonable period of time to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety. To avoid fines and/or suspension of the Recreational Common Areas the violation must be cured by the specific due date.
 - (c) The Member may request a hearing before the SBOD Texas Property Code §209.007 on or before the thirtieth (30th) day after the date the Member was Notified; and

- (d) subsections 2 (a)(b)(c) do not apply to a violation for which the Owner has been previously given Notice under this section and the opportunity to exercise any rights available under this section in the preceding six (6) months.
 - (i) If the Owner cures the violation before the expiration of the period for cure described by Subsection (b) fines may not be assessed for the violation.
 - (ii) For purposes of this subsection, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.
 - (iii) For purposes of this subsection, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the non-repetition of a one-time violation or other violation that is not ongoing the SBOD may not fine an Owner but said Owner may be Notified that a subsequent violation will lead to a fine.

Section 4.6 Effect of Delinquent Assessments/Remedies:

A. Collection/Lien/Suspension: Any amount of Assessment(s) due the SPOA that is not paid in full on or before the due date will constitute a delinquency. A late charge of no more than twenty-dollars (\$20.00) per month may be assessed for each delinquency that remains unpaid. Any single unpaid installment is considered a single delinquency; and if the full amount of such Assessment(s) is not paid within two (2) calendar months, the SBOD may take any actions allowed by the Dedicatory Instruments and applicable law, including but not limited to the following:

- (1) Any Owner, occupant, tenant and/or guest of any Lot having such delinquency may be subject to suspension of rights as provided in this Second Restated Declaration, including sections 3.3 and 4.6.F herein; and/or
- (2) a lien may be imposed against the Lot having such delinquency; and/or
- (3) employing attorneys or third party debt collectors to collect the monies due; and/or
- (4) the SBOD acting in behalf of the SPOA may name the delinquent Member in a small-claims court action; and/or

- (5) any Member liable for such delinquency shall also be liable for all costs of collection incurred by the SPOA, including any legal fees, recording fees and the costs of releasing any lien(s).

B. Assumption of Obligation to Pay Assessments.

- (1) Each Owner shall, by owning a Lot upon adoption of this Declaration or thereafter, or acceptance of a deed thereto, or the signing of a contract or agreement to purchase the same; whether from the SPOA, a subsequent Owner of such Lot, or any other person or entity, binds themselves, their heirs, personal representatives and assigns to pay all assessments and charges determined and levied upon such Lot including all Lot Specific Fees thereon and collection costs thereof, if any, including legal fees.
- (2) The obligation to pay such charges, assessments, and costs relating to any Lot constitutes an obligation running with the Lot to which such charges apply. Sale or transfer of any Lot shall not reduce or eliminate any assessment lien or charges provided for herein.

C. Remedy of Foreclosure:

- (1) Each such Owner, by owning a Lot or by acceptance of a Deed to or interest in a Lot, whether or not stated in the instrument of conveyance, hereby expressly vests in the SPOA (acting through the SBOD) or such persons as may be designated by the SPOA (acting through the SBOD), the right and power to impose a lien on such Lot to secure payment of any and all assessments and other amounts due to the SPOA under this Declaration, authorized Rules and Regulations and other Dedicatory Instruments related to the Lot, to record a document evidencing such lien against the Lot in the proper public records and to enforce the aforesaid lien(s) by all methods available for the enforcement of real and/or judicial foreclosure by an action brought in the name of the SPOA.
- (2) Each Member, and each prospective Owner/Member, is placed on notice that the title may be subject to the continuing lien for assessments attributable to a period prior to the date the Lot was purchased.
- (3) Each Owner, by accepting ownership of a Lot in the Subdivision, expressly grants SPOA (acting through the SBOD or a designee appointed by it) a Power of Sale to exercise and enforce SPOA's lien rights and said lien(s) by any and all non-judicial methods allowed by Texas law.
- (4) In any foreclosure, the Owner is required to pay the SPOA's and SBOD's costs and expenses for any judicial or non-judicial foreclosure proceeding (which costs and expenses shall constitute an additional lien against the Lot being foreclosed upon), including attorneys' fees, subject to applicable provisions of Texas law. The SBOD has the right and power to bid on the

Lot in the name of the SPOA at any foreclosure sale and; regardless of any other provisions of this Second Restated Declaration (and this provision shall supersede the Member assent requirements of Section 11.1 B) to acquire, hold, lease, mortgage (for purposes of purchasing it) and convey such Lot.

D. Subordination of Assessment Lien to Prior Mortgages:

- (1) The liens provided for in this Second Restated Declaration, including this Article IV, securing the payment of the assessments and charges provided for in the Declaration and any Rules and Regulations enacted pursuant to this Declaration, shall be subordinate to the lien of any mortgage or mortgages granted or created by the Owner of any Lot to secure payment of monies advanced and used for the purpose of purchasing and/or improving such Lot provided such purchase money or improvement lien shall have been duly perfected prior to the date such assessments became due.
- (2) Sale or transfer of any Lot pursuant to foreclosure of any such mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer but shall not relieve the prior Owners of personal liability therefore. No sale or transfer shall relieve such Lot, or the Owner thereof, from liability for any assessments thereafter becoming due or from the lien thereof.

E. Personal Liability of Owner/Member and Action at Law:

- (1) SPOA, acting by and through SBOD, may take any actions authorized by any law to collect assessments owed it and to enforce its assessment liens.
- (2) Such rights to action include but are not limited to: hiring attorneys and third party collectors; and bringing suit for money judgment against the Owners/ Members personally obligated to pay the amounts owed. Further, if the SPOA deems the debt to be uncollectible, the SPOA may elect to cancel the debt and the lien on the books of the SPOA, in which case the SPOA may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner(s).

F. Suspension of the use of Recreational Common Areas:

- (1) The SBOD may suspend the rights to the use of the Recreational Common Areas, including but not limited to the clubhouse, pool/spa, exercise room, tennis, shuffle board, pickle ball and bocce courts to any Owner(s) and their visitors, guests and tenants whose debt to the SPOA is delinquent for longer than two (2) calendar months (subject to any requirements of the law).

- (2) No Owner/Member may waive or otherwise escape liability for the assessments as provided for in this Declaration by non-use of the Recreational Common Areas or abandonment of any Lot.

ARTICLE V CONSTRUCTION/REMODELING/PAINTING:

Section 5.1 Prior Approval Section 5.2 Lots/Residences:
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Section 5.1 Prior Approval: Building permits must be obtained from the City of Pharr and conspicuously posted for all new construction, new fencing, roof replacement and additions.

A Written Request:

- (1) The authority of the CCC pursuant to this Article V is in addition to the authority provided it by Section 11.2 herein.
- (2) No structures or improvements of any kind that fail to comply with the provisions of this Article V or Section 6.2.B(1)(2) and/or (3) shall be commenced, erected or maintained upon any Lot.
- (3) No new construction, additions, changes, alterations, painting or improvements of any kind that may affect external appearance/aesthetics or water draining shall be commenced or made, until a written request has been submitted to and approved in writing by all three members of the CCC or approved on appeal by the SBOD.
- (4) All required written requests for CCC approval shall include, as applicable, plans and specifications which show the following:
 - (a) Construction, nature, kinds, shape, height, purpose, material and color.
 - (b) Location as to harmony of external appearance/aesthetics.
 - (c) Location in relation to surrounding structures and topography.
 - (d) The drainage path and drainage effects on surrounding Lots.
 - (e) Start date and planned time to complete.

- (5) The CCC shall require a five hundred dollar (\$500.00) deposit from the Owner(s) of any Lot prior to any new construction or additions on said Lot as security for any damages incurred to streets, Common Areas and/or other Lots. Owner(s) shall be responsible for any and all repairs, damages, or cleaning of the Common Areas during construction and after completion of construction. If charges exceed the five hundred dollars (\$500.00) deposit, Lot Specific Fee(s) shall be levied to cover all charges. Any unused portion of the deposit will be refunded to the Owner(s) upon completion of the construction.
- (6) Placement of utility trailers, dumpsters or other devices for collecting trash during construction or remodeling shall require prior written approval from the CCC, and the CCC may control and direct the concealment and appearance of such devices.

