

# DECLARATION OF RESTRICTIVE COVENANTS FOR ELLISOR AND PARKER CREEK ROADS RANCHETTES

State of Texas §  
County of Walker §

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR ELLISOR AND PARKER CREEK ROAD RANCHETTES (“Declaration”), effective April 1, 2009 (“Effective Date”), is made by HUNTSVILLE 160, L.L.C., a Texas limited liability company.

## Definitions

“ACC” means the Architectural Control Committee established in this Declaration.

“Covenants” means the covenants, conditions, and restrictions contained in this Declaration.

“Declarant” means HUNTSVILLE 160, L.L.C., a Texas limited liability company and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

“Easements” means Easements within the Subdivision for utilities, drainage, and other purposes as shown on the Plat or of record.

“Lot” means each tract of land designated as a “Lot” on the Plat. The term “Lot” does not include any Reserve shown on the Plat.

“Owner” means every record owner of a fee interest in a Lot.

“Plat” means the Plat of the Ellisor and Parker Creek Roads Ranchettes Subdivision recorded under Clerk’s File No. Volume 4, Page 176 of the Real Property Plat Records of Walker County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Residence” means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots. The term “Residence” does not include mobile or manufactured homes. The following shall be deemed not to be Residences and shall not be located on Lots: duplex houses, condominiums, town homes, and apartment houses.

“Single Family” means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

“Structure” means any improvement on a Lot (other than a Residence), including a fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

“Subdivision” means the Lots 1 through 7 shown on the Plat and any additional property made subject to this Declaration. Except for the benefits accruing to Declarant under Section 6(d), (g), and (i), the Reserve shown on the Plat shall not be encumbered or otherwise affected by the Declaration or Covenants (unless annexed by Declarant into the Declaration pursuant to the terms and conditions of this Declaration)

“Vehicle” means any automobile, truck, motorcycle, boat, trailer, motor home, recreational vehicle, all terrain vehicle, or other wheeled conveyance, whether self-propelled or towed.

### **Covenants, Conditions, and Restrictions**

**1. Imposition of Covenants.** Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot. Each Owner and occupant of a Lot agrees to comply with this Declaration and agrees that failure to comply may subject such party to a fine, damages, or injunctive relief. This Declaration is made subject to all encumbrances and other matters of record in the Official Public Records of Walker County, Texas.

**2. Plat and Easements.** The Plat, Easements, and all matters shown of record affecting the Subdivision are part of this Declaration and are incorporated by reference. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements. No structure, planting or other material may be placed in an Easement that could (a) damage or interfere with the installation and maintenance of utilities, or (b) affect the direction or flow of water through drainage channels in the Easement.

**3. Use and Activities.**

(a) Permitted Use. A Lot may be used only for an approved Residence and approved Structures by a Single Family. No trade or business may be conducted in or from any Residence, Structure, or Lot, except such use within a Residence where (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (ii) the business activity conforms to all applicable laws and the other terms and conditions of this Declaration; (c) the business

activity does not involve visitation to the Residence by clients, customers, suppliers or other business invitees; and (d) the business activity does not increase parking or traffic within the Subdivision (a business use that complies with the foregoing is an “Incidental Business Use”). Notwithstanding the foregoing, however, a temporary camper or recreational vehicle may be used on a Lot for living quarters during the period of construction of a Residence on such Lot for a period not to exceed one year.

(b) Prohibited Activities. Prohibited activities are the following:

- (i) any activity that is otherwise prohibited by this Declaration;
- (ii) any illegal activity;
- (iii) any nuisance or noxious or offensive activity;
- (iv) any dumping of rubbish;
- (v) any storage of any of the following:

(A) building materials except during the construction or renovation of a Residence or a Structure;

(B) Vehicles, except (I) Vehicles stored or parked in a garage or Structure, (II) operable automobiles or operable non-commercial, two-axle trucks, each in compliance with all applicable laws for use on public roads (including, but not limited to, current registration and safety inspection stickers, if applicable) parked on a driveway (the storage or parking of Vehicles other than automobiles or such trucks in compliance with the foregoing are prohibited in driveways), (III) a temporary camper or recreational vehicle stored or parked on a Lot in conjunction with the construction of a Residence as provided in Section 3(a), and (IV) any other Vehicles stored or parked in a location and manner approved by the ACC; the storage or parking of any Vehicle in a public street is prohibited;

(C) unsightly objects unless completely shielded by a Structure;

(vi) any exploration for or extraction of minerals;

(vii) any keeping or raising of swine or poultry, except for swine or poultry raised in conjunction with an organized youth farming program such as FFA or a 4-H Club; live stock, other than swine or poultry, are permitted on a Lot only in numbers that will not result in the overgrazing of the applicable Lot;

(viii) any commercial or professional activity except for an Incidental Business Use;

