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## ParkGate Reserve Restrictive Covenants

### AMENDED AND RESTATED SUBDIVISION RESTRICTIVE COVENANTS

THE STATE OF TEXAS           §  
   §       KNOW ALL MEN BY THESE PRESENTS:  
 COUNTY OF MONTGOMERY       §

THIS AMENDED AND RESTATED SUBDIVISION RESTRICTIVE COVENANTS is entered into effective this 12<sup>th</sup> day of January, 2011, by FRANKEL SHENANDOAH DEVELOPMENT, L.P., a Texas limited partnership (referred to herein as "Declarant" or "Developer"), acting herein by and through its duly authorized manager and agent, being the developer of PARKGATE RESERVE, a Subdivision in City of Shenandoah, Montgomery County, Texas as shown by plat thereof, recorded in Montgomery County Map Records under Doc. No. 2010013049 (the "ParkGate Reserve Plat").

WHEREAS, on or about February 17, 2010, the SUBDIVISION RESTRICTIVE COVENANTS were created, and on February 19, 2010, filed for record in the Montgomery County real property records under Doc. No. 2010013421 for the purpose of creating and implementing a uniform plan for the development, improvement and sale of said subdivision and the hereinafter described property as a restricted, exclusive residential district, hereby establishes and adopts the following restrictions, covenants and conditions upon the said Subdivision. It is intended by the Declarant to hereby amend and restate said SUBDIVISION RESTRICTIVE COVENANTS, as follows:

NOW, THEREFORE, the Declarant does hereby amend and restate the SUBDIVISION RESTRICTIVE COVENANTS, as follows:

I.

The restrictions, covenants and conditions hereof shall apply to all lots in PARKGATE RESERVE, a Subdivision in Montgomery County, Texas, as cited above. All property within PARKGATE RESERVE is subject to the City of Shenandoah's PDD3 zoning ordinance ("PDD3"). If any provision of these restrictive covenants conflicts with the PDD3, the PDD3 shall supersede and prevail.

II.

A. RESIDENTIAL USE

(1) All of the lots shall be used for residential purposes only. No part of any lot shall be used for any type of business or profession; however, builder may use a structure as a model home, builder office, sales center or design center while actually selling.

(2) Every type of institutional use, whether profit or non-profit, including, but not limited to, club, clubhouse, fraternity, sorority, lodge, church, clinic, sanatoria, academy,



## ParkGate Reserve Restrictive Covenants

school, nursery, day-care center, or nursing home uses, or any of them, is prohibited upon each lot.

(3) No building, whether to be used as a residence or otherwise, shall be moved onto a lot. However, builder may install a sales trailer and/or construction office while actively selling.

(4) No mobile home, travel trailer, trailer, tent, shed, barn or other outbuildings shall be used on any lot at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary nature be used as a residence.

(5) No sign of any kind shall be displayed to the public view on any lot except by Developer to advertise the property during the construction and sales period. Upon the expiration or conversion of all Class B votes, one (1) sign of not more than five square feet (5 s.f.) may be displayed to the public view on a lot to advertise the property for rent or sale

(6) No truck or commercial vehicle, including, but, not limited to a truck, truck-tractor, tractor-trailer, bus, trailer, all-terrain vehicles boat or marine craft shall be parked in the driveway or left parked in the street in front of any lot except as auxiliary to the construction or repair of a house or houses in the immediate vicinity, or for the servicing of or delivery of goods or merchandise to such house or houses. No truck, truck-tractor, tractor-trailer, bus, boat or marine craft, all terrain vehicle motorcycle or trailer shall be left parked on any portion of a lot, unless inside a garage or out of sight behind a fence.

(7) No playground equipment, basketball goal, or other recreational equipment may be installed in a permanent manner that is visible over the fence of that property from the street or a neighboring property. Portable basketball goals or other similar equipment may be left in a manner that is visible from the street, so long as such basketball goals or other similar equipment are kept in good condition and repair, and moved from such location within a reasonable period of time, such reasonable period to be determined at the sole and exclusive discretion of the Board. .

(8) No garage sales, yard sales, estate sales, moving sales, rummage sales or similar activity and no trade or business may be conducted in or from any lot, except that an owner or occupant residing in a lot may conduct business activities within the lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the lot; (b) the business activity conforms to all zoning requirements for the subdivision; (c) the business activity does not involve persons coming into the subdivision who do not reside in the subdivision or door-to-door solicitation of residents of the subdivision; and (d) the business activity is consistent with the residential character of the lot and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the subdivision, as may be determined in the sole discretion of the Board. A day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, barbershop or other similar facility is expressly prohibited.

