Amended and Restated Declaration of Restrictive Covenants of the FALCON RIDGE RANCH Subdivision

Basic Information

Date: _____, 2019

Owners: see signatures below – separate signature page for each Owner with the Tract description for each Tract Owned

Property Owners Association: FALCON RIDGE RANCH OWNERS ASSOCIATION, INC., a Texas nonprofit corporation

Property Owners Association's Address: 655 Last Trail, Fredericksburg, Texas 78624

Property: that certain 547.05 acres of land described in **Exhibits "A" through "I" inclusive**, attached hereto and made a part hereof for all purposes. As noted below, the 103.93 acre tract described below and owned by Thomas A. Enloe and Dena Kay Enloe, is excluded from the Property.

Definitions

"ACC" means the Architectural Control Committee function of the Board established in this Declaration.

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

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

"Bylaws" means the Bylaws of the Property Owners Association adopted by the Board.

"Common Area" means all roads and other property within the Subdivision not designated as a Tract. Declarant will convey the Common Area to the Property Owners Association. There has been conveyed by Deeds recorded n Reg. #20063700, Reg. #20073870 and Reg. #20073871, Official Public Records of Gillespie County, Texas, fee simple ownership of the property therein described to the Property Owners Association and there has been granted an easement across such property for use as a private road by instruments entitled Private Road and Right of Way Easement recorded in Reg. #20063701, Reg. #20073872 and Reg. #20073873, Official Public Records, Gillespie County, Texas. The Roads described herein shall be referred to herein as the "Roads". The easements for the Roads shall survive any termination of this Declaration. It is expressly understood that the Roads are not for use by the general public, but only for use of the Owners of Tracts and their permitted guests. Persons using the Roads in accordance with its dedicated terms shall not be charged any fee for such use; provided, however, that a security and privacy entry gate shall be installed at the point of public access to restrict access to the Roads. The Roads shall be used with reason and judgment so as not to interfere with the primary purposes of the Roads, which is to provide access for the Tracts and their guests for ingress and egress, and for the servicing and supplying of the Tracts. The

foregoing shall not be construed as forbidding the granting of appropriate and proper easement for installation, repair and replacement of utilities and other property services necessary for the proper development and occupying of the Tracts, and for erecting, constructing buildings and other improvements of the Tracts. The Property Owners Association shall be responsible for completing and paying all maintenance, repair, upkeep, taxes, assessments and other costs and expenses attributable to the Roads including landscaping. The Roads shall be maintained by the Property Owners Association, for the benefit of and at the expense of the Tract Owners, in good condition and repair, said maintenance to include, without limitation, the following:

i. Maintaining the surface in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal n quality, use and durability;

ii. Removing all papers, debris, filth and refuse, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

iii. Placing, keeping in repair, and replacing any necessary or appropriate directional signs, markers and lines;

iv. Operating and keeping in repair and replacing, where necessary, such artificial lighting facilities as may be or have been installed or otherwise authorized;

v. Maintaining the front security gate in a good condition and state of repair; and

vi. Maintaining all landscaping areas and making such replacements of shrubs and other landscaping as is necessary.

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

"Dedicatory Instruments" means this Declaration and the Certificate of Formation and Bylaws.

"Tract" means each tract of land within the Property designated as a Tract on signature page and attached Tract descriptions which are made a part hereof for all purposes.

"Member" means Owner.

"Owner" means the owners signing this Declaration and every record Owner of a fee interest in a Tract.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Tracts.

"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 Tract (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

Amendment

The Declaration of Covenants, Conditions and Restrictions of Falcon Ridge Ranch, dated May 17, 2006 of record under Clerk's File No. 20063237, Official Public Records, Gillespie County, Texas (the "Original Covenants"), as amended by Amendment of Restrictions, dated July 13, 2007, of record under Clerk's File No. 20073874, Official Public Records, Gillespie County, Texas ("First Amendment"), is hereby amended in its entirety and restated herein by 60% vote of all of the Owners and the undersigned Owners represent such 60% vote or greater vote.

The First Amendment provides that the Covenants may be amended by a "60% Vote of all of the Owners, with each Owner entitled to one vote for each twenty-five (25) acres of the total acreage in all of the Tracts owned by that Owner."