B. Response to Request:

- (1) Each submitted request shall be unanimously approved or rejected in writing and signed by the three members of the CCC within fifteen (15) days of submission of all materials requested or required by the CCC.
- (2) In the absence of any member of the CCC, a Director (member of the SBOD) shall be appointed by the SBOD President to temporarily serve as a replacement member of the CCC with all the powers and authority of the absent member.
- (3) Any Owner(s) dissatisfied with the decision of the CCC may appeal by written document delivered to the SBOD within fifteen (15) days of the approval rejection. The appeal should request that the SBOD reconsider the CCC's decision. The SBOD may overturn or uphold any decision of the CCC by majority vote.

C Responsibility for Compliance: Members shall be responsible for compliance with this Declaration and all Dedicatory Instruments, including that of any employee(s) and/or contractor(s) employed or contracted by such Members.

D. Enforcement: The CCC and/or the SBOD shall have the power and authority to enforce compliance with all provisions, requirements and/or restrictions of the Dedicatory Instruments and any approved request concerning such construction/remodeling.

E. Work Standards:

- (1) Work Activity:
Shall be conducted in a professional manner between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday. Extended hours may be permitted by the CCC in the event of an emergency or other justifiable circumstance, but only with prior written approval of the CCC.

- (2) **Trash Removal:**
Trash and debris shall be contained and expediently removed from the Subdivision. The street, driveway and sidewalks shall be kept clean during the project.
 - (a) Debris shall not be disposed of on the outside of Southgate's South wall in the brush pile. Contractors are responsible for disposal and refuse building materials off Southgate property.
- (3) **Construction equipment, job site, and materials:**
Shall be kept in a neat and orderly fashion.

Section 5.2 LOTS/RESIDENCES:

A. Minimum Size:

- (1) No Residence shall be constructed having a square footage less than twelve hundred (1,200) square feet of living area exclusive of any open porch, breezeway and/or garage.
- (2) Each Residence shall be constructed with a garage; and such garage shall have a minimum of four hundred forty (440) square feet.
- (3) The total width of garage door(s) for each Residence shall be a minimum of sixteen (16) feet and constructed of solid material.
- (4) Carports are not allowed.

B. One Story Structure:

Only one story structures are permitted.

C. Roof Slope:

All Residences shall have pitched roofs with slopes of 4 in 12 (minimum) to 7 in 12 (maximum), with minimum overhangs of sixteen (16) inches.

D. Placement: Building permits must be obtained from the City of Pharr and conspicuously posted for all new construction, new fencing, roof replacement and additions.

- (1) Any construction must meet and abide by all placement guidelines and procedures as follows:
 - (a) Prior to construction, the Owner, at the Owner's expense, shall furnish a copy of the site plan to the CCC for approval. Such approval shall not request or provide for any variance or exception by the CCC from the requirements of Article VI Section 5.2 or any other mandatory requirements of this Second Restated Declaration.

- (b) At least one week prior to any concrete slabs being poured, the Owner, at the Owner's expense, shall submit to the CCC, an official professional survey showing the placed forms for the concrete, elevation of the Lot, and the elevation of the proposed finished floor. The survey must show any proposed improvement, property lines, setbacks, easements, and finished floor elevations of any Residence(s) located directly on each side. Concrete slabs shall not be poured without the unanimous prior written approval of the CCC acting upon an official professional survey. The CCC is responsible to obtain the written signatures of any adjoining property Owner(s) after said Owner(s) has had the opportunity to preview the official professional survey. The adjoining Lot Owner(s) shall have three (3) business days to approve the professional survey regarding setbacks and elevation. Failure to respond by adjoining property Owner(s) within three (3) business days shall be considered an approval and no signature(s) shall be required. This information must be documented and kept in the Lot file indefinitely.
- (2) Elevation:
- (a) The finished floor elevation for any building improvement shall not create or cause any condition that will adversely affect any other Lot/Residence.
 - (b) Minimum permissible finished floor elevation for all building improvements shall be in accordance with the requirements of the appropriate governmental authorities.
 - (c) Maximum permissible finished floor elevation for all building improvements is eighteen inches (18") above the top of the curb adjoining the respective Lot unless required otherwise by subsections 2(b) above or 2(e) below.
 - (d) Exception to items (b) and (c) above, unless required otherwise by the applicable governmental authorities.
 - (e) The finished floor elevation for building improvements on any Lot when located between two existing Residences directly on each side, shall be greater than the finished floor elevation of the lowest adjacent Residence and less than the finished floor elevation of the highest adjacent Residence and/or

- (f) The finished floor elevation for building improvements on any Lot adjacent to only one existing Residence shall be equal to or lesser than that adjoining Residence. Such elevations shall be determined by an official professional survey which shall be provided to the CCC by the Owner prior to pouring any concrete as provided in Section 5.2 D(1)(b)
- (3) Set back Restrictions for undeveloped Lots:
- (a) Lot 37: eight (8) feet minimum side setback on the South side and two (2) feet minimum side setback on the North side.
 - (b) Lot 50: Twenty (20) feet East side street easement. Five (5) feet minimum on the East and West side setback.
 - (c) Lot 61: eight (8) feet minimum side setback on the North side and eight (8) feet minimum side setback on the South side.
 - (d) Lot 79 eight (8) feet minimum side setback on South side and two (2) feet minimum side setback on North side.
 - (e) All garages must be set back a minimum of twenty (20) feet from curb line.
- (4) Exceptions to Setback Restrictions:
Certain side setbacks, specified on the recorded plat described in subsection (6) and (7) below shall not apply to items (a) and/or (b) specified listed below:
- (a) Existing Residences Bridging Two LOTS:
The existing Residences, one which bridges Lots 44 and 45, and the other which bridges Lots 85 and 86, shall each be considered one Residence bridging two Lots. For Lots 44-45 and for Lots 85-86 all assessments shall be levied for two (2) Lots. HOWEVER, to remain within this exception:
 - (i) The existing foundations and structures shall not be expanded or additional structures built; and
 - (ii) if either existing structure is destroyed or damaged, the structure shall be rebuilt with exactly the same foundation placement and size, and still comply with this exception. Otherwise, if the existing structure is destroyed or damaged

and not built with exactly the same foundation placement and size, then the exception granted herein shall cease to exist and each of the two Lots bridged by a single structure shall be subject to the side setbacks in the written setback information provided from information recorded in the Map Records of Hidalgo County, Texas as such plat(s) currently exist or as they may be amended or re-platted.

(b) Other Current Setback Non-Compliance:

Other existing Residences which do not, at the effective date of this Second Restated Declaration, comply with the side setbacks as specified on the City of Pharr recorded plat and described in subsection (6) and (7) shall be excepted from those setback requirements. This exception shall not be effective as to any later encroachments into the setback areas. The exception(s) granted under this subparagraph (b) shall cease to be effective as follows:

- (i) When there is a destruction and need to replace or restore any part of the Residence which encroaches on the otherwise applicable setback areas, in which event the setbacks shall comply with the side setbacks as specified in the recorded Map Records of Hidalgo County, Texas as such plat(s) currently exist or as they may be amended or re-platted and (6) and (7) below shall apply.
- (ii) In the event such Residence is replaced, removed, or restored, (foundation included) then the original setbacks specified in the recorded Map Records of Hidalgo County, Texas as such plat(s) currently exist or as they may be amended or re-platted and subsection (6) and (7) shall apply to any replacement or restored structure.

- (5) Subject to the restrictions described above, placement of any new Residence or improvement to any existing Residence shall be a minimum of ten (10) feet from any other Residence, excluding the overhang of any roof(s).
- (6) No such Residence or improvement shall encroach upon any easement provided herein or in any applicable recorded plats.
- (7) All other easements and setbacks as shown in the applicable and effective plat(s) of Southgate Subdivision recorded in the Map Records of Hidalgo County, Texas as such plat(s) currently exist or as they may be amended or re-platted.