## ParkGate Reserve Restrictive Covenants

(9) No use of any lot shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or which is hazardous by reason of excessive danger of fire or explosion. No activity or use shall be permitted on or which respect to any of the lots which is determined by the Board to be obnoxious to or out of harmony with a residential community, including, but not limited to, junk or scrap metal yard, waste material business, any dumping, disposal, incineration or reduction of garbage or refuse, and any fire, bankruptcy, auction, garage (other than a private garage approved in advance by the ACC as to design and location of such garage) or operation. No excavations shall be made and no sand, gravel or soil shall be removed from the lot except in connection with a grading and/or building plan approved as provided by the ACC.

### B. SIZE AND CONDITION OF DWELLING

(1) No building shall be erected, altered, placed, or permitted to remain on any lot other than one single family detached dwelling or house, not to exceed two and one-half (2-1/2) stories in height, a private garage built with floor space to accommodate not more than four (4) passenger automobiles, and other outbuildings incidental to residential use of the lot, all subject to the same height limit prescribed for the house.

(2) A building may be erected or placed on a lot with floor space to accommodate more than four (4) passenger automobiles provided that the building is built to serve primarily as a private automobile garage which is auxiliary to another residence in ParkGate Reserve, and that the structure is fully approved, in advance, by the ACC, in its sole discretion. No part of this structure may be rented, leased, or subleased to any other party.

(3) No building may be constructed or erected on a lot to a height of more than thirty-eight feet (38') above the top of the slab.

(4) All minimum/maximum slab heights and finished floor elevations are regulated by the PDD3.

(5) The living area of the main house, exclusive of open porches, patios, lanais, breezeways, and garages, shall contain not less than 3,000 square feet, and shall contain not more than 5,500 square feet. Any dwelling which does not comply with these provisions shall be required to comply, or shall be removed from the lot.

### C. LOCATION AND OTHER REQUIREMENTS OF RESIDENTIAL STRUCTURES

Front building lines should vary to achieve a harmonious blend of the homes from the street and open space.

(1) All minimum setbacks and building lines are regulated and controlled by the PDD3.

## ParkGate Reserve Restrictive Covenants

(2) All residences erected on lots in PARKGATE RESERVE, shall be oriented toward the front lot line, providing, however, the main entrance to such residence may be situated in a side exterior wall of such residence but in no case shall such entrance face, in whole or in part, the rear lot line.

(3) Nothing herein contained shall be construed to prevent the use as or building site of two (2) or more consecutively adjacent lots, or the use as a building site of portions of two (2) or more such lots, all having a common street frontage, and a street frontage not less than the frontage of any lot, a portion of which is included in such site.

### D. ARCHITECTURAL STYLE

Architectural style may vary, consistent with maintaining a highly compatible appearance throughout. Vivid colors and radically different styles shall not be permitted. All styles and exterior colors and materials shall be approved by the Architectural Control Committee ("ACC") of PARKGATE RESERVE. Builders may submit one-time multiple plans and elevations to the ACC for initial one-time approval. The ACC, in its sole discretion, may deny multiple approvals or subsequent re-approvals of any plan.

### E. EXTERIOR FINISHES

(1) All dwellings, buildings, structures, etc. in the Subdivision are recommended to use exterior materials that historically reflect the Old World styling recommended by the ACC. Exterior materials should historically reflect and be consistent with the styling of the home. Masonry construction, including brick, stucco, and stone, are encouraged. The term "masonry" includes stucco and all material commonly referred to in the Texas building industry as masonry. The above material recommendation for "exterior walls" excludes gables, doors and windows. Any construction materials used other than brick or masonry, stucco or stone, must have complete ACC approval.

(2) Masonry color and selection and exterior color selections shall be submitted to the ACC of PARKGATE RESERVE at the time the final plans are presented for approval, and all exterior colors shall be subject to approval by the ACC, in its sole discretion.

F. Intentionally Deleted.

### G. ENERGY CONSERVATION EQUIPMENT.

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC. No windmills, wind generators or other apparatus for generating power from the wind shall be erected or installed on any lot.

### H. ANTENNAS

## ParkGate Reserve Restrictive Covenants

All antennas, video discs, satellite receivers (including, without limitation, radio or television transmitting or receiving antennas) shall be installed so that no antenna, discs, etc. are visible from any street or Common Area, unless approved by the ACC.

### I. FENCES, WALKS, AND HEDGES

(1) No fence or wall or any character shall be erected nearer to the street than the front or side building line of the home. No fence or wall shall exceed seven feet (7') in height. Acceptable fence materials shall be brick, wrought iron, stucco, or wood. The use of other material must be approved, in advance, by the ACC.