- (ix) the renting of a Structure or less than all of a Residence;
- (x) the drying of clothes in a manner that is visible from any street;
- (xi) the display of any sign except any of the following:
  - (A) one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
  - (B) political signage not prohibited by law;
- (xii) the installation of a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot, except as otherwise permitted under Section 3(a) during construction of a Residence;
- (xiii) moving a previously constructed house onto a Lot;
- (xiv) interfering with a drainage pattern or the natural flow of surface water;
- (xv) discharging any rifles, shotguns, pistols, or other firearms; bow hunting on a Lot, however, is permitted;
- (xvi) occupying a Structure that does not comply with the construction standards of a Residence;
- (xvii) the excavation of any dirt pit, lake, or other significant hole on a Lot without the approval of the ACC; and
- (xviii) the use of “off-road” vehicles, including, but not limited to, all-terrain vehicles, dirt bikes, motor cross bikes, for recreational or racing use; the use of “off-road” vehicles in conjunction with mowing or other yard care, gardening, maintenance of Structures, and other similar uses, however, is permitted.

(c) Residence and Structure Maintenance. Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.. All portions of Residences designed to be painted must be kept painted, and the paint may not be allowed to become faded, cracked, flaked or damaged in any manner. Grass on each Lot shall be cut, and landscaping maintained, as often as may be necessary to maintain the same in a neat and attractive condition. Grass growing onto or over sidewalks, driveways, and curbs shall be presumed to be unattractive.

#### **4. Construction and Maintenance Standards**

(a) Lots. An Owner of adjoining Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence. No Lot may be further subdivided without the approval of the ACC. No easement in a Lot may be granted without ACC approval. Notwithstanding the preceding sentence, however, Declarant shall have the right to grant easements and additional encumbrances on all Lots owned by Declarant without the necessity of ACC approval.

(b) Residences and Structures.

(i) Aesthetic Compatibility. All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.

(ii) Maximum Height. The maximum height of a Residence is three stories (exclusive of any attic only if the attic is not air-conditioned).

(iii) Required Area. The total area of a Residence, exclusive of porches, garages, or carports, must be at least 1,750 square feet.

(iv) Location on Lot. No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.

(v) Garages. Each Residence must have at least a two-car garage accessed by a driveway. The garage may be a separate structure.

(vi) Damaged or Destroyed Residences and Structures. Any Residence or Structure that is damaged must be repaired within 360 days (or within a greater period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within 180 days and the Lot restored to a clean and attractive condition.

(vii) Fences, Walls, and Hedges. Each Owner must obtain ACC approval of all fencing before installation. All fencing visible from streets must be constructed of wood, ornamental iron, masonry, or synthetic materials, unless otherwise approved by the ACC. No barbed wire fencing is permitted along any of the boundaries of a Lot adjacent to a public street.

(viii) Antennae. No antenna, satellite dish, or associated wires may be visible from the street or be located behind the back setback line of any Lot.

(ix) Flagpoles. No flagpole may be permanently placed on any Lot unless previously approved by the ACC.

(x) Traffic Sight Lines. No landscaping that obstructs traffic sight lines may be placed on any Lot.

(xi) Water Wells and Septic Tanks. All water wells and septic systems must meet all applicable local and state codes regarding such systems. Each Owner must obtain all necessary governmental permits for such systems and cause such systems to be inspected by all applicable local and state authorities as required by law.

(xii) Exterior Construction. The exterior of each Residence or Structure must be completed within 12 months after the commencement of construction of such Residence or Structure.

(xiii) Tree Preserve. Unless otherwise approved by the ACC, no Owner shall have the right to cut or remove any tree having a diameter of 4 inches or greater (measured 2 feet above the ground) that is located on a strip(s) of land (“Tree Preserve”) 25 feet in width adjacent to, parallel with, and extending the full length of the entire boundary or boundaries of the Owner’s Lot adjacent to a public street(s). Notwithstanding the preceding sentence, however, each Owner shall have the right to (A) cut and remove any dead or diseased trees from the Tree Preserve located on such Owner’s Lot and (B) if required in conjunction with the construction of utility lines or facilities or a driveway providing access to the Owner’s Lot from an adjacent public street, cut and remove trees from such Tree Preserve reasonably necessary for such construction. Additionally, each Owner shall have the right to cut and remove brush (and other similar vegetation) and trees, other than the trees described in the first sentence of this Section 4(b)(xiii), from the Tree Preserve located on such Owner’s Lot.

(c) Building Materials for Residences and Structures

(i) Roofs. Only composition, tile, or metal roofs may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks must be painted to match the roof color.

(ii) Air Conditioning. Window- or wall-type air conditioners may not be used in a Residence.

(iii) Exterior Walls. The exterior walls, minus windows and doors, of each Residence must be constructed with stone, brick, or horizontal lap siding such as “hardi-plank” (or other product of equal or greater quality) (or any combination of such materials), unless otherwise approved by the ACC.