E. Open Side/Closed Side of the Residence:

(1) Open Side:

An open side of a Residence is one that has window(s), door(s) and/or patio(s) incorporated into it and runs generally parallel to the common property line with another Lot (the common property line being also referred to hereinafter as a “side Lot line”).

- (a) Patios (covered or uncovered) with poured foundations may not be constructed on the open side of any Lot if said patio infringes upon any setback area between the two Lots. Both Lot Owners shall have the right to review and approve the plans by written consent adhering to the due date requested by the CCC. The CCC shall require a professional survey before foundations may be poured so as not to infringe upon any setback on the recorded plat described in subsection (6) and (7) below.

(2) Closed Side:

Closed side of a Residence is one that does not have any window, door or patio incorporated into it and runs generally parallel to the common property line with another Lot.

- (a) Patios shall not be constructed on the closed side of any Lot.

(3) Restriction:

In no case may an open side of any Residence be constructed to face the open side of another Residence. Glass block windows may be approved by the CCC, subject to conditions that the CCC may impose, on a Residence’s closed side. Atriums or porches may be placed on the closed side of a Residence only if they are entirely “closed” to any open side of another Residence so that the other adjoining Residence is facing a “closed side.”

(4) Maintenance:

Responsibility for maintenance of the yard area between any adjacent open side/closed side shall be determined by the common property line unless the Owners thereof agree otherwise.

F. Materials/Accessories:

All exterior materials/accessories, including painting, shall have written approval of the CCC prior to installation or application. All Residences shall comply with the following requirements:

(1) Roofing Materials:

Shall be similar to other roofing materials predominantly used in the Subdivision.

(2) Exterior Siding of Each Residence:

Shall have a minimum of seventy-five percent (75%) fired clay brick.

(3) Attic Vents:

Turbine type attic ventilators are permitted; placement must be so as not to be viewed from the street (exceptions may be approved in writing by the CCC) and may not be a noise nuisance to any other Owner. If attic ventilators become a nuisance, the CCC may enforce repair, removal or replacement.

(4) Driveways, Walkways and Patios:

Driveways, walkways and patio materials and specifications, including expansion joints in concrete, shall have written approval of the CCC prior to installation.

(5) Exterior Paint:

Must be approved in writing by the CCC **before** any exterior painting may begin. When painting the exterior trim and doors of your home, the colors must be selected from the “*Desert and Southwest Style*” color chart which has been given to all Owners. “Accent” colors on the chart may **not** be used for garage door or trim, but may be used for a painted front door. Whatever brand of paint you choose, you must still color match to the chart provided by the Office. The master copy of this chart is on file in the Southgate Office.

(6) Accessory Buildings:

(a) No accessory buildings (such as storage sheds or carports) shall be permitted on any Lot.

(b) Existing accessory buildings placed prior to the effective date of this Second Restated Declaration, shall be maintained and kept in good repair and attractive condition as determined by the CCC or shall be removed by the Owner at the expense of the Owner.

ARTICLE VI USE/RESTRICTIONS:

Section 6.1 LOT/RESIDENCE:

Section 6.2 Infringements/Nuisances:

Section 6.1 Lot/Residence:

A. Private Residence:

No Owner of any Lot/Residence shall allow occupancy or use of any part thereof for any purpose other than as a private single family Residence for Owners including temporary visitors/guests, as authorized by such Owner, the Dedicatory Instruments, and the SPOA. Temporary visitors/guests are limited to thirty (30) days in a six (6) month period. Special exceptions may be allowed by unanimous SBOD approval. All Residents must provide approved proof of age to the Southgate Office **prior** to occupying said Residence.

B. Rental:

- (1) No Owner shall allow any lessee under the age of fifty-five (55) to occupy and/or lease the Residence. Subletting is not allowed and occupancy is denied to any person not listed on the lease and not registered with the SPOA according to 2.3 (A)(1). The minimum rental shall be not less than twelve (12) months,
- (2) Homes are strictly for single-family residential purposes. Leased or rented homes must be rented in their entirety – individual rooms may not be leased or rented under any circumstances.
- (3) No Owner shall allow a Lot/Residence to be used by anyone except through lease, gift, loan, trade, assignment, or rental unless and until the Owner shall fill out, sign, and provide to the SPOA a written affidavit proving that the occupants of the Lot meet the requirements of the Dedicatory Instruments. The affidavit shall include independent age verification of all occupants, and Tenant's contact information.
- (4) All lessees must comply and abide by the Dedicatory Instruments. Tenants are required to register in the office, sign a written affidavit with independent age verification of all occupants **before** residency may begin. Contact/Emergency information must be provided to the office. Tenants must sign and agree to the rules compliance document upon registration. All registration documentation must be kept current at all times. Residents who are Tenants and their guests are to comply with and abide by all the Dedicatory Instruments and Owners may be subject to Lot Specific Fees for non-compliance.
- (5) The Owner of such Lot is responsible for any Tenant and/or occupant who does not comply with this Article VI and the SPOA is hereby granted the right to cancel and terminate such lease, rental agreement, occupancy, or

usage, without any liability to the Lot Owner or renter/lessor. In said respect, the SPOA shall be regarded as the Owner's agent, fully authorized to take such steps as may be necessary to effect the cancellation and termination of such lease or rental agreement, and the eviction of any unauthorized occupants.

C. Oil Mining:

No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot.

D. Temporary Structures:

No structures of a temporary character (including tents, trailers, mobile homes, or recreational vehicles) shall be used on any Lot at any time as a Residence. No trailer or recreational vehicle may be used on any Lot or Common Area to temporarily house guests or Owners. The only trailer or recreational vehicles permitted in Southgate must be owned by the Lot Owner(s) and the Lot Owner(s) must adhere to the time-line stated in these Declarations.

Section 6.2 Infringements/Nuisances:

A. Infringement:

The Owner(s) of any Lot shall allow no activity or condition to exist thereon that will impair or adversely affect any other Owner's, easement, inheritable property and/or structural soundness or integrity of any other Residence or structure.

B. Drainage:

- (1) The Owner(s) of any Lot shall allow no drainage condition to exist on said Lot which will adversely affect any other Lot/Residence, the Common Areas or the Recreational Common Areas.
- (2) Properly functioning gutter systems shall be provided by any Owner as may be required by the CCC to divert roof run-off water and prevent such water from adversely affecting any other Lot(s), Residence(s), the Common Areas or the Recreational Common Areas.
- (3) No one shall alter the grade or height of any developed Lot, as established for proper drainage at the time the Residence on said Lot was constructed, unless prior written approval is obtained from the CCC.

C. Nuisances:

- (1) Activities or Conditions:

No noxious or offensive activity shall be allowed on any Lot or the Common Areas nor shall any activity or condition be allowed to exist thereon which may become a nuisance or annoyance to other residents as determined by the CCC.

(2) **Mechanical Work:**

- (a) No repair work, dismantling or assembling of motor vehicles, boats, trailers or any other similar equipment shall be permitted on any street, driveway or yard adjacent to a street, or in the Common Area.
- (b) Light tune-up or “tinkering” is permitted on an Owner(s) driveway if not deemed a nuisance by the CCC.
- (c) SPOA maintenance personnel may operate, service, and repair SPOA equipment at any time, or perform SPOA duties and functions.

D. Exterior Décor/Clutter:

When visible from the street, yard ornaments, decorations and/or any objects shall be consistent so as to blend with the overall appearance/aesthetics of the other Lots and comply with the applicable Rules and Regulations. Clutter, disarray and/or debris on any Lot will not be allowed.