(2) No hedge of more than thirty inches (30") in height shall be permitted in front of any dwelling unless approved, in advance, by the ACC.

### J. LANDSCAPING

(1) Grasses and weeds growing on any front, side or rear yard of a lot shall be cut or mowed at such intervals as to maintain front, side, or rear, of not more than six inches (6") above the sod thereunder. Until a dwelling is built on a lot, the undersigned, or its duly authorized agents or assigns, may, at its option, cut such grasses and weeds to meet this covenant and may have dead trees, shrubs, and plants removed from the lot and the owner of said lot shall be held, by the acceptance of a deed thereto, to be obligated to pay and reimburse it, its duly authorized agents or assigns for the cost thus incurred.

(2) Each lot is required to contain a minimum of three (3) Forest Zones as part of its landscape treatment. This Forest Zone is either a native forest area containing preserved existing trees, shrubs, understory plants and seedlings or it may be a forest "rebuilt" with at least a minimum density of approved existing or proposed plants from the Approved Species List for Forest Preserve/ Reforestation in the City of Shenandoah's adopted Urban Forest Technical Manual. Typical Forest Zones will include a combination of both conditions. Forest Zones must be supplemented with appropriate landscaping so as to present a completed appearance which should include sodding, pine straw, shovel-cut bed edge and planting to cover bare or erosion prone areas.

a. For a Forest Zone to achieve minimum density every 300 square feet of Forest Zone area must have a minimum of one (1) hardwood (3 inch minimum), one (1) evergreen pine (3 inch minimum) and three (3) shrubs (15 gallon minimum, each) planted a maximum of ten (10) feet on center on a triangular grid.

b. To achieve the desired indigenous woodland aesthetic, Forest Zones must comprise a minimum of 40% of the front yard (between front of house and front property line) and 40% of a combined side yard and back yard area.

c. All lawn areas in front yards to be solid sod, fine-bladed Zoysia

## ParkGate Reserve Restrictive Covenants

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grass ("Zeon", "Emerald", or approved equivalent). A minimum of ten (10) feet in width of lawn shall be located along all street backs of curbs (islands are exempt).

(3) While homeowners do not own the land between their property line and the street in the public R.O.W., they are responsible for maintaining it. This maintenance includes appropriate irrigation and the removal (and replacement) of dead trees. Replacement trees in front yard Forest Zones must be three (3) inch sized minimum when replacing a removed tree less than three (3) inch diameter and three (3) inch minimum when replacing a removed tree greater than two (2) inch diameter.

(4) Each lot shall have a minimum of two (2) street trees within the public right of way with a minimum caliper of three (3) inches.

(5) Any clearing five feet beyond the building pad or three feet beyond the driveway requires the written approval of the committee. Temporary fencing is to be furnished and installed by the builder in order to protect easily damaged vegetation. The builder is required to complete the front lot final landscape treatment prior to the committee final inspection and home occupancy.

(6) The natural vegetation must be supplemented with appropriate landscaping so as to present a completed appearance which should include sodding, seeding, pine bark or planting to cover bare or erosion prone areas.

(7) The installation of a landscape irrigation system for front yards is required. The installation of a landscape irrigation system in the side and rear yards is encouraged. The installation of a drip irrigation system for all newly landscaped reforestation areas is encouraged. Permits must be applied for and obtained from the City of Shenandoah. Systems must include a rain sensor.

(8) Landscaping of a lot shall be completed within ninety (90) days after completion of the main residential structure.

(9) All grass, plants, and shrubs shall be maintained by the owner of the lot. The grass, plants, shrubs and trees shall be in compliance with these restrictions and of a type and within standards approved by the Board. The landscaping requirements herein may be revised from time-to-time by the Board. Grass and weeds shall be kept mowed and edged to prevent unsightly appearance. Dead or damaged trees or other shrubbery, which might create a hazard to property or person within the subdivision shall be promptly removed and repaired. All landscaping and hardscaping on any lot shall be subject to review and approval by the ACC.

(10) No artificial vegetation, permanent flagpoles or temporary flagpoles shall be permitted on the exterior of any portion of a lot. No exterior sculpture, fountains, flags and temporary flagpoles, birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved in advance by the ACC. No such decorative embellishment or similar items shall be permitted on the front portion of any lot or yard. However,

## ParkGate Reserve Restrictive Covenants

notwithstanding the foregoing, flags mounted on the front of the primary dwelling with a bracket shall be allowed for one (1) week before a nationally recognized holiday and one (1) week after such holiday only.

### K. DRIVEWAYS, APPROACHES AND WALKS

Driveway locations must be coordinated with the ACC of the PARKGATE RESERVE. The drive approach and driveway shall be constructed in such a manner as to conform to the City of Shenandoah's specifications.

