

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

LINDSEY CROSSING, UNIT 1

A Master Planned Residential Subdivision

WHEREAS, Carr Properties, LLC and Huckabee Properties, LLC (jointly, the “**Declarant**”) are the owners of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of Lindsey Crossing, Unit 1, each a **Lot**” and collectively the “**Lots**, a residential subdivision in the City of Tyler, Smith County, Texas (the “**Subdivision**”), as shown on the Plat thereof recorded in Cabinet F, Slide 133-B of the Plat Records of Smith County, Texas;

WHEREAS, for the purpose of creating, implementing and carrying out a general and uniform plan for the development, maintenance and use of the Lots in the Subdivision and to insure the creation of an architecturally harmonious subdivision, the Declarant desires to subject the Property to the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth herein the (“**Declaration**” or the “**Restrictions**”).

NOW THEREFORE, Declarant hereby declares that the Property and all of the Lots shall be held, sold and conveyed subject to these Restrictions, which shall be deemed as covenants running with the land and imposed upon and intended to benefit and burden the Property and each Lot.

The definitions of certain words and terms that are a part of this Declaration are set forth in Exhibit “A,” which is attached hereto and incorporated herein for all purposes.

The Declarant is the owner of a certain 75.647 acre tract of land (the “**Declarant’s Land**” or the “**Property**”), more or less, of which the Subdivision is a part, said 75.647 acre tract being described in a deed dated March 5, 2009 from Paul Morrison Hey and Suzanne Hey Darr, et al, to the Declarant that is recorded under Clerk’s File No. 2009-0R00010259 in the Official Public Records of Smith County, Texas. It is contemplated by the Declarant that the remainder of the Declarant’s Land will be developed in the future as a residential development such that the Lindsey Crossing Subdivision may be expanded to include all or part of the Declarant’s Land as additional Units of the Lindsey Crossing Subdivision. These Restrictions shall automatically become effective against and shall run with all of the land that is described on any Plat that is a part of the Declarant’s Land, whether or not any additional documents are filed of record in the Official Public Records of Smith County, Texas. Additionally, the Declarant may unilaterally prepare and record amendments to these Restrictions to account for differences in the development characteristics between the Subdivision and any of the additional land. By accepting a Deed to a Lot, each Owner stipulates, acknowledges, covenants and agrees that additional real property may be made subject to this Declaration by the Declarant at the sole and exclusive discretion of the Declarant.

1. Scope of Restrictions. The Restrictions shall constitute covenants running with the land, and persons or entities acquiring a Lot or Lots in the Subdivision, whether by purchase, descent, device, gift or otherwise, and each person or entity, by the acceptance of title to any Lot within the Subdivision, shall thereby agree and covenant to abide by and perform the Restrictions as set forth herein, as the same may be hereafter changed, modified or amended.

2. Residential Lots. All of the Lots in the subdivision shall be used, known and described as residential lots. No building, structure or other permanent improvement shall be erected, altered, placed or permitted to remain on any Lot other than a single family residential dwelling and, if any, customary and usual accessory structures, unless prohibited elsewhere in this Declaration. No building, structure or other permanent improvement on any Lot shall exceed two (2) stories in height.

3. Minimum Floor Space. Each one (1) story Dwelling Unit constructed on any Lot in the Subdivision shall contain a minimum of one thousand six hundred (1,600) square feet of heated and cooled area, exclusive of all garages, porches or breezeways attached to the main Dwelling Unit. Each one and one-half (1½) story Dwelling Unit constructed on any Lot in the Subdivision shall contain a minimum of one thousand six hundred square feet of heated and cooled space on the first floor, exclusive of all porches, garages or breezeways attached to the main Dwelling Unit. No secondary dwellings are allowed.

1600 sq ft min
1st floor

2 CAR GARAGE

4. Garages. Each Dwelling Unit erected on a Lot in the Subdivision shall provide garage space for a minimum of two (2) conventional automobiles with a maximum space for (3) conventional automobiles. Each garage shall open to the front of the Lot (facing the street), except for Lots 1, 15, 19, 20, 24, 25 and 29 on which the garage may open to either the front or the side of the Lot (in either case facing the street). Driveways shall be constructed of concrete or other material expressly approved by the Architectural Control Committee and must be completed prior to occupancy of the Dwelling Unit.

20' FRONT
5' SIDING
15' REAR

5. Setback Requirements. No Dwelling Unit, building or other structure of any type shall be erected on any Lot in the Subdivision nearer to the front property line than indicated by the minimum building setback line on the recorded plat of the subdivision. No Dwelling Unit, building or other structure shall be built or erected any nearer to the front Lot line than twenty (20) feet. No Dwelling Unit, building or other structure shall be built or erected any nearer to the rear Lot line than fifteen (15) feet. No Dwelling Unit, building or other structure shall be built or erected any nearer to a side Lot line than five (5) feet. The Lot width shall be measured from property corner to property corner. No portion of any structure, such as eaves or steps, shall encroach upon another Lot.