(iv) Color Changes. No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.

(v) Driveways and Sidewalks. Unless otherwise approved by the ACC, all driveways providing access to a Residence from a public street must be

surfaced with concrete, asphalt, crushed limestone, or other similar crushed rock; dirt driveways are not permitted.

(vi) Lot Identification. Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

## 5. ACC

### (a) Establishment

(i) Purpose. The ACC is established as a committee of the Association to assist the Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to this Declaration.

(ii) Members. The ACC consists of at least three persons appointed by the Declarant for so long as Declarant owns at least one Lot; if Declarant does not own a Lot, then the Owners of a Majority of the Lots shall appoint the members of the ACC. The Declarant may remove or replace an ACC member at any time, for so long as Declarant owns at least one Lot; if Declarant does not own a Lot, then the Owners of a Majority of the Lots may remove or replace an ACC member at any time. The initial members of the ACC are Chris D'Agostino, Bryan D'Agostino, and Charles D'Agostino, each with an initial address of 206-A South Loop 336 West, Suite 211, Conroe, Texas 77304.

(iii) Term. ACC members serve until replaced by Declarant (or majority of the Owners of the Lots, as provided above) or they resign.

(iv) Standards. Subject to approval by Declarant (or majority of the Owners of the Lots, as provided above), the ACC may adopt standards that do not conflict with this Declaration. On request, Owners will be provided a copy of any standards.

### (b) Plan Review

(i) Required Review by ACC. No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.

### (ii) Procedures

(A) Complete Submission. Within 30 days after the submission of plans and specifications by an Owner, the ACC must notify the submitting

Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

(B) Deemed Approval. If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within 30 days after complete submission, the submitted plans and specifications are deemed approved.

(c) Appeal. An Owner may appeal any action of the ACC to the Declarant (or, if the Declarant no longer owns a Lot, then to a majority of the other Owners). The appealing Owner must give written notice of the appeal to the Declarant (or, if the Declarant no longer owns a Lot, then to the other Owners), and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner, each within 20 days after the ACC's action. If the Declarant (or, if the Declarant no longer owns a Lot, then a majority of the other Owners) fails to overturn the action of the ACC within 20 days after timely notice of appeal is given, the appeal shall be deemed to be denied and the action of the ACC shall be deemed approved. Such determination (or deemed determination) by the Declarant (or majority of the other Owners) shall be final.

(d) Records. The ACC will maintain written records of all requests submitted to it and of all actions taken for a period of four years. The Declarant will maintain written records of all appeals of ACC actions and all determinations made for a period of four years. Any Owner may inspect the records of the ACC and Declarant with respect to such appeals and determinations, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

(e) No Liability.

(i) **NEITHER THE ACC, DECLARANT, NOR ANY OF THE RESPECTIVE OFFICERS, AGENTS, MANAGERS, PARTNERS, MEMBERS, SUCCESSORS OR ASSIGNS OF THE ACC OR DECLARANT (TOGETHER "RELEASED PARTIES"), SHALL BE LIABLE IN DAMAGES OR OTHERWISE TO (A) ANYONE WHO SUBMITS MATTERS FOR APPROVAL TO ANY OF THE ABOVE-MENTIONED PARTIES, OR (B) ANY OWNER AFFECTED BY THIS DECLARATION BY REASON OF MISTAKE OF JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL, DISAPPROVAL, OR FAILURE TO APPROVE OR DISAPPROVE ANY MATTERS REQUIRING APPROVAL HEREUNDER. APPROVAL BY ANY RELEASED PARTY IS NOT INTENDED AS ANY KIND OF WARRANTY OR GUARANTEE AS TO THE INTEGRITY OR WORKABILITY OF THE PLANS OR THE CONTRACTORS USED.**

(ii) **NONE OF THE RELEASED PARTIES REPRESENTS OR WARRANTS, OR HAS REPRESENTED OR WARRANTED, (A) THE SOIL CONDITIONS, (B) THE SUITABILITY OF ANY LOT FOR A RESIDENCE,**

**STRUCTURE, OR OTHERWISE, (C) THE CONDITION OF THE SOIL, (D) THE HEALTH OF ANY TREES OR VEGETATION ON ANY LOT, OR (E) THE APPLICABILITY OF ANY PARTICULAR FLOOD ZONE, ELEVATION, OR DESIGNATION TO ANY LOT OR LOTS. EACH OWNER SHALL PERFORM ITS OWN INSPECTIONS AND DUE DILIGENCE TO DETERMINE THE SUITABILITY OF THE SOIL CONDITIONS, FLOOD CONDITIONS, FLOOD ELEVATIONS, SLAB ELEVATIONS, AND ANY OTHER MATTERS RELATING TO THE CONSTRUCTION OF A RESIDENCE OR STRUCTURE OR FOR PLACEMENT OF A FOUNDATION FOR A RESIDENCE OR STRUCTURE ON A LOT.**

## **6. General Provisions**

(a) Term. This Declaration runs with the land and is binding for a term of 25 years from the date of this Declaration. Thereafter this Declaration automatically continues for successive terms of 10 years each, unless within 12 months before the end of a term the Owners of at least 67 percent of the Lots execute and record in the Real Property Records of Walker County, Texas an instrument specifying that the term of this Declaration shall not be extended.