E. Pets/Animal Restrictions:

- (1) No exotic animals of any kind including but not limited to: reptiles, livestock, or poultry shall be raised, bred, or kept on any Lot. Dogs and cats or other common household pets shall not exceed two (2) adult animals.
- (2) No animal that causes annoyance due to noise, odor or unsanitary conditions, as determined by the CCC, may be kept on any Lot.
- (3) Animal walking in the Common Areas or the Recreational Common Areas **is not permitted**. Pets may be taken into the non-excluded Common Areas **IF and only IF** they are confined and are securely tethered to said confinement, so that their feet may not touch the ground. Pets that are secured with no opportunity to escape and kept from walking on the ground may be taken into the outdoor Common Areas that are limited to only the streets and sidewalks. No pet may be allowed on another Owner’s property.
- (4) Excluded Common Areas or Recreational Common Areas for pets include but are not limited to: The clubhouse, office, exercise room, pool/spa to include fenced deck area of the pool/spa, tennis, shuffle board, pickle ball and bocce courts.

F. Unique Restrictions for Southgate Subdivision:

- (1) Pet walking is prohibited in the Common Areas and the Recreational Common Areas. (See Pets/Animal Restrictions in Section E above).
- (2) Security Gate Rules to keep our subdivision safe:
 - (a) The security gate is closed twenty-four (24) hours per day.
 - (b) After gaining access through the gate it is required and enforced that you stop after passing through the gate. Allow the gate to close before proceeding.
 - (c) It is the Owner's responsibility to notify anyone you grant access into the subdivision through the gate that they must stop to allow the gate to close before proceeding.
 - (d) If after you stop and allow the gate to begin to close if it begins to open again that means that a resident is behind you and you may proceed. It shall be that resident's responsibility to stop to allow the gate to fully close before proceeding.
- (3) Garage Doors:
 - (a) All Garage Doors are to be kept closed unless the owner is working or relaxing within the sight of the garage door.
 - (b) Garage Doors may be open slightly for venting the garage area.
- (4) Exercise Room
 - (a) All Residents using the Exercise equipment do so at their own Risk.
 - (b) The Exercise Room is for registered residents only.
 - (c) All residents should wipe the equipment they used before leaving the area.
 - (d) Smoking is prohibited in the exercise room.
- (5) Pool/Spa Regulations:
 - (a) Anyone entering the pool or the spa must rinse in the outdoor shower area before entering the water.
 - (b) Only four (4) guests per Lot in a twenty-four (24) hour period are allowed to use the pool/spa. Enforcement and restrictions shall be as provided in the Rules and Regulations now existing or as may be hereafter amended.

- (c) Next to the pool entrance gate, there is an emergency 911 telephone for emergencies. When the pool or spa is being used this gate must remain open to allow access to the paramedics if an emergency situation arises. The last resident to leave the pool is responsible for locking the gate to keep the area secure to comply with our insurance safety rules.
- (d) Guests must be accompanied to the pool/spa by an Owner or registered Lessee of the Lot.
- (e) Any guest under the age of eighteen (18) is not permitted in the spa.
- (f) Minors who are under the age of three (3) years of age are not permitted in the pool or the spa.
- (g) Minors or any person who is incontinent are NOT allowed in the pool or spa and absolutely no diapers or “swim diapers” are permitted.
- (h) Anyone entering the pool/spa must wear proper swimming attire. Sun shirts must be designed as proper swimming attire. Cotton tee shirts, cutoffs, shorts, etc. are strictly prohibited
- (i) Glass containers may not be brought into the pool/spa or the fenced pool/spa deck area.
- (j) Smoking is not allowed in the pool/spa or the fenced pool/deck area.
- (k) Running and diving is strictly prohibited in the pool/spa or the fenced pool/spa deck area.

G. Trash Disposal:

- (1) No Owner shall use or maintain any Lot as a dumping ground for trash, garbage, yard clippings, yard debris, or other waste.
- (2) Trash, garbage and/or other waste shall be kept in provided containers, and:
 - (a) The containers may be placed at curbside on the designated day of trash pick-up or after 6:00 PM the day before pick-up.
 - (b) The empty containers must be removed from curbside the same day of the pick-up.
 - (c) Such containers shall be stored so that they may not be viewed from the street.
- (3) Residents may place landscape brush on the brush pile only seven (7) days of the month. The brush pile is further discussed in the Rules and

Regulations section of the Dedicatory Instruments. Hired contractors may not use the Residential brush pile to dispose of construction debris. Hired landscapers may use the brush pile if the time of disposal coincides with the brush pick up noted on the Southgate calendar.

H. Clothes Lines:

Outdoor clothes lines of the umbrella type design shall be permitted on any Lot IF and ONLY IF it cannot be seen from the street or viewed by any neighbor. When not in use, the clothes lines must be retracted.

I. Signs:

- (1) No exterior signs of any kind or type shall be placed on any Lot, unless the prohibition of the exterior signs are in conflict with applicable law.
- (2) Approved signs offering property for sale may be purchased at the SPOA office. Realtor's or sales agent's signs are not permitted on any Lot.

J. Satellite Dishes:

- (1) Satellite dishes may not be placed on the front or sides of any home. The required placement area is the back of the house. If any existing satellite dishes are currently located so that they may be viewed from the street, the satellite dish must be moved to the rear of the house when the house is sold.
- (2) If an alternative placement area is necessary to mount the satellite dish, the Owner must have written permission from the CCC to place the satellite in any area other than the back of the house.

K. Air Conditioners/Utility Equipment:

- (1) Placement of air conditioning condensing units and utility equipment must be approved in writing by the CCC.
- (2) Air conditioning condensing units and utility equipment must be screened if visible from any street. Such screening must be approved, in writing, in advance of installation or placement by the CCC.
- (3) No window or wall type air conditioners shall be permitted unless approved in writing by the CCC prior to installation.

L. Unsafe Activities:

The SBOD has the authority to determine that any condition existing on a property or any activity ongoing within Southgate Subdivision is unsafe or a safety hazard to the SPOA. The SBOD has the authority to take immediate reasonable action to address and eliminate any unsafe conditions or safety

hazards. Additionally, the SBOD has the authority to issue fines or Lot Specific Fees for expenses incurred for the removal of unsafe conditions or safety hazards.

ARTICLE VII MAINTENANCE AND CARE:

Section 7.1 Structures

Section 7.2 Vegetation on Developed and Undeveloped Lots:

Section 7.1 Structures:

A. Responsibility of Owner:

Owner(s) shall maintain and keep in good repair and condition the Residence fences and/or structures appurtenant to each Lot Owner(s).

B. Extensive Damage:

The Owner(s) of any Residence, structure and/or Lot having damage caused by vandalism, fire, wind, hail or any other such casualty shall cause restoration of each property(s) so as to comply with this Article VII.1 and Article V herein.

C. Scheduling Restoration:

Any such restoration shall be accomplished with all due diligence and shall commence within two (2) months after any such casualty and be completed within twelve (12) months unless prevented due to causes beyond the Owner(s)' reasonable control.

D. Utility Equipment:

- (1) The Owner of any Lot shall be responsible for maintenance and repair of all utility equipment which is located on and provides exclusive service to said Lot.
- (2) Said utility equipment includes, but is not limited to, the following:
 - (a) Sanitary sewer lines and connections
 - (b) Electric power service lines and conductors
 - (c) Water lines
 - (d) Electric circuit breakers
 - (e) Natural gas, butane or other similar fuel lines and connections.

Section 7.2 Vegetation on Developed and Undeveloped LOTS:

A. Standards/Responsibility:

- (1) The care and appearance of vegetation on each Lot, developed or undeveloped, shall be in accordance with the overall care and appearance/aesthetics of the other Lots as determined by the CCC.
- (2) The Owner(s) of any Lot, developed or undeveloped, shall be responsible for the care and appearance of all vegetation thereon. Such Owner(s) shall

keep and maintain same, including the area between the setback line and the curb, in good condition and will not allow weeds to grow on the Lot.