6. Fences, Walls, Hedges and Mailboxes. No fence, wall or hedge shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line indicated on the recorded plat of the subdivision unless approved for an erosion control by the Committee. No fence, wall or hedge shall exceed six (6) feet in height unless otherwise specifically required by the City of Tyler. All clothes lines or service facilities must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential street. All fences must be of wood construction or other material expressly approved by the Committee. All mailboxes must be of ornamental iron, and both the material and design of the mailbox must be expressly approved by the Committee. It is possible that the United States Postal Service may require a community style mailbox for the Subdivision, and in such case mailboxes will not be allowed on any Lot. All walls constructed for erosion control must be drawn on a site plan and approved by the Committee. The Committee's approval is only regarding the aesthetic nature of the wall, not the structural integrity, which is the Lot Owner's responsibility. The face of the wall must be either decorative key stone blocks or the same masonry choice for the Dwelling Unit. No square block walls or un-faced solid concrete wall allowed.

7. Signs. No sign or signs shall be displayed to the public view on any residential lot, except that (i) any builder, during the applicable initial construction and sales period, may utilize one professional sign (of not more than eight (8) square feet in size per lot for advertising and sales purposes; (ii) thereafter, a dignified "For Sale" sign (of not more than eight (8) square feet in size) may be utilized by the owner of the respective residential lot for the applicable sale of the Lot.

8. Easements: Utilities. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Except as to special street lighting or other aerial facilities which may be required by the City of Tyler or may be required by the franchise of any utility company, no aerial utility of any type (except meters, riser, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be permitted, erected or installed in the Subdivision whether upon individual Lots, easements, streets, right-of-way or otherwise, including, but not limited to, any person owning or acquiring any part of the Subdivision or any Lot in the Subdivision. All utility service facilities, including but not limited to, water, sewer, gas, electricity, television, internet and telephone, shall be buried underground, under streets or under utility easements.

8(a). Title Subject to Easements. It is expressly agreed and understood that the title conveyed by the Developer to any of the Lots by deed or other conveyance are and shall be and remain subject to any easement affecting same for roadways or drainage, electric lighting, electric power, telegraph or telephone purposes and other easements heretofore or hereafter granted affecting the Property or any Lot. The Owners of a Lot or Lots shall not be deemed to own any pipes, wires, conduits or other service lines running through their Lot or Lots which are utilized for or service other tracts, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of the Lot.

8(b). Easement Improvements. No Dwelling Unit or building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete

drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purpose of gaining access to and from such tracts, provided, however, any concrete drive, fence or similar improvement placed upon a utility easement by an Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said utility easements shall be responsible for any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such utility easements and for repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the utility easements.

9. Temporary Structures. No temporary structure of any kind shall be permitted, erected or placed upon any Lot in the Subdivision. Temporary structures shall include, (but not be limited to), any garage, servant's house, kit built storage shed, manufactured or prefab homes, or any structure not on a permanent slab foundation.

10. Vehicles. Unless expressly permitted or directed by the Committee, any truck, bus, boat, boat trailer, mobile home, manufactured home, recreational vehicle, camper, or any vehicle other than a conventional automobile (collectively, a **"NCV"**) shall, if brought within the Subdivision, be stored, placed or parked completely inside the garage of the Dwelling Unit or detached garage approved by the Committee such that the door on the garage can be completely closed and such NCV is completely concealed from being visible from all points in the Subdivision. No NCV shall be maintained or used on any Lot at any time as a residence, either temporally or permanently.

11. Improper Maintenance. In the event any Lot or any portion of any Lot, any Dwelling Unit, or any other permanent improvement on any Lot is in the reasonable judgment of the either the Declarant or the Committee in such a condition as to (i) present a public or private nuisance, (ii) substantially detract from the appearance or quality of the surrounding Lots or other residential areas of the Property or the Subdivision, or (iii) in any manner fail to comply with any of these Restrictions, the Declarant or the Committee may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver written notice (the **"Notice"**) thereof to the offending Owner that unless corrective action to remedy the situation, such corrective action to be stated in the Notice, is taken within ten (10) days from the date of such Notice, the Declarant or the Committee, as applicable, shall have the right and authority to cause such action to be taken at such Owner's cost and expense to remedy the situation, including entry upon the Owner's Lot, if necessary. Any entry upon any part or portion of a Lot by the Declarant or the Committee, or anyone at the direction of the Declarant or the Committee, shall not be deemed a trespass or other violation of any law, ordinance or statute. Each Owner grants to the Declarant and the Committee the right to enter upon the Owner's Lot at all reasonable times to fulfill the obligations under this Paragraph 11, and neither the Declarant nor the Committee nor anyone else entering upon any part or portion of the Owner's Lot at the direction of the Declarant or the Committee shall be subject to any liability therefor. If after the expiration of said ten (10) day period the requisite corrective action has not been completed to the reasonable satisfaction of the Declarant or the Committee, the Declarant or the Committee, as applicable, shall be and is hereby authorized and empowered by the violating Owner to cause the corrective action stated in the Notice to be taken on the Owner's behalf, and all costs and expenses thereof and associated therewith, including but not limited to the costs of collection, court costs and reasonable attorneys' fees, such costs and expenses being herein collectively called the **"Maintenance Charges,"** together with interest accruing thereon from the date or dates of the remedial action of such costs at the rate of (i) ten percent (10.0%) per annum or (ii) the highest rate allowed by law if the highest legal rate is less than ten percent (10.0%) per annum, from such date until paid in full, shall be charged and assessed against the offending Owner and the offending Owner's Lot. The Maintenance Charges, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Paragraph 12, below. Written notice of such assessment shall be delivered to the offending Owner by the Declarant or the Committee which notice shall specify the amount of such Maintenance Charges and shall demand payment thereof within thirty (30) days after the date of said notice. By acceptance of a Deed to a Lot, every Owner agrees to and shall pay all Maintenance Charges that shall be charged or assessed against an Owner's Lot.