### L. GARBAGE AND TRASH COLLECTION

No lot shall be used or maintained as a dumping ground for garbage, rubbish or trash. Garbage, rubbish, or trash shall not be permitted on any lot unless the same is stored in a sanitary container or containers and removed from the premises promptly. Garbage removal by the City of Shenandoah Sanitation Division on its regular schedule for servicing the street upon which a lot is situated shall be deemed requisite promptitude for the removal of garbage. Accumulations of rubbish or trash, including, but not limited to, grass cuttings and tree limbs, shall be removed not less often than twice a month. Construction debris may be stored on a vacant lot adjoining construction for no more than one week at a time. Such debris must be kept in a neat and organized manner.

### M. PARKING REQUIREMENTS

The parking of any vehicles on any street for more than a twenty-four (24) hour period shall be strictly prohibited.

### N. UNACCEPTABLE AND OFFENSIVE ACTIVITIES

(1) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

(2) No oil or gas drilling, oil or gas, mineral producing, oil exploration or development operations, oil refining, quarrying or mining operation shall be permitted upon, in or under any lot provided, however, the present facilities and activities in connection therewith on any recorded replat pipeline easements shall not be deemed a violation of this covenant.

(3) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept, provided, however, that such are not kept, bred or maintained for commercial purposes, and that such does not create an annoyance or a nuisance to the neighborhood.

(4) No boats or marine craft shall be stored or parked in any driveway or open parking area of a lot.

## ParkGate Reserve Restrictive Covenants

(5) No permanent recreational equipment, including without limitation, basketball goals (except goals on detached garages) or poles, volleyball net poles, or any other type of athletic or similar equipment, shall be constructed or placed on any lot unless specifically approved by the Architectural Control Committee.

(6) Umbrellas, water slides, playground equipment, man-made structures, etc., are not permitted closer than fifteen (15) feet from the rear property line or closer than five (5) feet to any side property line if they are visible from the neighboring rear yard or the street.

### O. EASEMENTS; UTILITIES

(1) Easements for installation and maintenance of utilities and drainage facilities and for ingress and egress of the grantor are reserved as shown on the ParkGate Reserve Plat. Any fence, wall, or planting in or across said easements may be removed by said utilities, their duly authorized agents or assigns, and by said grantor, its duly authorized agent or assigns, if deemed necessary, free of any and all liability or obligation to the owner or owners of such fence, wall or planting on account of such removal. Said utilities easements are for all utilities now or hereafter to be installed and maintained in said locations according to custom and usage from time to time.

(2) All electrical and telephone service and subdivision distribution lines shall be buried in conformance with the then applicable National Electrical Safety Code.

### P. COMMON AREAS

Declarant will transfer ownership in Common Areas and Water Lake Area to PARKGATE RESERVE Homeowners Association, Inc., a Texas non-profit corporation (the "Association") and said Association or its successors, assigns or replacements which have jurisdiction over the lots located within the land encumbered by these restrictive covenants, as same may be amended, will be solely responsible for maintenance of Common Areas and Water Lake Area. "Common Area" shall mean and refer to any properties, real or personal, owned in fee or held in easement by the Association for the common use and enjoyment of the owners.

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## ParkGate Reserve Restrictive Covenants

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### III. PARKGATE RESERVE ARCHITECTURAL CONTROL COMMITTEE

#### A. CREATION

There is hereby and established the PARKGATE RESERVE Architectural Control Committee.

#### B. OBJECTIVES

The Architectural Control Committee has been established to encourage the construction of dwellings of superior architectural design, quality, proper size, and overall compatibility with the conceptual plan of PARKGATE RESERVE.

#### C. MEMBERSHIP

Membership of the Architectural Control Committee shall consist of three (3) persons. Its officers shall consist of a Chairman, Secretary and Treasurer, elected by majority vote of qualified and serving members of the Committee. Committee may adopt and amend By-Laws from time to time for the government of its meeting and internal operation consistent with these covenants, by majority vote of the qualified and serving members. The initial Committee shall be constituted as follows:

1. James G. Frankel, Chairman
2. Scott A. Frankel, Secretary
3. Kevin A. Frankel, Treasurer

A majority of the Committee may designate a representative to act for it. Such designation shall be recorded in the Minutes of the Committee. In the events of death, resignation, inability or refusal to serve of any member of the Committee, the remaining member or members shall have full authority to designate a successor.

#### D. FUNCTION AND CONTROL

Dwellings should be designated to create an attractive and harmonious blend with existing houses. No building shall be erected, constructed, remodeled, or altered on any lot until construction plans and specifications have been submitted to and approved in writing by the Architectural Control Committee of PARKGATE RESERVE.