- (3) The vegetation on all developed Lots (front, side and back) is to appear to be healthy, pleasing and consistent with the overall appearance and aesthetics of the other Lots and the Common Areas. Flower and ornamental plant beds with ornamental plants are permitted as accessories to each yard. Each yard is to be mowed weekly. The yards are to be watered and cared for regularly.
- (4) Undeveloped Lots are to be mowed as needed to maintain a pleasant appearance. Vegetation killer may not be applied to an undeveloped Lot.
- (5) Trees and/or shrubs are to be trimmed and cared for so as to prevent interference or intrusion upon any other Lot, Residence, fence and/or structure. Trees and/or shrubs must allow thirteen and one half (13 ½) feet minimum clearance above all points on the street and curb so as to comply with the City of Pharr regulations.
- (6) Trees are to be trimmed and maintained as needed to maintain a pleasant appearance. Debris from trees such as but not limited to: acorns, fruit, leaves, and branches must be kept picked up and not allowed to become a nuisance to the neighboring Lots. It is the Owner's responsibility to keep the area surrounding their tree(s) clean and prevented from blowing onto neighboring Lots.
- (7) There is a ten (10) foot easement along all street curbs. Any planting in this area is subject to loss if maintenance needs to be performed.

B. Enforcement:

- (1) The CCC shall have the authority to determine for any Lot the need for mowing of grass, trimming, removal of trees or other foliage, treating insect or plant disease(s) and weed control treatment.
- (2) The CCC shall also have the authority to arrange to have these services performed as deemed necessary if any Lot does not conform to and match the overall standards, appearance/aesthetics, and maintenance of the other Lots.
- (3) All members of the CCC may inspect the Lots and determine whether any Lot needs to be mowed (developed or undeveloped). In the event mowing is needed a contracted service will be told to mow the Lot (without prior Notice to the Owner).

- (4) Any such charge paid or incurred by the SPOA will be charged as a Lot Specific Fee which will be subject to collection from the Owner of said Lot according to the terms of Article IV herein.

ARTICLE VIII FENCES/WALLS:

Section 8.1 Perimeter Fence/Wall around Southgate Subdivision:

Section 8.2 Interior Privacy Fences along Rear Property Lines:

Section 8.3 All Other Fences/Walls:

Section 8.1 Perimeter Fence/Wall around Southgate Subdivision:

- A.** Shall be the responsibility of the SPOA for maintenance and/or replacement.
- B.** Access rights of the SPOA and its designees shall include a twenty (20) foot utility easement as provided in Section 10.3 herein.

Section 8.2 Interior Privacy Fences along Rear Property Lines:

- A.** Construction, maintenance and replacement of fences along the rear property lines of Lots fifty-one (51) through eighty-eight (88) shall be the responsibility of the respective Lot Owners.
- B.** Such responsibility and costs shall be shared equally by Owners of adjacent Lots for that portion of the fence which they own jointly.
- C.** Owners that share a fence shall be responsible for presenting to the CCC a written unified plan to include color, material type, height, and appearance of all fencing material which all Owners have agreed in writing by signing their name and dating the document. The CCC shall have final authority to approve the fence plan. All three members of the CCC shall sign the written request for approval document. The CCC and/or the SBOD shall not be responsible for settling fence related disputes between Owners.
- D.** Fencing shall require written approval of the CCC **prior** to any construction, replacement or change in height. Any change in height over six (6) feet tall requires a written variance permit signed by all three member of the CCC.
- E.** Materials will equal or exceed the quality of existing fence(s).
- F.** The fences will be constructed on the property lines.
- G.** New fence construction shall be completed by the adjoining Owners after the adjoined Lots are developed on both sides of the shared rear property line.
- H.** Access to such fence(s) shall be as provided in the recorded plat of Southgate Subdivision by a ten (10) foot easement running along each such Lot's rear property line.

- I. No Owner shall do any act or allow any condition to exist that will impair the structural soundness of integrity of said fence and/or cause intrusion of any adverse effect upon the adjoining Lot.
- J. In the event any Owner(s) fails to comply with their obligations as set out in this Article VIII, the CCC may correct and cure the non-compliance and assess the costs of the correction and cure against the non-complying Owner as a Lot Specific Fee.

Section 8.3 All Other Fences/Walls:

- A. Shall require prior written approval of the CCC for any construction, replacement, removal and/or change in material and/or color.
- B. Shall be the responsibility of the respective Owner(s) for maintenance, replacement and/or removal.
- C. Removal and/or replacement of any fence/wall, for allowed access upon and through any easement upon which said fence may be located, shall be the responsibility of the Owner(s) of said fence/wall.
- D. No fence/wall shall be installed nearer to the street curb than the respective Residence. Retaining walls no more than twelve (12) inches in height may be an exception with prior written approval by the CCC.
- E. In the event of any dispute regarding said fences, Owner(s) may appeal to the CCC and the CCC shall have the authority to assess the respective Owner(s) obligations, and/or enforce the Dedicatory Instruments as they may apply to the situation. Lot Specific Fees may be assessed by the CCC for any Owner’s non-compliance of the Dedicatory Instruments regarding fencing.

ARTICLE IX PARKING VEHICLES:

Section 9.1 Parking

Section 9.2 Off-Street Parking

Section 9.3 Excluded Vehicles/Methods of Transportation

Section 9.4 On-Street Parking

Section 9.5 Recreation/Clubhouse Parking

Section 9.1 Parking

Parking of vehicles within Southgate Subdivision shall be subject to the restrictions herein and the published Rules and Regulations of the SPOA as they currently exist or as they may be amended or changed.

Section 9.2 Off-Street Parking:

- A.** Shall mean and refer to garages and paved driveways specifically intended for the parking of vehicles.
- B.** Each Owner shall provide sufficient garage or driveway parking facilities for allowed vehicles belonging to such Owner, any tenant, occupant or guest thereof.
- C.** This section shall not prohibit parking along the street for reasonable periods of time, but does not allow overnight parking except as provided in Section 9.4.

Section 9.3 Excluded Vehicles/Methods of Transportation:

Excluded Vehicles:

- A.** Vehicles too large to be accommodated by the garage or driveway of the Lot with which they are associated by occupancy or visitation, pick-up trucks with stand-up campers, motorhomes, recreational vehicles, mobile homes, utility trailers, other tow-behind-vehicles, boats, and any other vehicle that may be deemed unsafe, noisy, oversized, unsightly, or inappropriate by the CCC will be considered as an excluded vehicle. The aforementioned excluded vehicles permitted in the Southgate Subdivision overnight must be owned by a SPOA Property Owner and said Owner must notify the CCC by phone or email before parking in the Subdivision. All Owners must adhere to the time-line for excluded vehicles as stated in these Declarations.
- B.** Go-carts are considered to be an unsafe excluded method of transportation and are prohibited.
- C.** Any other personal transportation vehicle will be considered as non-excluded and is not subject to the restrictions in item A.
- D.** The use of a cover on any vehicle is prohibited in the drive-way area of any home or Common Area. Vehicles that are covered must not be seen from the street.
- E.** Excluded vehicles belonging to Residents are generally not allowed to be parked outside any garage or any Lot, driveway, street or Common Area within Southgate Subdivision; except that:
- F.** Approval may be granted by any member of the CCC to allow parking of excluded vehicles for a period of time not to exceed two (2) days. Such approval must be requested and obtained **prior** to parking by calling or emailing a member of the CCC. If the excluded vehicle is brought into the subdivision after 5:00 PM the two (2) day time limit will begin the following day and that following day shall be counted as day one. Failure to request approval may result in Lot Specific Fees. The SBOD may in rare special circumstances grant a variance for the time line described above.

Section 9.4 On-Street Parking:

On-Street Parking

- A. Shall mean and refer to the Common Areas, such as but not limited to, the streets and the two parking areas, one located directly east of the tennis courts and one located directly west of the swimming pool.
- B. On-street parking and enforcement shall be as provided in the Rules and Regulations now existing or as may be hereafter amended.
- C. Overnight parking on any street in Southgate is strictly prohibited.

Section 9.5 Recreation/Clubhouse Parking:

- A. Shall mean and refer to the two parking areas, one located directly east of the clubhouse and one located directly west of the swimming pool.
- B. Recreation/Clubhouse parking and enforcement shall be as provided in the Rules and Regulations now existing or as may be hereafter amended.