12. Imposition of Assessment Lien and Priority of the Lien. THE OBLIGATION TO PAY MAINTENANCE CHARGES IN THE MANNER PROVIDED FOR IN PARAGRAPH 11 AND TO PAY ANY OTHER CHARGES OR ASSESSMENTS AS PROVIDED IN THIS DECLARATION, TOGETHER WITH INTEREST, COLLECTION COSTS, COURT COSTS, AND REASONABLE ATTORNEY'S FEES RELATED THERETO, SHALL BE AND IS HEREBY EXPRESSLY SECURED BY A CONTINUING CONTRACTUAL LIEN (THE **"ASSESSMENT LIEN"**) AND CHARGE ON THE LOT OR OTHER PART OR PORTION OF THE

PROPERTY COVERED BY SUCH MAINTENANCE CHARGES, ASSESSMENTS OR OTHER CHARGES, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual Assessment Lien shall attach to each and all of the Lots and other part or portion of the Property as of the date of the recording of this Declaration in the Official Public Records of Smith County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in Paragraph 12(b), below. Either the Declarant or the Committee shall have the right to subordinate the aforesaid Assessment Lien to any other lien by recording the subordination in the Official Public Records of Smith County, Texas. The exercise of such right shall be entirely discretionary with the Declarant or the Committee. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or otherwise under the laws of the State of Texas, all Lots and other parts and portions of the Property are conveyed to, and accepted and held by, the Owner thereof subject to the Assessment Lien. To evidence any unpaid Assessments, the Declarant or the Committee, as applicable, may prepare a written notice of unpaid Assessments (the **"Notice of Unpaid Assessments"**) setting forth the amount of the unpaid indebtedness, the reason for the indebtedness, the name of the Owner of and describing the affected Lot or other part or portion of the Property. Such notice shall be signed by the Declarant or the Committee, as applicable, and may, at the sole and exclusive discretion of the one giving the Notice, be recorded in the Official Public Records of Smith County, Texas. The Declarant or the Committee, as applicable, shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid in full. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT OR OTHER PROPERTY BY THE DECLARANT OR THE COMMITTEE, AS APPLICABLE, SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH OF THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME. In addition, the Declarant or the Committee, as applicable, may institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Declarant or the Committee, as applicable, shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or nonjudicial, or in any suit or other action against, or pertaining to, the Owner, the Owner shall be required to pay all costs, expenses and reasonable attorneys' fees incurred by the foreclosing party. The Declarant and the Committee shall have the right and power to buy the Lot or other Property at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same, subject to any statutory right of redemption.

12(a). Owner's Agreement. Each Owner, owning a part or portion of the Property or of any Lot, for said Owner, and the Owner's heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees (i) that the Owner acquires the Owner's Property or Owner's Lot subject to the Maintenance Charges and the Assessment Lien, (ii) that by accepting a Deed to the Owner's Property or Owner's Lot, the Owner is, shall be, and shall remain personally liable for any and all Maintenance Charges assessed against the said Owner's Property or Owner's Lot while the said Owner is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed, and (iii) that by accepting a Deed to the Owner's Property or Owner's Lot and to secure the Owner's performance hereunder, the Owner conveys the Owner's Property and the Owner's Lot, and all portions thereof, to the Declarant and the Committee, and their respective successors and assigns, in Trust, with a power of sale, and warrants and agrees to defend the title to the Lot, and all portions thereof. If the Owner pays all of the Maintenance Charges imposed against the Owner's Property or Owner's Lot as provided herein, this conveyance in trust shall have no further effect. If the Owner fails to pay any of the Maintenance Charges imposed against the Owner's Property or Owner's Lot, the Declarant or the Committee in the capacity as trustee shall have the right to nonjudicially foreclose upon the Assessment Lien granted herein in accordance with and upon compliance with the provisions of the Texas Property Code, as the same may be amended or supplemented from time to time.