#### E. REVIEW PROCESS

The review process for approval of plans by the Architectural Control Committee has been created to evaluate construction plans to ensure conformity with the application of the deed restrictions.

## ParkGate Reserve Restrictive Covenants

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Design Review – Two (2) sets of drawings, including the following, shall be submitted to the Architectural Control Committee. These drawings will be evaluated as to compliance with all deed restrictions and conformity and harmony of exterior architectural design.

### F. APPROVALS

The Committee's approval or disapproval of plans and specifications as required in these covenants shall be in writing, and shall specify the reasons for disapproval, if such be the case. However, in the event the Committee or its designated representative, if any, fails to approve or disapprove within thirty (30) days after proper plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction or remodeling has been filed in a court of competent jurisdiction prior to the completion thereof, approval will not be required and the requisite covenants shall be deemed to have been fully complied with.

G. Neither the Committee nor any architect or agent thereof, nor PARKGATE RESERVE, nor any agent or employee or any of the foregoing shall be responsible in any way for any failure of structures to comply with the requirements of this declaration, although a letter of compliance has been issued, any defects in any plans and specifications submitted, revised or approved in accordance with foregoing provisions, nor any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon, agree not to sue or claim against the entities and persons referred to in this section for any cause arising out of the matters referred to herein and further agree to and do hereby release said entities and persons from each and every such cause of action.

### IV. HIGHER RESTRICTIONS – SUBSEQUENT CONVEYANCE

(1) The undersigned may provide more onerous restrictions in any deed to any particular lot in PARKGATE RESERVE, whether by increasing the floor space requirements or by other changes, so long as said changes work to raise the architectural and living standards applicable to said lot and are incorporated in the deed or other instrument at or prior to the time of passage of title.

(2) Before any lot is conveyed to a Buyer or subsequent buyer, each Buyer shall be required to acknowledge and accept, through a written document, that the drainage of the subdivision is designed in such a way that some temporary flooding a part of the subdivision, including part of a yard, might occur during or after periods of heavy rainfall.

### V. REMEDIES FOR VIOLATION

Violation of any restrictions, condition or covenant affecting any lot as provided herein shall vest in the undersigned the right to enter upon such lot and similarly abate or remove the same at the expense of the owner or owners of said lot and such entry, abatement, or removal

## ParkGate Reserve Restrictive Covenants

shall not be deemed a trespass and the remedy provided for herein shall be cumulative of and in addition to all other remedies which the undersigned may have, and not in lieu thereof, and shall be in addition to the remedies of the other lot owners affected by these restrictions, conditions and covenants.

### VI. MODIFICATIONS – AMENDMENTS

The undersigned shall have and hereby reserves the right to modify and amend these restrictions, conditions and covenants with reference to location or setback or any of the improvements within the Subdivision and the direction which the same shall face to such extent as it deems for the best interests of the Subdivision as a whole. Such modifications and amendments, if any, shall be in writing. The owners of record of not less than three-fifths (3/5) of all of the lots in PARKGATE RESERVE Subdivision shall have the power and authority to amend these restrictive covenants, and conditions hereof, and such amendment shall become effective on the date any instrument signed by the then owners of not less than three-fifths(3/5) of the lots with the PARKGATE RESERVE Subdivision is filed of record in the Office of the County Clerk of Montgomery County, Texas, so amending the restrictions, covenants and conditions hereof. The execution of said written instrument shall include acknowledgments thereof in the manner entitling the same to be placed of record, but said instruments need not all be under one cover but may be several different instruments.

### VII. TERM OF RESTRICTIONS: ENTITLEMENT THEREUNDER

These restrictions and conditions shall be covenants running with the land and shall be binding on all parties and persons owning any of the lots in PARKGATE RESERVE from the date hereof until the same are changed or removed in accordance with the provisions hereof. Each owner of any lot or lots herein shall have the right to enforce these restrictions, conditions and covenants at law or in equity against the person or persons violating or attempting to violate any part hereof.

The initial term of the restrictions and conditions herein shall expire on February 17, 2020, after which time said restrictions and conditions shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed by the then owners of record of not less than three-fifths (3/5) of all of the lots in PARKGATE RESERVE, (regardless of the square foot area or perimeter dimensions of the respective lots) is filed of record in the Office of the County Clerk of Montgomery County, Texas, altering, rescinding, or modifying said restrictions and conditions, in whole or part, as to said renewal date. The execution of said written instrument shall include acknowledgments thereof in the manner entitling the same to be placed of record, but said instruments need not all be under one cover but may be several different instruments.