(b) No Waiver. Failure by the Declarant or an Owner to enforce the Declaration is not a waiver.

(c) Corrections. The Declarant may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

(d) Amendment. This Declaration may be amended at any time by an instrument specifying such amendment that is (i) executed by (A) the Owners of at least 67 percent of the Lots and (B) the Declarant, for so long as the Declarant is the Owner of any Lot or any portion of the Reserve shown on the Plat, and recorded in the Real Property Records of Walker County, Texas.

(e) Severability. The provisions of this Declaration are severable. If any provision of this Declaration is invalidated or declared unenforceable, the other provisions remain valid and enforceable.

(f) Notices. Any notice required or permitted by this Declaration must be given in writing by certified mail, return receipt requested. Unless otherwise required by law or this Declaration, actual notice, however delivered, is sufficient.

(g) Annexation of Additional Property. On written approval of (A) the Owners of at least 67 percent of the Lots and (B) the Declarant, for so long as the Declarant is the Owner of any Lot, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property. Notwithstanding the foregoing, for a

period of 10 years from the date of this Declaration, Declarant may subject the Reserve (or any portion of the Reserve shown on the Plat) shown on the Plat that is owned by Declarant to this Declaration by recording an annexation agreement imposing this Declaration and the Covenants on such property.

(h) Association. Subject to the next sentence, the Owners of 67 percent of the Lots in the Subdivision may authorize the formation of an association of Owners (“Association”) by signing and acknowledging a statement containing (i) the proposed Association’s name and type of entity and (ii) the names and addresses of the initial directors. Notwithstanding the preceding sentence, however, for so long as the Declarant is the Owner of any Lot, no association of Owners may be formed without the written approval of the Declarant. The Association will be governed by this Declaration, its Certificate of Formation, if any, and its bylaws and rules adopted by its board of directors (collectively, “Governing Documents”).

If an Association is formed, every Owner will be a member and agrees to comply with the Governing Documents with the same consequences for failure to comply as are contained in this Declaration for failure to comply with it. Membership in the Association is appurtenant to and may not be separated from ownership of a Lot. If more than one person is an Owner of a Lot, only one vote may be cast for the Lot. The Association will have the powers of a Texas nonprofit corporation or unincorporated nonprofit association, as applicable, and a property owners association for the Subdivision under the Texas Business Organizations Code, the Texas Property Code, and the Governing Documents. The Association may levy assessments to pay the expenses of its formation; to promote the recreation, health, safety, and welfare of Owners in the Subdivision; to fund its operating expenses; and to improve and maintain any common areas. An assessment is a personal obligation of each Owner when the assessment accrues. Assessments are secured by a continuing vendor’s lien on each Lot, and the lien is reserved by the Declarant and assigned to the Association. By acceptance of a deed to a Lot, each Owner grants a lien, together with the power of sale, to the Association to secure assessments. The lien granted and reserved to the Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Association’s lien as to assessments due before the foreclosure. The bylaws or the rules of the Association establish when assessments are due, how assessment amounts may be changed, and the Association’s rights to collect assessments. Regular assessments will be equal for all Lots. The bylaws and rules may also specify the Association’s remedial rights to charge late fees for late payment of assessments; enforce compliance with the Governing Documents; and assess an Owner for attorney’s fees and costs arising out of enforcement actions, foreclosure of the Association’s lien, or suspension of an Owner’s rights, including voting rights, for a delinquency in paying an assessment or other violations of the Governing Documents.

(i) Enforcement. Each Owner and the Association (if formed) shall have the right to enforce this Declaration and the Covenants. Additionally, for so long as Declarant owns any portion of the Reserve shown on the Plat, Declarant shall have the

right to enforce this Declaration and the Covenants, even if Declarant is not the Owner of a Lot at such time.

Executed to be effective on the Effective Date.

HUNTSVILLE 160, L.L.C.  
A Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS           §  
COUNTY OF WALKER         §

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of  
HUNTSVILLE 160, L.L.C., a Texas limited liability company, on behalf of said limited  
liability company.

\_\_\_\_\_  
Notary Public, State of Texas

When Recorded, Return To:

Huntsville 160, L.L.C.  
206-A S. Loop 336 West, # 211  
Conroe, Texas 77304  
Attention: Mr. Bryan D'Agostino