12(b). Enforcement Remedies. If the Owner of any Lot or other part or portion of the Property fails or refuses to pay any Maintenance Charges, or fails or refuses to pay any interest accrued on any Maintenance Charges, or fails or refuses to pay any and all costs (including court costs and attorneys' fees) incurred by either the Declarant or the Committee in collecting same, the Declarant or the Committee, as applicable, shall have the right to enforce the payment of the Maintenance Charges, and all interest accrued thereon and costs incurred by either the Declarant or the Committee

in collecting same, and/or enforce the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, neither the Declarant nor the Committee prejudices their exercise of any other remedy) (i) bring an action at law and recover judgment against the Owner personally obligated to pay the Maintenance Charges or (ii) enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in the Texas Property Code. The Declarant, the Committee, or any Owner may be the purchaser at any such foreclosure sale.

12(c). Texas Law to Apply. Notwithstanding any provisions of this Declaration to the contrary, all enforcement remedies for Maintenance Charges and Assessment Liens shall be conducted in accordance with the provisions of the Texas Property Code.

12(d). Subordination to First Mortgage Lien. The Assessment Lien provided for herein shall be subordinate to any valid first mortgage lien (purchase money or improvement loan) held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United States or any state within the United States. Sale or transfer of any Lot or other part or portion of the Property shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of any such superior mortgage lien or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage lien foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or other Property free of the Assessment Lien for all Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens, or encumbrances (except lien for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take the Lot or other Property subject to all Maintenance Charges and Assessments, and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

13. Enforcement of the Restrictions. The Declarant or the Committee, acting either jointly or independently, shall each have the right, jointly or severally, but not the obligation, to enforce the provisions of this Declaration, including, but not limited to, enforcement of the Assessment Lien. Any Owner shall also have the right to enforce this Declaration at the said Owner's sole cost and expense by any appropriate action, whether at law or in equity. Neither the Declarant nor the Committee shall have any liability to any Owner or any other person or entity for failing or refusing to enforce this Declaration.

14. Offensive Activities. No activity which is in the reasonable opinion of the Declarant or the Committee noxious or offensive shall be conducted on any Lot or otherwise in the Subdivision nor shall anything be done on any Lot or otherwise in the Subdivision which is or may become an annoyance or nuisance to a reasonable person in the Subdivision or any portion thereof. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. Pets will be confined to the Owner's Lot at all times, except when accompanied on a leash by the Owner.

15. Business Activity. No activity of any nature, whether for profit or not, shall be conducted on any tract which is not directly related to single family residential purposes, unless said activity meets the following criteria as determined in the reasonable opinion of the Declarant or the Committee: (a) no additional exterior sign of activity is present, (b) no additional human or vehicular traffic is created, (c) no danger is presented by the activity, and (d) the activity does not constitute a nuisance or annoyance. Nothing herein shall prevent a home office so long as the requirements of (a), (b), (c), and (d) above are met.

16. New Construction. All Dwelling Units and structures erected on any Lot shall be new construction and consist of at least sixty percent (60.0%) brick or stone. No old buildings may be placed on any Lot, even if such old building satisfies all other requirements. The roofs on all Dwelling Units, building and other structures must have a minimum of an 8½ roof pitch. All roof shingles must have a GAF Silver Pledge™ Limited Warranty or other similar warranty that has been pre-approved by the Committee. All homes are required to have a four (4) foot-wide concrete sidewalk poured at time of driveway pour. The sidewalk must be parallel to the front property line and extend the entire

width of the property. At the commencement of construction, the Owner shall provide a portable toilet facility which shall be placed on the Lot and used by workers. Upon commencement of the framing phase of construction, the Owner shall provide a dumpster which shall be placed on the Lot for the accumulation and disposal of waste and trash resulting from construction. The Owner will keep the street and surrounding Lots free of building debris and litter at all times. Any Dwelling Unit or structure commenced on any Lot shall be completed as to exterior finish and appearance within nine (9) months from the commencement date. It will be the Owners responsibility to maintain erosion control methods in accordance with TCEQ guidelines on their Lot. Landscaping of all surface area visible from the roadway must be pre-approved by the Committee and completed within six (6) months of the completion of the Dwelling Unit.

17. No Renting or Leasing. No part of any Dwelling Unit, garage or other building or structure of any type whatsoever on any Lot may be rented by any Owner or by any other person or entity at any time without the prior written consent of the Committee which consent may be withheld for any reason or for no reason at the sole discretion of the Committee.

18. No Propane tanks and Satellite Dishes. No propane tanks will be allowed on any Lot. Satellite dishes are not permitted on a pole detached from the house. Satellite dishes are not permitted on the house that can be seen from the streets in the Subdivision.

19. Drainage. No creeks, natural drainage or other water flow areas may be dammed. No water running through any creek, natural drainage, or other water flow may be diverted, altered, rerouted or otherwise used for any purpose without the prior written consent of the Committee. Driveway culverts must be installed and must be sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. Drainage culvert installation must meet City of Tyler requirements and must have concrete sloped ends. It is the Owners responsibility to conform to all TCEQ Texas Pollutant Discharge Elimination System requirements from the time of ownership through construction and to also design the site plan to divert all water directly to the right of way from said tract. Diverting water to an adjoining Lot or Lots will not be allowed.