### VIII. SEVERABILITY

It is hereby declared to be the intent of the maker hereof to create and covenant each separate provision hereof independently in its operative effect of all other provisions, and the fact

## ParkGate Reserve Restrictive Covenants

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that any article, section, paragraph, sentence, clause, word or part of this instrument shall be declared invalid or unconstitutional by final judgment of any court of competent jurisdiction shall in no event affect any other article, section, paragraph, sentence, clause, word or part of this instrument, and it is hereby declared to be the intent of the maker hereof to have created and covenanted each article, section, paragraph, sentence, clause, word or part hereof severable.

### IX. PARKGATE RESERVE HOMEOWNERS ASSOCIATION, INC.

#### A. ORGANIZATION

Declarant has heretofore caused the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance charge funds, enforcement of the Declaration, providing for the maintenance, preservation and architectural control (when the powers of the Committee terminate and the Committee's powers vest in the Association) within the subdivision, the general overall supervision of all of the affairs and well being of the subdivision and the promotion of the health, safety and welfare of the residents within the subdivision.

#### B. BOARD OF DIRECTORS

The Association acts through a Board of Directors (referred to herein as the "Board of Directors" or "Board"), which manages the affairs of the Association as specified in the By-Laws of the Association.

#### C. MEMBERSHIP

Every owner of a lot within PARKGATE RESERVE shall be a member of the Association. Lot ownership is the sole requirement for membership and no owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association and shall automatically pass with the title to the lot.

#### D. VOTING

The Association shall have two (2) classes of voting membership with respect to the Subdivision covered by this Declaration, as follows:

(1) CLASS A. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one individual or entity holds an ownership interest in a lot, all such persons shall be members, but in no event shall they be entitled to more than one vote with respect to that particular lot.

(2) CLASS B. Class B members shall be the Developer. Class B members shall be entitled to fifteen (15) votes for each lot owned. The Class B ownership shall cease and

## ParkGate Reserve Restrictive Covenants

be converted to Class A membership on the happening of either of the following events, whichever occurs first: (i) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or (ii) on February 17, 2020. However, if Class B membership has automatically converted to one vote per lot owned, it shall automatically revert to fifteen (15) votes per lot owned in the event additional lots are subjected to the jurisdiction of the Association such that the Declarant owns more than twenty-five percent (25%) of all lots.

### X. COVENANT FOR MAINTENANCE ASSESSMENTS

#### A. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS

The Developer for each lot within the subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each owner of any lot which shall be or thereafter become assessable, by acceptance of a Deed therefore, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay to the Association the following:

- (1) Annual assessments of charges; and
- (2) Special assessments for capital improvements.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing Vendor's Lien upon the lot against which such assessments or charges are made. Each such assessment or charge, together with such interests, costs and reasonable attorney's fees shall also be and remain the personal obligation of the individual or individuals who owned the particular lot at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such lot. Upon a transfer of a lot, the assessments accrued to the date of transfer must be paid in full.

#### B. PURPOSE OF ASSESSMENTS

The assessments levied by the Association shall be used exclusively for the purpose of prompting the recreation, health, safety and welfare of the residents of the subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association and, at the option of the Board of Directors of the Association, for any and all of the following purposes: lighting, improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, perimeter fence, gates and esplanades in the Subdivision; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expense incurred in connection with the collection, enforcement and administration of all

## ParkGate Reserve Restrictive Covenants

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assessments and charges and in connection with the enforcement of this Declaration; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the mowing of vacant lots in the subdivision, mowing of Lake Area and maintenance of the lake itself, mowing and maintenance of swales and ditches, and the planting and upkeep of trees, grass and shrubbery on esplanades and easements and in the Community Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the subdivision in neat and good order, or which they consider of general benefit to the owners or occupants of the subdivision, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance and other charges as specified herein. The judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

### C. BASIS AND MAXIMUM LEVEL OF ANNUAL ASSESSMENTS.

Until January 1 of the year immediately following the date of commencement of the first annual assessment as determined by the Board of Directors, the maximum annual assessment shall be \$750.00 per developed lot per year. Undeveloped lots shall be a maximum of \$ 50.00 per year as long as owned by the Developer and a maximum of \$150.00 per year when owned by a builder. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, in conformance with the rise, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by Department of Labor, Washington, D.C., or any successor publication, for the preceding month of July or alternatively, by an amount equal to a ten percent (10%) increase over the prior years annual assessment, whichever is greater, without a vote of the members of the Association. The maximum annual assessment may be increased above that established by the Consumer Price Index formula or the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of members as provided in the By-Laws of the Association, a door to door canvass may be used to secure the written approval of two-thirds (2/3) of each class of members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the members.