ARTICLE X EASEMENTS:

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| <p>Section 10.1 General Easement Usage:
Section 10.2 Utility-Emergency-CCC
Section 10.3 20' Perimeter Utility Easement:</p> |
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Section 10.1 General Easement Usage:

Each Lot and the Common Areas shall be subject to the following easements:

- A. For necessary public utility lines, streets, improvements and maintenance of improvements on Lots and Common Areas; and
- B. as reasonably necessary to maintain and repair any existing structures, fences, yards, improvements, or utility lines; and
- D. SPOA maintenance personnel may operate, service, and repair SPOA equipment at any time, or perform SPOA duties and functions.

Section 10.2 Utility-Emergency-CCC:

A. Blanket Easement:

There is hereby created a blanket easement upon, across, over and under all the properties of Southgate Subdivision for ingress, egress, installation, replacing, repairing and maintaining all utilities including, but not limited to, water, sewer, gas, telephone, television, and electricity.

B. Utilities:

By virtue of this easement, it shall be expressly permissible for the providing utility companies to erect and maintain the necessary poles and other necessary

equipment on any Lot or Common Area in the Subdivision and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under such properties.

C. Emergency/Services:

An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pickup vehicles and all similar persons to enter upon the Common Area and Lots in the performance of their official duties.

D. Approval:

Notwithstanding anything to the contrary contained in this Section 10.2, no sewage lines or facilities, electrical lines, water lines, or other utilities may be installed or relocated on the properties within Southgate Subdivision except as approved in writing by the CCC. Should any utility furnishing a service covered by the general easement herein provided, request a specific easement by separate recordable document, the SPOA (acting through its SBOD) shall have the right to grant or deny such easement. The easements provided for in this Article X in no way affect any other existing or recorded easement in the Subdivision.

Section 10.3 Twenty Foot (20') Perimeter Utility Easement:

The twenty foot (20') wide perimeter utility easement ["Perimeter Utility Easement"] around Southgate Subdivision inside the perimeter wall/fence exists for the purposes described in Section 10.2 herein and for the inspection, maintenance and servicing of the masonry wall and fence.

A. Sole Right of SPOA:

- (1) The SPOA (acting through the SBOD, CCC, their designees and/or contractors) shall have the sole right to enter into and use the Perimeter Utility Easement for the purpose of facilitating maintenance of such wall/fence.
- (2) Individual Lot Owners do not have the right to alter, change, or modify in any manner said perimeter wall and fence; such rights being reserved exclusively to the SBOD acting on behalf of the SPOA.

B. Owners Obligation:

The Owner of any adjoining Lot has the right, duty and obligation to keep the portion of the Perimeter Utility Easement on said Lot mowed and cleared of weeds and high growth, but does not have the right to construct any fences or structures of any kind thereupon except as may be approved in writing by the SBOD or the CCC acting for the SBOD.

C. SPOA Right to Enforcement:

The SBOD, shall have the right to maintain and/or repair any perimeter utility easement fence/wall which belongs to the SPOA.

- (1) Removal of structures or obstructions of any kind that prohibits access to said fence/wall on the Perimeter Utility Easement shall be at the expense of the Lot Owner.

- (2) Any such assessments shall be a Lot Specific Fee subject to Article IV herein.

ARTICLE XI MANAGEMENT OF SUBDIVISION:

Section 11.1 Authority of SBOD:

Section 11.2 Authority of the CCC:

Section 11.3 Enforcement:

Section 11.4 Insurance:

Section 11.1 Authority of SBOD:

A. General:

- (1) The SBOD shall exercise for the SPOA all powers, duties and authority vested in or delegated to the SPOA in this Second Restated Declaration or in the Dedicatory Instruments, except those that are reserved to the Members by other provisions of the Dedicatory Instruments.

- (2) The SBOD shall have the authority, right and duty to manage and control the affairs of Southgate Subdivision, pursuant to the Dedicatory Instruments and applicable law.
 - (a) The SBOD shall support that any applicable Government and/or Texas Law(s) supersede our Dedicatory Instruments; when said law specifies the intent to supersede Dedicatory Instruments.
 - (b) Before such amendments or revocations have force and effect they must be registered with Hidalgo County, Texas and also registered with the Texas Secretary of State.

- (3) The SBOD shall act by majority vote unless otherwise provided by the Dedicatory Instruments.

- (4) The SBOD shall have the authority to fix the amount of annual assessments to be levied against each Lot for each calendar year as provided in section 4.3 herein.

- (5) The SBOD shall have the authority to employ a manager, hire independent contractors or other employees and contractors as it deems necessary, and to prescribe their duties and/or terminate their employment or contract. Any such employee shall be a non-resident of Southgate and unrelated to any Director serving on the SBOD. Outside Management Companies may be hired with the consent of sixty-five percent (65%) of the SPOA.
- (6) The SBOD shall have the power and authority to enforce this Declaration in any legal manner available as they deem appropriate, including, without limitation, conducting a census of the occupants of the Lots, requiring birth certificates, or other proof of age for each occupant of the Lot to be provided to the Board on a periodic basis, and taking legal action against the occupants of any Lot not in compliance with the requirements and regulations of this Declaration. Each Member hereby appoints the SBOD as its attorney-in-fact for the purpose of taking legal action to dispossess, evict, or otherwise remove the occupants of their Residency as necessary to enforce compliance with this Declaration.
- (7) Each Lot Owner shall be responsible for ensuring compliance with the requirements and restrictions of this Declaration and the Rules and Regulations of the Association adopted hereunder by itself and by its Lot Owners. Each Owner, by acceptance of title to a Lot, agrees to indemnify, defend, and hold harmless the Association from any and all claims, losses, damages, and causes of action that may arise enforcement of the Dedicatory Instruments, or from failure of such Owner's Lot to so comply.

B. Safeguard

- (1) The SBOD shall have the authority to acquire by gift, foreclosure, purchase or otherwise, own, hold, improve, build upon, operate, maintain, real or personal property on behalf of the SPOA.
- (2) The SBOD shall have the authority to sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property on behalf of the SPOA, only with the assent of at least sixty-five percent (65%) of the Members of the SPOA [however, such assent requirement is NOT applicable to service equipment, supplies, personal property, furnishings, décor and/or the sale of Lots foreclosed on pursuant to Section 4.6.C].
- (3) The SBOD shall have the authority to borrow money. Secured loans require the assent of at least sixty-five percent (65%) of the Members of the SPOA [which assent requirement is not applicable to borrowing against foreclosed Lots as provided in Section 4.6.C(4)], to mortgage, pledge, grant

security interests in any or all of the SPOA's real or personal property as security for money borrowed or debts incurred.

- (4) The SBOD has the authority to procure and maintain insurance protection for the acts and omissions of its officers, agents, designees, Directors, and for the protection of the Common Areas and the Recreational Common Areas as provided in Section 11.4 herein.
- (5) The SBOD shall have the authority to cause all officers and/or employees having fiscal responsibilities to be bonded at SPOA expense.
- (6) The SBOD has the right to enforce any and/or all the provisions/restrictions of the Dedicatory Instruments.
- (7) The SBOD may levy fines as provided in this Second Restated Declaration against any Owner and/or Member for non-compliance with any provision(s) of the Dedicatory Instruments.
- (8) The SBOD (acting for the SPOA) has the authority to foreclose its lien(s) against any Lot by judicial or non-judicial means to the fullest extent permitted by the applicable law and statutes, and/or to bring an action at law or in equity against any Member personally obligated to pay any assessments and liens.
- (9) In the event of any monetary discrepancy in the course of duty by any volunteer acting as an officer or agent of the SPOA, the SBOD shall have the authority to:
 - (a) Determine such discrepancy to be the result of error and approve it as an expense to be borne by the SPOA; or
 - (b) take legal action as necessary.
- (10) In the event any person charges any action or policy of the SBOD as failing to comply with the Dedicatory Instruments or applicable law, and asks the SBOD or CCC to take action to correct the alleged violation, the SBOD and/or CCC shall have the authority to require that such person furnish a written and signed opinion from a licensed Texas attorney stating the claim and the legal support for such claim before having any obligation to respond to or investigate such claim, in order to avoid unnecessary legal expense to the SPOA due to frivolous claims. Any expenses and legal fees incurred by the SBOD in responding to an unjustified or unsupported claim brought by an Member or any tenant, guest, or designee of an Member, shall be recoverable by the SBOD (acting on behalf of the SPOA) against the Member and such expenses and fees may be assessed as a Lot Specific Fee against the applicable Owner's Lot(s).