KK Happy Heart Ranch, LLC and Kathlyn Elizabeth Kerr, the owners of approximately 672.86 acres, have agreed to withdrawn their property from the subdivision and the Original Covenants by a settlement agreement entered into pursuant to Cause No. 14655, styled Gary Anthony Roberts, Sr., Individually and on behalf of the Owners of Falcon Ridge Ranch, Plaintiff, v. Kathlyn Kerr, and KK Happy Heart Ranch, LLC, in the District Court, 216th Judicial District, Gillespie County, Texas, as referenced in that certain Affidavit of Fact of Gordon Sauer filed as document number 20175979, in the Official Public Records of Gillespie County, Texas.

Presently, there are 10 tracts, described below, owned by 7 Owners, representing the number of votes specified below.

Tract	Exhibit	Owner	Number of Votes
150 acres	"A"	Thomas A. Enloe and Dena Kay Enloe	6
31.02 acres	"B"	Randy Bruno	1
57.13 acres	"C"	Gibbs Joint Revocable Trust – Jeffrey R. Gibbs and Sandra K. Gibbs, Trustees	2
25.00 acres	"D"	David Canfield Trust	1

		David P. Canfield, Trustee	
33.90 acres	"E"	Gary A. Roberts, Sr.	1
25.00 acres	"F"	Gary A. Roberts, Sr.	1
25.00 acres	"G"	Gary A. Roberts, Sr.	1
25.00 acres	"H"	Michael R. Borchers and Shari L. Addington	1
175.00 acres	"I"	Albert and Jeanne Anderson Revocable Living Trust – Albert L. Anderson and Jeanne A. Anderson, Trustees	7
103.93	**	Thomas A. Enloe and Dena Kay Enloe	4
TOTAL:			**25**

** **103.93 acres** described in that certain Special Warranty Deed recorded as Document number 20100462, Official Public Records of Gillespie County, Texas.

This Declaration is signed by Owners representing at least 60% of the votes of all of the Owners..

The 103.93 acres described above, and owned by Thomas A. Enloe and Dena Kay Enloe shall no longer be a part of the Property or the Subdivision and the Declaration, as amended, shall no longer apply to it.

Clauses and Covenants

A. Imposition of Covenants

1. Owners impose the Covenants on the Subdivision. All Owners and other occupants of the Tracts by their acceptance of their deeds, leases, or occupancy of any Tract agree that the Subdivision is subject to the Covenants.

2. 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 Tract.

3. Each Owner and occupant of a Tract agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him or her to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

B. Tracts and Easements

1. The description of the Tracts herein set forth, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Tract 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.

C. Use and Activities

1. *Permitted Use.* A Tract may be used only for an approved Residence and approved Structures for use by a Single Family.

2. *Prohibited Activities.* Prohibited activities are—

a. any activity that is otherwise prohibited by the Dedicatory Instruments;

b. any illegal activity;

c. any nuisance, noxious, or offensive activity;

d. any dumping of rubbish;

e. any storage of—

i. building materials except during the construction or renovation of a Residence or a Structure;

ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or

iii. unsightly objects unless completely shielded by a Structure;

f. any exploration for or extraction of minerals;

g. any commercial or professional activity except reasonable home office use;

h. the renting of a portion of a Residence or Structure;

i. the drying of clothes in a manner that is visible from any street;

j. the display of any sign except—

i. one not more than five square feet, advertising the Tract for sale or rent or advertising a garage or yard sale; and

ii. political signage not prohibited by law or the Dedicatory Instruments;

k. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Tract;

l. moving a previously constructed house onto a Tract;

m. interfering with a drainage pattern without ACC approval;

n. hunting and shooting except as authorized by the Board for animal and wildlife control and no rifle shooting for sport or practice (range) with the exception of predators and permit deer hunting with archery equipment which are approved;

o. metal buildings are approved as long as Board approves color and location; and

p. occupying a Structure that does not comply with the construction standards of a Residence.

D. Construction and Maintenance Standards

1. *Tracts*

a. *Consolidation of Tracts.* An Owner of adjoining Tracts, with ACC approval, may consolidate those Tracts into one site for the construction of a Residence.

b. *Subdivision Prohibited.* No Tract may be further subdivided if such subdivision would result in any Tract being less than 25 acres.

c. *Easements.* No easement in a Tract may be granted without ACC approval.

d. *Maintenance.* Each Owner must keep the Tract, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

2. *Residences and Structures*

a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.

b. *Maximum Height.* The maximum height of a Residence shall be

determined by ACC taking into consideration the height of existing structures in the Subdivision.

c. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must be at least 3,000 square feet.

d. *Location on Tract.* Any Residence or Structure may not be located within the setback area of 200 feet from front boundary line of a Tract and may not be located within the setback area of 75 feet from side boundary line of a Tract. Each Residence must face the front Tract line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.