20. Combining Lots. Any owner of one or more adjoining Lots may, with the prior written approval of the Committee, consolidate such Lots into one Lot, with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the Lot boundary lines as indicated on the original Plat. It shall be the responsibility of the Owner to obtain all needed easement releases from the appropriate agencies and to file a new Plat with the City of Tyler.

21. Resubdivison. No Lot shall be further subdivided and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant, its successors or assigns, which approval may be withheld for any reason or for no reason.

22. Hunting. No hunting is allowed in the Subdivision. No discharge of handguns, rifles, shotguns or other firearms, pellet or air guns, bows or cross bows, or other weapons is allowed in the Subdivision.

23. Architectural Control Committee. The members of the Architectural Control Committee (the "**Committee**") shall be Caren Carr, Kevin Huckabee and James T. McCain, Jr. At such time as (i) all of the Lots in the Subdivision and all of lots that are to be created by the expansion of the Lindsey Crossing Subdivision on the Declarant's Land are sold to third parties unrelated to the Declarant or (ii) Caren Carr, Kevin Huckabee and James T. McCain, Jr., or their respective assigns, file an instrument in the Official Public Records of Smith County, Texas resigning as the members of the Committee, the Committee will then consist of five (5) persons who are owners of property that is a part of Declarant's Land as the successors to serve on the Committee. The initial five (5) members of the Committee will be appointed by the Declarant. Thereafter, the members of the Committee will be elected or appointed to serve as determined by the Board of Directors of the Association.

24. Construction and Other Approval Requests. All requests for approval of any of the items set forth in this Declaration initially be submitted in writing to the **Architectural Control Committee, Lindsey Crossing, Unit 1, at _____, Tyler, Texas 75703**, or at such other address as may from time to time be designated by the Committee and recorded in the Official Public Records of Smith County, Texas, and such request for approval shall be

accompanied by complete and specific plans and specifications showing the nature, kind, shape, elevations, height, materials, color, location, landscaping, and other material attributes of the Dwelling Unit and other Permanent Improvements, additions, changes, alterations or excavation of a Lot or any part thereof. The Committee shall have no duty to exercise the power of approval or disapproval hereby reserved. The Committee shall have the power and authority to charge an application fee to be submitted with all requests for approval of any and all items as required in this Declaration.

25. Prior Approval. No dwelling, building, garage, storage building, fence, wall, sign, exterior lighting, pole, antenna, television or satellite disc or dish, driveway, sidewalk, other walkway, mailbox, athletic equipment, recreational equipment, playground equipment, basketball goals, swimming pool, spa, hot tub, other structure, equipment or apparatus or any nature whatsoever, either permanent or temporary, or landscaping shall be commenced, erected, constructed, placed or maintained upon any Lot, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, roadways, and walkways, be made, until the plans and specifications showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted in writing to and approved in writing by the Committee, in its sole and exclusive discretion, as to (i) compliance with these Restrictions, and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not limited to, architectural designs, setbacks, landscaping, color schemes and construction materials. The Committee shall have the right to promulgate a form for submission of such items to the Committee, and upon such promulgation, all Owners shall be required to use the form for all such submissions. In the event the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been properly submitted to the Committee, approval will not be required, and the requirements for approval set forth in this paragraph shall be deemed to have been fully met and performed. Non-exercise of the powers hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in any other or different instances. Likewise, approval of anyone set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to the Committee, the Committee and the individual members of the Committee shall not in any manner or degree be liable for the improper enforcement or failure to exercise any of the powers reserved and delegated unto said Committee pursuant to this Declaration. The fact that some type of structure or improvement may be mentioned in this Declaration is not in any manner to be construed as a statement that such type of structure or improvement will be allowed on any Lot in the Subdivision, as the final approval or disapproval for any type of structure or improvement on any Lot shall be expressly vested solely in the Committee to be exercised at its sole discretion.

26(a). No Liability. In no event shall any approval obtained from the Committee pursuant to the terms of this Declaration be in any manner deemed to be a representation of any nature regarding the structural integrity or safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations, nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval. No member of the Committee shall at any time have any liability to any Owner or other person or entity for any decision(s) that are made by the Committee as long as such decision(s) are made by the decision maker without willful and intentional misconduct. Any and all errors or omissions from the plans submitted to the Committee shall be the sole responsibility of the Owner of the Lot to which the plans and improvements relate, and the Committee, and each member thereof, shall have no obligation to check the plans for errors or omissions or to check such plans for compliance with this Declaration, zoning ordinances, laws, building lines, easements or rights-of-way, or any other issue.

26(b). Restriction on Commencement of Construction. No construction nor pre-construction (site clearing, tree cutting or trimming, dirt removal, etc.) work of any type, kind or nature may be commenced on any Lot unless and until the Owner has received the written approval for construction from the Committee as required by this Declaration.