- (11) Any powers not allowed or granted the SBOD in the Dedicatory Instruments with respect to the Southgate Subdivision, shall reside in the Members as a group, acting by majority vote of a quorum of the Members entitled to vote at a meeting of the Members unless provided otherwise in the Dedicatory Instruments. For purposes of voting at meetings, a quorum of Members shall be considered the Members representing more than 50% of the Lots entitled to vote in SPOA affairs.

C. Common Area:

- (1) Per the City of Pharr Ordinance, Smoking is prohibited inside any Common Area building. Smoking is also prohibited to include but not limited to: any covered area of the Clubhouse to include any covered porch area, the covered picnic/patio area, outside the office, the outdoor bathrooms, and inside the fenced area of the pool/spa.
- (2) The SBOD acting by majority vote shall have the authority and right to create, prescribe, and enforce the Rules and Regulations governing the use of all Southgate Properties, including streets and utilities. The SBOD may further amend or change such Rules and Regulations as it deems necessary for the governance of all Southgate Properties. The Rules and Regulations shall not conflict with this Declaration.
- (3) The SBOD shall cause the Common Areas and the Recreational Common Areas to be maintained as herein provided.

D. Termination of Director:

- (1) In the event of death, resignation or removal of a Director of the SBOD, a successor shall be appointed by the remaining Directors of the SBOD and shall serve until the earlier of:
 - (a) Expiration of the term of the replaced Director; or
 - (b) the day following a special meeting held of the Members which is set and arranged by the SBOD to elect and appoint a Director to replace the appointed Director and complete the unexpired term; or
 - (c) March 1st following the next Annual Meeting at which time a replacement for the unexpired term shall be elected.
- (2) Any Director may be removed from the SBOD, with or without cause, by either:

- (a) A petition signed by the Members of the SPOA representing the majority of the Lots; forty-five (45) Lots or fifty-one percent (51%) entitled to vote in SPOA affairs; or
- (b) At a special recall election called by the SBOD, which may be taken:
 - (i) By ballot (written or electronic), without a meeting; or
 - (ii) at any Annual Meeting by the majority vote of a quorum of Members present or by proxy; or
 - (iii) at any special meeting called by the SBOD for that purpose by the majority vote of a quorum of Members present or by proxy.

E. Conduct of Business; Enactment of Rules:

The SBOD, acting by majority vote, may enact, amend, or delete Rules and Regulations for the conduct of SPOA, CCC and SBOD business.

Section 11.2 Authority of the CCC:

A. Appointment:

The President of the SBOD shall appoint a Compliance Control Committee (CCC) composed of three (3) members of the SBOD. The term of office of each shall run until any resignation, death, disability, or a replacement is appointed by the President or a majority vote to remove said CCC member by the SBOD.

B. Conditions, Requirements and Restrictions:

Said CCC shall have full power and authority to make determinations and act upon all matters pursuant to:

- (1) Articles V, VI, VII, VIII, IX and X herein; and
- (2) decisions and/or actions of the SBOD/SPOA, and
- (3) any Rules and Regulations promulgated by the SBOD.

C. Architectural:

- (1) Each Owner intending to make improvements to any Lot or structure shall first submit the proposed plans and specifications for such improvements to the CCC and obtain the written approval of the CCC prior to commencing any work. The CCC shall review the plans and specifications promptly, and may ask for further detail or information prior to acting on the request. For all Lot improvements not considered cosmetic, the CCC shall present the proposal to the SBOD before granting written permission to the Owner.

The Owner's acceptance or rejection of plans shall be kept in the Lot file indefinitely.

- (2) By written unanimous vote, the CCC shall have full power and authority to accept or to reject any plans, specifications and written requests that do not comply with the restrictions and guidelines herein imposed. After presenting the written requests to the SBOD for addition to the SBOD minutes the acceptance or rejection of plans shall be kept in the Lot file indefinitely.
- (3) By written unanimous vote, the CCC shall have full power and authority in matters affecting external appearances in relation to the overall character and aesthetics of Southgate Subdivision. The CCC must present the acceptance or rejection of plans to the SBOD for addition to the SBOD minutes which shall be kept in the Lot file indefinitely.
- (4) The CCC shall not be responsible or liable for the integrity of any building, its placement or the sufficiency of its survey, engineering, design or construction.

D. Owner's Right to Appeal:

Affected Owners shall have the right to appeal the decisions of the CCC to the SBOD and the SBOD may override the decision of the CCC by majority vote: This decision shall be recorded for the minutes of the SBOD and shall be kept in the Lot file indefinitely.

Section 11.3 Enforcement:

A. Proceedings at Law or in Equity:

The SPOA, acting through the SBOD, as well as any Member, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereinafter imposed by the provisions of the Dedicatory Instruments. Failure by the SBOD or by any Member to enforce any covenant or restriction or requirement contained in the Dedicatory Instruments shall in no event be deemed a waiver of the right to do so thereafter.

B. Obligation to Pay Fees and Expenses:

All legal and other expenses incurred by the SPOA in collecting any assessment or enforcing any restriction provided in the Dedicatory Instruments, or in responding successfully to any claimed invalidity of the Dedicatory Instruments or the actions of the SBOD or CCC, shall be paid by the Owner(s) against whom such action is brought or who brought such action or claim, and may be enforced by lien and foreclosure of lien as provided herein. Further, all such expenses shall be subject to the due dates and non-payment of assessments as provided in Section 4.5 and 4.6 herein.

C. Violation is a Nuisance:

The result of every action or omission whereby any restriction, covenant, condition or agreement herein contained, or any rule or regulation enacted under the authority of this Declaration, is violated or breached, in whole or part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any Owner or lessee, either public or private, for a nuisance shall be applicable against every such result and may be exercised by SPOA, CCC, or any Member.

D. Suspension of Use of Recreational Common Areas:

- (1) Rights of a Member or the rights of the Member's designees, occupants, tenants or guests, to use of the Recreational Common Areas (including but not limited to: the clubhouse, pool/spa, exercise room (members only), tennis, shuffle board, pickle ball, and bocce courts) may be suspended by the SBOD due to non-compliance with the Dedicatory Instruments by the Member(s) of any Lot, or Tenant(s), or guest(s) thereof.
- (2) The SBOD may suspend the rights to use of the Recreational Common Areas by any whose debt to the SPOA is delinquent longer than two (2) calendar months (subject to any requirements of the law).
- (3) Written Notice pursuant to and in compliance with the Texas Property Code §209.006 shall be given prior to any and all suspensions under this section.

E. Authority of the Dedicatory Instruments:

In the event of any conflicts between the Dedicatory Instruments of the SPOA, the order of authority shall be as follows, with the prior listed document(s) controlling over the later listed document(s):

- (1) APPLICABLE GOVERNMENT/TEXAS LAW
- (2) DECLARATION
- (3) ARTICLES OF INCORPORATION
- (4) BYLAWS
- (5) RULES AND REGULATIONS
- (6) DECISION AND ACTION OF THE SPOA
- (7) DECISION AND ACTION OF THE SBOD
- (8) DECISION AND ACTION OF THE CCC.

Section 11.4 Insurance:

A. Property:

SBOD shall obtain and continue in effect blanket property and liability insurance for the buildings and structures in the Common Area or the Recreational

Common Areas for the SPOA against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions. Said insurance shall include coverage against vandalism and other risks.

B. Public Liability:

SBOD shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, to insure its agents and employees from and against liabilities.

C. Payment:

All of the insurance obtained by SBOD as provided in subsection (A) and (B) above may be paid, along with other expenses, out of the annual assessments.

D. LOTS/RESIDENCES:

Each Owner shall be responsible at his own expense and cost for any insurance desired on any Lot, Residence, improvements on any Lot, contents of any Lot or Residence, and/or for personal liability, or other risks.