Conveyance of a home from one Buyer to another shall incur a transfer fee of \$150.00.

### D. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

## ParkGate Reserve Restrictive Covenants

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In addition to the annual assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a particular capital improvement located upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval by 2/3 of each class of the Members as set forth in Section IX above.

### E. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION IX OR SECTION X HEREIN

The quorum for any action authorized under Sections IX or X herein shall be as follows:

At any meeting of the Association, the presence at the meeting of Members, or of proxies, entitled to cast ten percent (10%) of all of the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any subsequent meeting shall be one-half (1/2) the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

### F. RATES OF ASSESSMENT

Both annual and special assessments on all lots, whether or not owned by the Declarant, shall be fixed at uniform rates provided, however, the rate applicable to lots that are owned by Declarant or a builder and are not occupied as residences shall be equal to one-half (1/2) of the full assessment as set by the Board of Directors of the Association. The rate of assessment for each lot shall change as the character of ownership and the status of occupancy changes. There shall be no transfer fee charged for lots sold to builders.

### G. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENT

The annual assessment provided for herein shall commence as to all lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. On or before the 30<sup>th</sup> day of November in each year, the Board of Directors of the Association shall, subject to the limitations contained in Article IV, Section 3 above, fix the amount of the annual assessment to be levied against each lot in the next calendar year. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every owner whose lot is subject to the payment thereof. The annual assessment shall be due and payable in advance on the first day of January. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular lot is binding upon the Association as of the date of its issuance.

## ParkGate Reserve Restrictive Covenants

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### H. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charges are not paid within thirty (30) days after the due date, the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the Vendor's Lien herein retained against the lot. Interest accruing on past due assessments at the lesser of the maximum lawful rate or twelve percent (12%) per annum, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such owner, by his acceptance of a Deed to a lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such owner personally for the collection of such assessments and charges as a debt and to enforce the Vendor's Lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale, and such owner expressly grants to the Association a power of sale in connection with the non-judicial foreclosure of the Vendor's Lien. Non-judicial foreclosure shall be conducted by notice and posting of sale in accordance with the then applicable laws of the State of Texas. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such owner's lot.

### I. SUBORDINATION OF THE LIEN TO MORTGAGES

As hereinabove provided, the title to each lot shall be subject to the Vendor's Lien securing the payment of all assessments and charges due the Association, but the Vendor's Lien shall be subordinate to any valid purchase money lien or valid lien securing the cost of construction of home improvements. Sale or transfer of any lot shall not affect the Vendor's Lien provided, however, the sale or transfer of any lot pursuant to a judicial or non-judicial foreclosure under the aforesaid superior liens shall extinguish the Vendor's Lien securing such assessment or charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot or the owner thereof from liability for any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided for hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the Vendor's Lien herein retained to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine.

### J. EXEMPT PROPERTY

All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no lot which is used as a residence shall be exempt from said assessments and charges.



## ParkGate Reserve Restrictive Covenants

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### XI. PROPERTY RIGHTS IN THE COMMON AREA

#### A. OWNER'S EASEMENT FOR ACCESS AND ENJOYMENT

Subject to the provisions herein stated, every owner shall have an easement of access and a right and easement of enjoyment in the Common Area, and such right and easement shall be appurtenant to and shall pass with the title to every lot, subject to the following rights of the Association:

(1) The Association (as may be determined by the Board) shall have the right to borrow money. For purposes of making improvements, repair or replacements to the Common Area and with the consent of two-thirds (2/3) the total eligible votes of the members, the Association may mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred. With the consent of two-thirds (2/3) of the total eligible votes of the members, the Association may additionally convey any and all of the Common Area for such purpose or purposes as may be deemed desirable. In connection with the rights of the Association set forth hereunder, the Board shall be authorized to execute the appropriate instrument or instruments required therefore.

(2) The Association (as may be determined by the Board) shall have the right to take such steps as are reasonably necessary to protect the Common Area against foreclosure of any such mortgage.

(3) The Association (as may be determined by the Board) shall have the right to suspend the voting rights and enjoyment rights of any members to the Common Area, if any, for any period during which any assessment or other amount owed by such member to the Association remains unpaid in default of the terms herein.

(4) Association (as may be determined by the Board) shall have the right to establish reasonable rules and regulations governing the members' use and enjoyment of the Common Area, if any, and to suspend the enjoyment rights and voting rights of any member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.