26(c). Finality of Determinations. The authority granted by the Declarant to the Committee in this Declaration has intentionally been very broad and all encompassing. Therefore, no decision of the Committee may in any manner be avoided, challenged, reversed, rendered, modified, changed or nullified in any manner by any person, tribunal, court or other entity, except by the Committee itself, as long as the decision of the Committee was made without

willful and intentional misconduct on the part of any member of the Committee, even if the decision of the Committee may seem to some as arbitrary.

27. Variances. The Declarant may, on a case by case basis, authorize variances from compliance with any of the provisions of this Declaration.

28. Validity. Violation of or failure to comply with these covenants and restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on any residential lot in the subdivision. Invalidation of any one of these covenants and restrictions, or any portion thereof by a judgment or court order shall not affect any of the other provisions or covenant herein contained, which shall remain in full force effect. In the event any portion of these covenants and restrictions conflict with mandatory provisions of any ordinance or regulation promulgated by the City of Tyler, then such municipal requirement shall control. Words of any gender used herein shall be held and construed to include any gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The captions used in connection with paragraphs herein are convenience only and shall not be deemed to construe or limit the meaning of language herein.

29. Amendment. Until (i) all of the Lots in the Subdivision and all of lots that are to be created by the expansion of the Lindsey Crossing Subdivision on the Declarant's Land are sold to third parties unrelated to the Declarant or (ii) Caren Carr and Kevin Huckabee, or their respective assigns, file an instrument in the Official Public Records of Smith County, Texas waiving their right to amend these Restrictions, these Restrictions may be amended only by Caren Carr and Kevin Huckabee. In the event of the death of either Caren Carr or Kevin Huckabee prior to the effectiveness either of subparagraphs (i) or (ii), above, then these Restrictions may be amended only by the survivor of them, and the amendment by survivor shall be unilateral. In the event of the death of both Caren Carr and Kevin Huckabee prior to the effectiveness either of subparagraphs (i) or (ii), above, then these Restrictions may be amended only by the eldest living descendant of Caren Carr or Kevin Huckabee. After (i) all of the Lots in the Subdivision and all of lots that are to be created by the expansion of the Lindsey Crossing Subdivision on the Declarant's Land are sold to third parties unrelated to the Declarant or (ii) Caren Carr and Kevin Huckabee, or their respective assigns, file an instrument in the Official Public Records of Smith County, Texas waiving their right to amend these Restrictions, these Restrictions may be amended or changed, in whole or in part, at any time by the written agreement or by signed ballots voting for such amendment of not less than two-thirds (2/3rds) of all the Owners (including the Developer) of the Lots in the Subdivision, as it may have been expanded as provided herein. There shall be one vote per Lot. Anyone owning more than one Lot shall have one vote for each Lot owned. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of the votes of the Owners, such amendment must be approved by said Owners within ninety (90) days of the date the first Owner executes such amendment, or such longer period of time as may be required by the Texas Property Code. The date an Owner's signature is acknowledged shall constitute prima facie evidence of the date of execution of said amendment by such Owner. Any such amendment shall become effective when an instrument filed for the record in the Official Public Records of Smith County, Texas, accompanied by a certificate, signed by a member of the Board of Directors, stating that the required number of Owners executed the amendment. Copies of written ballots pertaining to such amendment shall be retained by the Committee for a period of not less than three (3) years after the date of filing of the amendment or termination. Notwithstanding anything to the contrary in this Declaration, no amendment to this Declaration which adversely affects the rights and privileges of Developer shall become effective unless and until approved, in writing by Developer and any Mortgagee of Record which is a lender to Developer.

30. Duration. These Restrictions shall run with the land and shall be binding on all parties and all persons claiming title of any Lot until January 1, 2040. These Restrictions shall automatically renew and extend for successive periods of five (5) years each unless an instrument terminating these Restrictions is signed by a simple majority of the Owners of the Lots within the Subdivision, including all portions of the Declarant's Land for which Plats have been recorded in the Official Public Records of Smith County, Texas (as shown by the records of Smith County, Texas), and recorded in the Official Public Records of Smith County, Texas.

31. Period of Developer's Rights and Reservations. Developer shall have and does hereby retain and reserve certain rights as set forth in this Declaration with respect to the Committee from the date hereof, until the earlier

to occur of (i) the Control Transfer Date or (ii) Developer's written notice to the Committee of the Developer's termination of the rights. The rights and reservations herein set forth for the benefit of the Developer shall be deemed expected and reserved in each conveyance of a Lot by the Developer to an Owner whether or not specifically stated therein and in each deed by which a Lot is conveyed by Developer. The rights, reservations and easements herein set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developers prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

32. Developer's Rights to Grant and Create Easements. Developer shall have and hereby reserves the right, without the consent of any other Owners or the Committee, to grant or create temporary or permanent easements, for access, utilities, pipeline easement, cable television systems, communication and security systems, drainage, water and other purposes incidental to development, sale, operation and maintenance of the subdivision, located in, on, under, over and across (i) the Lots or the Declarant's Land and (ii) existing utility easements. The Declarant also reserves the right, without the consent of any other Owner or the Committee, to grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision.