ARTICLE XII GENERAL PROVISIONS:

Section 12.1 Severability:

Section 12.2 Amendment:

Section 12.3 Declaration Binding; Transition:

Section 12.1 Severability:

A. Effect of Invalidation:

Invalidation or modification of any portion of the Second Restated Declarations (as they may be amended) by judgment, court order, or operation of law, shall in no way affect any other provisions which shall remain in full force and effect.

B. Risks of Validity/Enforceability:

Any Owner who purchases a Lot in Southgate Subdivision, or resides thereon, in reliance on this Second Restated Declaration assumes all risks of the validity and enforceability thereof, and agrees to hold SPOA, SPOD and Owners of Lots harmless from any failure to enforce same or for enforcing same.

Section 12.2 Amendment:

A. Term of the Declaration:

This Second Restated Declaration shall run with and bind the land in the Southgate Subdivision until 2028 at which time it will be automatically renewed for successive 10 year periods unless otherwise revoked or amended as provided herein.

B. Vote to Amend: by a vote of sixty-five percent (65%) of the total votes allocated to property owners entitled to vote on the amendment of the Declaration, in compliance with Texas Property Code §209.0041. This Second Restated Declaration may be revoked or amended by an instrument signed by the Members of not less than sixty-five percent (65%) of the Lots who are entitled to vote.

C. Must be Duly Recorded:

Any amendment to this instrument must be duly recorded in the appropriate Deed Records of Hidalgo County, Texas, before such amendment or revocation shall have any force and effect.

Section 12.3 Declaration Binding; Transition

A. Continuity:

The Southgate Subdivision is subject to existing Declarations as set out in the preamble to this Second Restated Declaration which provide similarly, for the SPOA and the SBOD which currently exist and are active. This Second Restated Declaration is intended to supersede and restate, with some amendments and clarification, the existing Declarations. It is the intent of this Second Restated Declaration that all similar provisions and terms of those previous effective Declarations shall continue until officially superseded by this Second Restated Declaration, and that there shall be no “gap” or “transition” in the operations of the SPOA, SBOD, or Southgate Subdivision between the previous Declarations and this Second Restated Declaration, and the enactment of this Second Restated Declaration, Articles, Bylaws, other Dedicatory Instruments, and other official actions of SPOA and SBOD, all of which are expressly adopted and continued in full force and effect to the extent that they do not conflict with this Second Restated Declaration. Therefore, despite the enactment of this Second Restated Declaration:

- (1) The status of existing assessments, fees due and paid, and liens shall continue and carry forward upon the Effective Date of these Second Restated Declarations; and
- (2) the existing SPOA officers and directors, specifically:

<u>Current Officer</u>	<u>Term</u>	<u>Current Position</u>
Claude J. Buckland	January, 2018 through February, 2021	President
Viola De Ochoa	January, 2018 through February, 2021	Vice-President
Joyce Moran Mendoza	January, 2016 through February, 2019	Secretary
George Herrington	January, 2016 through February, 2019	Treasurer
Linda O’Donohue	January, 2017 through February, 2020	Member-At-Large

or any replacements or successors chosen prior to the Effective Date of this Second Restated Declaration, shall continue on in such offices, positions and terms as of the Effective Date; and

- (3) there shall be no “lapse” of any requirement of any Declaration or restriction provided herein which was also provided in the previous effective Declarations.
- (4) Due to the change of the date of the Annual Meeting from the first Saturday in December, to the first Saturday in February, the SBOD Director terms due to expire January 1, 2019 shall be extended to expire on March 1, 2019. (The first day of the new month after the Annual Meeting). This exception is a one-time extension only in 2019.

B. Effective Date:

As of the later of October 1, 2018 or the date of its recording in the Official Records of Hidalgo County, Texas, this Second Restated Declarations shall be binding upon and inure to the benefit of the SPOA, the Lots, the Common Areas, all Members and their respective residents, guests, tenants, heirs, successors and assigns.

C. Transfer of Declarant’s Rights Complete:

All the rights, powers and reservations of Developer and Declarant contained in the Declarations previously applicable to the Southgate Subdivision have devolved upon and inured to the benefit of the SPOA due to the occurrence of the required conditions precedent.

(signatures and approvals follow on subsequent pages)

CERTIFICATE OF COMPLAINE

THE UNDERSIGNED, acting with the authority of the Board of Directors of Southgate Property Owners Association, a Texas non-profit corporation, hereby certifies that upon a written ballot vote of the Owners of over sixty-five percent (65%) of the Lots in the Southgate Subdivision, by proper vote conducted in accordance with the procedures of Southgate Property Owners Association, as well as, the applicable Declarations and Covenants recorded in the records of the office of the Hidalgo County Clerk, the preceding “The Second Restated and Superseding Declaration of Covenants, Conditions and Restrictions” of Record applicable to Southgate Subdivision, City of Pharr, Hidalgo County, Texas was in all things properly **AGREED, APPROVED, RATIFIED** and made wholly effective and also approved and consented by the Southgate Property Owners Association Board of Directors.

SOUTHGATE PROPERTY OWNERS ASSOCIATION
A Texas Non-profit Corporation

By: _____
Claude J. Buckland,
ITS: President
Southgate Property Owners Association

IN WITNESS WHEREOF, the undersigned, Joyce Moran Mendoza, the duly elected, qualified, and acting Secretary of Southgate Property Owners Association, a Texas non-profit corporation, hereby certifies on behalf of the Association that this Second Restated Declaration of Covenants, Conditions and Restrictions was duly adopted by at least sixty-five percent (65%) of the Association by written ballot from September 7, 2018 to October 1, 2018 and shall take effect upon its recording in the Official Public Records of Hidalgo County, Texas.

SOUTHGATE PROPERTY OWNERS ASSOCIATION
A Texas non-profit corporation

BY: _____
Joyce Moran Mendoza
ITS: Association Secretary

**THE STATE OF TEXAS, §
COUNTY OF HIDALGO §**

Before me, the undersigned authorities on this date personally appeared CLAUDE J. BUCKLAND, President and JOYCE MORAN MENDOZA, Secretary of the Southgate Property Owners Association. Known to me to be the persons whose names are subscribed to the Certificate of Compliance and acknowledged to me that they each executed the same in the capacities stated and for the purposes and consideration therein expressed.

This instrument was acknowledged before me on the _____ day of _____, 2018.

(Seal)

Notary Public Signature

CERTIFICATE OF ATTESTATION

The First Restated and Superseding Declaration of Covenants, Conditions and Restrictions of Record is herein amended to The Second Restated and Superseding Declaration of Covenants, Conditions and Restrictions of Record. This Restatement was approved by sixty-five percent (65%) of the Membership by written vote effective September 7, 2018 to October 1, 2018 and has been recorded in the Hidalgo County Official Records.

The undersigned being the Southgate Board of Directors of the Southgate Property Owners Association hereby unanimously enact and approve The Second Restated and Superseding Declaration of Covenants, Conditions and Restrictions of Record.

Claude J. Buckland, President

Viola De Ochoa, Vice President

Joyce Moran Mendoza, Secretary

George Herrington, Treasurer

Linda O'Donohue, Member at Large

THE STATE OF TEXAS §
COUNTY OF HIDALGO §

Before me, the Southgate Property Owners Association Board of Directors on this date personally appeared Claude J. Buckland, President; Viola De Ochoa, Vice President; Joyce Moran Mendoza, Secretary; George Herrington, Treasurer; and Linda O'Donohue, Member at Large. Known to me to be the persons whose names are subscribed in the Certificate of Attestation and acknowledged to me that they each executed the same in the capacities stated and for the purposes and consideration therein expressed.

This instrument was acknowledged before me on the _____ day of _____, 2018

(Seal)

Notary Public Signature

SOUTHGATE PROPERTY OWNERS ASSOCIATION

**SECOND RESTATED AND SUPERSEDING DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

DOCUMENT FILE NUMBER: 2954478

RECORDED: OCTOBER 2, 2018