(5) Upon approval by two-thirds (2/3) of the total eligible votes of the members, the Association shall have the right to dedicate, sell or transfer all or any part of the Common Area to any public agency or like nonprofit authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3) of the total eligible votes of the members provided, however, nothing contained herein shall be construed to limit the right of the Association to grant or dedicate easements in portions of the Common Area to public or private utility companies. Such a vote shall authorize the Board to execute appropriate deed(s).

#### B. DELEGATION OF USE

## ParkGate Reserve Restrictive Covenants

Each member shall have the right to extend his rights and easements of enjoyment to the Common Area, to the members of his family, to his tenants who reside on the Property, and to such other persons as may be permitted by the Association.

### C. LIABILITY OF OWNERS FOR DAMAGE BY MEMBER

Each member shall be liable to the Association for any damage to the Common Area or for any expense or liability incurred by the Association, to the extent not covered by insurance, that may be sustained by reason of the negligence or willful misconduct of such member or such member's, guests, tenants, licensees or invitees or for any violation by such member of this Declaration for any of the rules or regulations adopted by the Board of Directors. The Association shall have the power to levy and collect an assessment against a member, after notice and hearing, to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration or of its rules and regulations, or for any increase in insurance premiums directly attributable to any such damage or any such violation.

### D. ASSOCIATION POWERS IN THE EVENT OF CONDEMNATION

If any Common Area or interest therein is taken under exercise of the power of eminent domain or by private purchase in lieu of condemnation, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any mortgagee of any such property, to the extent such Common Area consists of an easement over the Property of the Owner in question. The Association shall have the exclusive right to participate in such condemnation proceeding and to represent the interest of all Owners therein. Any award or funds received by the Association shall be held by the Association as determined by the Board of Directors, as a reserve for future maintenance, repair, reconstruction, or replacement of the Common Area or may be used for improvements or additions to or operations of the Common Area.

## XII SECURITY

The Association may, but shall not be obligated to, maintain or support certain activities within the subdivision designed to make the subdivision safer than it otherwise might be, including, but, not limited to the installation of a gate or gates within the subdivision (the installation, construction and style of any such gates to be within the sole and exclusive discretion of the Board and/or ACC). NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND AGENTS, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF

## ParkGate Reserve Restrictive Covenants

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DIRECTORS, ITS AGENTS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE BOARD OF DIRECTORS MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLARS ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, ITS DIRECTORS, OFFICERS AND AGENTS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY DWELLING UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, ITS DIRECTORS, OFFICERS AND AGENTS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE SUBDIVISION.

### XIII VARIANCE

The Board may authorize variances from compliance with any of the provisions of these restrictions (except for the provisions relating to single family residential construction and use). Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Board. If any such variance is granted, no violation of the provisions of these restrictions shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of these restrictions for any purpose except as to the particular lot or property and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of the Board other than with respect to the subject matter of the variance, nor shall the granting of a variance affect in any way an owner's obligation to comply with all governmental laws and regulations affecting the lot concerned.

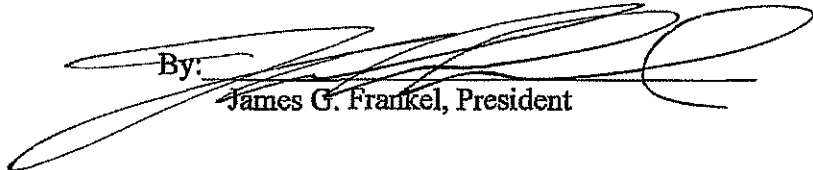
**ParkGate Reserve Restrictive Covenants**

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EXECUTED this the 12 day of Janaury, 2011.

FRANKEL SHENANDOAH DEVELOPMENT, L.P.,  
A Texas limited partnership

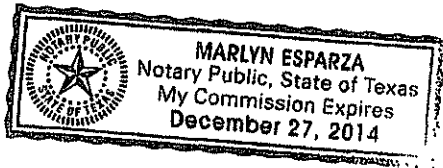
BY: FRANKEL SHENANDOAH, LLC

By:   
James G. Frankel, President

STATE OF TEXAS     §  
                                  §  
                                  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned authority, on this day personally appeared JAMES G. FRANKEL, President of FRANKEL SHENANDOAH, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12<sup>th</sup> day of Janaury, 2011.



  
NOTARY PUBLIC, STATE OF TEXAS

Ret: Weycer Kaplan Pulaski + Zuber PC  
11 Greenway Plaza #1400  
Houston, TX 77046

**FILED FOR RECORD**

01/18/2011 3:17PM



COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in file number  
sequence on the date and at the time stamped herein  
by me and was duly RECORDED in the Official Public  
Records of Montgomery County, Texas.

01/18/2011



County Clerk  
Montgomery County, Texas