33. Property Owners Association.

33(a). Establishment. The Declarant shall have the right to form the Association by the filing of a Certificate of Formation of the Association with the Secretary of State of the State of Texas. The Association has not been established on the date of the filing of this Declaration. The Association may be formed after the date on which this Declaration is recorded.

33(b). Bylaws. Bylaws for the Association will be established and adopted by the Board of the Association.

33(c). Membership. The Declarant and each Owner of a Lot, including successive buyers, shall automatically and mandatorily become and be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every Member shall have a right at all reasonable times during regular business hours of the Association to inspect the books and records of the Association.

34(d). Voting Rights. The Association shall have two (2) classes of membership to be designated as Class A and Class B.

- A. Class A Members shall be all Owners with the exception of the Declarant. A Class A Member shall be not entitled to vote until (i) the Declarant initially sells all of the Lots in the Subdivision, as now existing or as the Subdivision may be expanded as provided in this Declaration, owned by the Declarant, or (ii) the Declarant files a statement with the Association that the Declarant will allow the Class A Members to vote. Once the Declarant files the statement with the Association allowing Class A Members to vote, the statement may not be revoked by the Declarant. Each Class A Member shall, once the Class A Members are entitled to vote, be entitled to one (1) vote for each individual Lot owned. When more than one person owns an interest in an individual Lot, all such persons shall be members of the Association, however, the one (1) vote voting right for such Lot shall be exercised collectively as the owners of the particular Lot shall between or among themselves determine.
- B. The Declarant shall be the Class B Member for so long as it owns any Lot in the Subdivision, as now existing or as the Subdivision may be expanded as provided in this Declaration, which has not previously been conveyed by the Declarant to an Owner. When any Lot is initially sold by the Declarant, the Class B membership with respect to such Lot shall cease and automatically become and be a Class A membership. Unless the Declarant files the statement with the Association referred to in Section 9.04(A), above, allowing Class A Members to vote, for so long as the Declarant, owns any Class B membership, the Declarant as the sole Class B Member shall be the only Member of the Association entitled to vote.

- C. Once the Class A Members are entitled to vote, whether by sale by the Declarant of all of the Declarant's Lots or by the Declarant's filing the statement with the Association allowing the Class A Members to vote, the Class B Member shall no longer be entitled to vote as a Class B Member.

33(e). Board of Directors. The Board shall be elected by the Members as provided in the Bylaws. The Board shall conduct the business of the Association, except when a membership vote is required by this Declaration, the Articles of Incorporation or the Bylaws.

33(f). Assessments. Each Lot is hereby and shall be subject to an annual maintenance charge and assessment for the purpose of creating a fund to be used for the mutual benefit of all Owners and the Subdivision. The amount of such annual maintenance charge shall initially be determined by the Declarant, and, except as is provided below, such annual maintenance charge shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Declarant. The annual maintenance charge may be used for, among other purposes, upkeep, repair and maintenance of the Subdivision. The Board shall also have the right to levy and charge to the Owners special assessments for such purposes that shall benefit the Subdivision as the Declarant, in its sole discretion, shall determine. Except as is provided below, the special assessments shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Declarant. If an Owner shall own more than one Lot, the Owner shall be responsible for paying the full annual maintenance charge and the full special assessment for each Lot owned by the Owner. At such time as the Association is formed, the Board, instead of the Declarant, shall (i) determine the amount of the annual maintenance charge, (ii) adopt procedures for payment and collection of the annual maintenance charge, (iii) have the authority to levy and charge special assessments, and (iv) determine the purposes for which special assessments shall be used. Any delinquent assessment, either annual or special, shall be subject to the Assessment Lien, as described above.

- A. Notwithstanding anything contained in this Declaration or elsewhere, the Declarant shall not at any time be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment.
- B. Notwithstanding anything contained in this Declaration or elsewhere, a homebuilder who purchases a Lot directly from the Declarant on which the homebuilder shall construct a Dwelling Unit that shall be sold to a third party shall not be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment for a period of one (1) year from the date that such homebuilder purchases a Lot from the Declarant, such purchase date being the date that the Deed is signed by the Declarant conveying the Lot to the homebuilder. If, prior to the expiration of the one-year exemption period, the homebuilder sells the Lot to any other person or entity, the exemption shall automatically and without notice lapse, and the new Owner shall then be fully responsible for all annual maintenance charges and special assessments from and after the date of such sale as evidenced by the date of the Deed from the homebuilder to the Owner.

33(g). Conflicts. The Association may make whatever rules, regulations and Bylaws it deems necessary or desirable to govern the Association and its Members; provided, however, that any conflict between the Association's rules, regulations and Bylaws and the provisions of this Declaration shall be controlled by and resolved in favor of this Declaration.

SIGNED on the date first above mentioned.