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

f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within 120 days (or within a period approved by the Board) and the Tract 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 60 days and the Tract restored to a clean and attractive condition.

3. *Building Materials for Residences and Structures*

a. *Roofs.* Only tile or metal roofs may be used on Residences and Structures, unless otherwise approved the Board. All roof stacks must be painted to match the roof color;

b. *Air Conditioning.* Window or wall-type air conditioners may not be used in a Residence;

c. *Exterior Walls.* All Residences must have a least 50% of their exterior walls, including exposed foundation, of stone or brick, minus windows and doors, unless otherwise approved by the Board; provided that metal building may be used (but not as primary Residence) if approved by the Board as to color and location;

d. *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 Board;

e. *Driveways.* All driveways must be surfaced , unless otherwise approved by the Board. Driveways may be surfaced with chip seal, hot mix or concrete ;

f. *Tract Identification.* Tract address numbers and name identification must be aesthetically compatible with the Subdivision;

Notwithstanding anything contained herein to the contrary, all uses of the Property in effect on March 18, 2018 which may violate these covenants are grandfathered, may continue and shall not be restricted by these covenants, including any repair, restoration, modification, addition, improvement and/or renovation of or related to any such use.

E. Property Owners Association

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Tract. The Property Owners Association has one (1) class of voting Member and all Owners have one vote per Tract. When more than one person is an Owner, each is a Member, but only one vote may be cast for a Tract.

F. ACC

1. *Establishment*

   a. *Purpose.* The ACC function is to be by the Board of the Property Owners Association (no separate committee) in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.

   b. *Standards.* The Board may adopt standards that do not conflict with the other Dedicatory Instruments to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.

2. *Plan Review*

   a. *Required Review by ACC.* No Residence or Structure may be erected on any Tract, or the exterior altered, unless plans, specifications, and any other documents requested by the Board have been submitted to and approved by the Board. 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 Board may require.

   b. *Procedures*

i. *Complete Submission.* Within 30 days after the submission of plans and specifications by an Owner, the Board must notify the submitting Owner of any other documents or information required. In the absence of timely notice from the Board requesting additional documents or other information, the submission is deemed complete.

ii. *Deemed Approval.* If the Board fails to give notice of disapproval of the plans and specifications to the submitting Owner within 60 days after complete submission, the submitted plans and specifications are deemed approved.

c. *Records.* The Board will maintain ACC written records of all requests submitted to it and of all actions taken. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

d. *No Liability.* The Property Owners Association, the Board, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

G. Assessments

1. *Authority.* The Property Owners Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners Association, and to improve and maintain the Common Areas.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Tract, which lien is reserved by the Declarant and hereby assigned to the Property Owners Association. By ownership of, and by acceptance of a deed to, a Tract, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.

4. *Commencement.* A Tract becomes subject to Assessments on conveyance of the Tract by Declarant.

5. *Regular Assessments*

a. *Rate.* Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment is $2,000.00 per Tract.

b. *Changes to Regular Assessments.* Regular Assessments may be changed

annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.

c. *Collections.* Regular Assessments will be collected annually in advance, payable on the first day of the year and on the same day of each succeeding year.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefiting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a Owner's vote of 67% of Tracts at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner against a Tract not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

10. *Delinquent Assessments.* Any Assessment not paid within 30 days after it is due is delinquent.

H. Remedial Rights

1. *Late Charges and Interest.* A late charge of 5% of the delinquent amount is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of 10% per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.

3. *Judicial Enforcement.* The Property Owners Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

4. *Remedy of Violations.* The Property Owners Association may levy a fine against an Owner for a violation of the Dedicatory Instruments.

5. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.

6. ***Damage to Property.*** **An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.**

I. General Provisions

1. *Term.* This Declaration runs with the land and is binding for a term of ten (10) years. Thereafter this Declaration automatically continues for successive terms of 10 years each, unless within 2 months before the end of a term at a meeting in accordance with the Bylaws by vote of Owners of 60% of Tracts elect not to extend the term. An instrument reflecting the extension will be signed by the Property Owners Association and recorded.

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.

3. *Corrections.* The Board 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.

4. *Amendment.* This Declaration may be amended at any time by vote of 67% of Owners of the Tracts. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.

6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

(See Signatures on the following pages)