CARR PROPERTIES, LLC
a Texas limited liability company

HUCKABEE PROPERTIES, LLC
a Texas limited liability company

BY: _____
CAREN CARR, Manager

BY: _____
KEVIN HUCKABEE, Manager

STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on _____, 2019 by Caren Carr, the Manager of Carr Properties, LLC, a Texas limited liability company, on behalf of said company.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on _____, 2019 by Kevin Huckabee, the Manager of Huckabee Properties, LLC, a Texas limited liability company, on behalf of said company.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT "A"
Definitions

"Association" means the Lindsey Crossing Property Owners Association, Inc., a Texas non-profit corporation to be formed as provided in the Declaration.

"Board" means the Board of Directors of the Association.

"Committee" means the Architectural Control Committee.

"Declarant" or **"Developer"** means Carr Properties, LLC, a Texas limited liability company, and Huckabee Properties, LLC, a Texas limited liability company, jointly.

"Dwelling Unit" means the structures which are built on a Lot for the purposes of residential living in the Subdivision.

"Owner" means the person or persons, entity or entities, who, individually or jointly, own record title to a Lot. The term Owner shall exclude any person or persons, entity or entities, having an interest in a Lot or any such parcel merely as security for the performance of an obligation. The term Owner shall include Declarant if Declarant is a record title owner of a Lot.

"Plat" means the survey plat of the Subdivision filed with and approved by the City of Tyler, Texas and recorded in Cabinet F, Slide 133-B of the Plat Records of Smith County, Texas.

"Subdivision" means Lindsey Crossing, Unit 1, as shown on the Plat, as the Subdivision may be hereafter changed, modified, supplemented or expanded.

**AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
LINDSEY CROSSING**

A Master Planned Residential Subdivision

WHEREAS, Carr Properties, LLC and Huckabee Properties, LLC (jointly, the **“Declarant”**) are the owners of a certain 75.647 acre tract of land (the **“Declarant’s Land”** or the **“Property”**), more or less, described in a deed dated March 5, 2009 from Paul Morrison Hey and Suzanne Hey Darr, et al, to the Declarant that is recorded under Clerk’s File No. 2009-0R00010259 in the Official Public Records of Smith County, Texas; and

WHEREAS, Declarant intends to develop all or part of the Declarant’s Land into a residential subdivision to be known as Lindsey Crossing and comprised of multiple units (the **“Subdivision”**); and

WHEREAS, a Plat has been recorded in Cabinet F, Slide 133-B of the Official Public Records of Smith County, Texas for Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of Lindsey Crossing, Unit 1, said Lots being a part of the Subdivision; and

WHEREAS, a Plat has been recorded in Cabinet F, Slide 166-D of the Official Public Records of Smith County, Texas for Lots 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 of Lindsey Crossing, Unit 2, which Lots are also a part of the Subdivision; and

WHEREAS, a Declaration of Covenants, Conditions and Restrictions Lindsey Crossing (the **“Declaration”**) was filed by the Declarant on November 15, 2019 under Clerk’s File No. 20190100038940 in the Official Public Records of Smith County, Texas, said Declaration affecting and running with all of the Declarant’s Land now or hereafter to be a part of the Subdivision; and

WHEREAS, Declarant desires to amend the Declaration to account for differences in the covenants, conditions and restrictions between certain of the Lots which are a part of Lindsey Crossing, Unit 1, and Lindsey Crossing, Unit 2;

THEREFORE, the Declaration is hereby amended as follows:

Paragraph 4 of the Declaration is amended to read as follows:

4. Garages. Each Dwelling Unit erected on a Lot in the Subdivision shall provide garage space for a minimum of two (2) conventional automobiles with a maximum space for (3) conventional automobiles. Each garage shall open to the front of the Lot (facing the street), except for Lots 1, 15, 19, 20, 24, 25, 29, [REDACTED] on which the garage may open to either the front or the side of the Lot (in either case facing the street). Driveways shall be constructed of concrete or other material expressly approved by the Architectural Control Committee and must be completed prior to occupancy of the Dwelling Unit.

The definitions of **“Plat”** and **“Subdivision”** on Exhibit “A” of the Declaration are amended to read as follows:

“Plat” means each of the survey plats of the Subdivision filed with and approved by the City of Tyler, Texas and recorded in Cabinet F, Slide 133-B and Cabinet F, Slide 166-D of the Plat Records of Smith County, Texas.

“Subdivision” means Lindsey Crossing, Unit 1 and Unit 2, as shown on the Plat, as the Subdivision may be hereafter changed, modified, supplemented or expanded.

In all other respects the Declaration is hereby ratified and confirmed.

SIGNED on the dates of the parties acknowledgments set forth below.

CARR PROPERTIES, LLC
a Texas limited liability company

HUCKABEE PROPERTIES, LLC
a Texas limited liability company

BY: _____
CAREN CARR, Manager

BY: _____
KEVIN HUCKABEE, Manager

STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on May ____, 2020 by Caren Carr, the Manager of Carr Properties, LLC, a Texas limited liability company, on behalf of said company.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on May ____, 2020 by Kevin Huckabee, the Manager of Huckabee Properties, LLC, a Texas limited liability company, on behalf of said company.

NOTARY PUBLIC, STATE OF TEXAS