

**FIRST AMENDMENT TO
AMENDED SWINNEY SWITCH SHORES, LP
USE AND ARCHITECTURAL RESTRICTIONS**

SWINNEY SWITCH SHORES

THE STATE OF TEXAS §

COUNTY OF LIVE OAK §

SWINNEY SWITCH SHORES, LP (the “Developer”), being the owner of more than one hundred percent (100%) of the lots in Swinney Switch Shores, a subdivision in Live Oak County, Texas (the Subdivision”), makes and publishes this First Amendment to Amended Swinney Switch Shores, LP Use and Architectural Restrictions applicable to any and all lots, lots or blocks contained in the following property:

Swinney Switch Shores a subdivision in Live Oak County, Texas, according to the map or plat thereof recorded in Volume 3, Page 130, Map Records of Live Oak County, Texas.

These restrictions and limitations shall apply to and become a part of all conlots of sale, deeds and other legal instruments whereby title or possession is divested out of the Developer and vested in other persons. These restrictions and limitations shall run with the land and extend to and include the heirs, assigns, devisees, lessees, and holders of every kind and any and all who may own, purchase and acquire any real property in Swinney Switch Shores from the Developer, his heirs, legal representatives and assigns.

APPROVAL BY ARCHITECTURAL CONTROL COMMITTEE

A. No building or any other structure or improvement shall be erected, placed, or altered on any lot until the construction plans and specifications and plan showing the exact location of the structure on the lot have been approved by the Architectural Control Committee (the “Committee”). The initial Committee shall be Jean Marie Giegerich until the responsibilities of the Committee are assumed by the Board of Directors of the Association as provided below. Review of the Committee shall also consider quality of workmanship and materials, harmony of external design with existing structures, and location with respect to topography and finished grade elevation. Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of such plans and specifications will be retained by the Committee and the other complete set will be marked “Approved” and returned to the owner or builder. Any modifications or changes to the approved set of plans and specifications must again be submitted to the Committee for its review and approval. The Committee’s approval or disapproval as required by these covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after submission, then approval shall be presumed. If approval is obtained, such approval shall be in effect for one year, and if

within one year construction has not begun, then a re-submission for approval must be made prior to commencement of construction.

B. The Committee shall have the right and authority to waive, modify, alter, change or approve any covenant, term, condition or restriction where, in the opinion of the Committee, such change is necessary or required for the advantage and best appearance of Swinney Switch Shores, in the following situations: (a) change all restrictions in conflict where one lot and all or a portion of other contiguous lots are being used together for the purpose of building a single-family dwelling, or (b) modify these restrictions in the case of lots which are unusual in size, or which are of unusual or irregular shape, where such change is deemed for the advantage or best appearance of Swinney Switch Shores.

C. No building shall be located on any lot nearer to the front lot line or nearer to the side lot line than the minimum building setback as shown on the plat, but in no event shall any building be located nearer than 15 feet from any lot line. No main building may be located farther away from the front lot line than the Committee reasonably determines to be in harmony with existing buildings in the immediate vicinity.

D. The exterior walls of all outbuildings must have finishes on the exterior that harmonize or are otherwise consistent with the exterior finish of the main dwelling on the lot.

FENCES OR WALLS

A. All fences and walls facing the roadway shall be constructed of new wood, masonry or similar materials and shall be no higher than seven (7) feet.

HOMEOWNERS ASSOCIATION

A. Association. The Swinney Switch Shores Homeowners Association is hereby established and may be organized as a nonprofit corporation under the Texas Non-Profit Corporation Act. The Association is charged with the duties and invested with the powers prescribed by law and set forth in these Restrictions and as may be set forth further in the Association's Articles of Incorporation and Bylaws.

B. Membership. Membership in the Association is automatically granted to the Owners of each lot. On the transfer of title to any lot, the membership of the transferor automatically ceases and each new Owner becomes a member.

C. Voting Rights. The Owner of each lot is entitled to one vote per lot. If a lot has more than one Owner, the aggregate vote of the Owners of the lot shall equal one vote per lot.

D. General Powers and Authority. The Association shall have all of the powers allowed by the Texas Property Code, as well as any other powers of a nonprofit corporation established under Texas law, subject only to the limitations contained in these Restrictions. The Association may perform all acts that may be necessary for, or incidental to, the performance of

the obligations and duties imposed on it by these Restrictions. The powers of the Association shall include, but are not limited to, the following:

(1) The power to establish, fix, and levy assessments against Owners in accordance with the procedures and subject to the limitations set forth in these Restrictions.

(2) The power to adopt reasonable operating rules governing the use of the facilities owned by the Association.

(3) The right to institute and maintain actions for damages or to restrain any actual or threatened breach of any of the provisions of these Restrictions in its own name, either on its own behalf or on behalf of any Owner.

(4) The power to delegate its authority, duties, and responsibilities to such committees, officers, or employees.

E. Duties of the Association. The Association shall be responsible for the maintenance and repair of the private roadway and any other improvements as the Association shall determine are necessary and proper.

F. Architectural Control Committee. The Board of Directors of the Association shall serve as the Architectural Control Committee as provided in these Restrictions.

ASSESSMENTS

A. Covenant to Pay. Each Owner by acceptance of the deed to such Owner's lot is deemed to covenant and agree to pay to the Association the regular and special assessments levied pursuant to the provisions of these Restrictions. All moneys collected shall be put into a maintenance fund to be used to defray expenses attributable to the ownership, operation, and maintenance of private roadway and improvements by the Association.

B. Regular Assessments. The initial regular assessment for maintenance of the private roadway shall be \$250.00 per year. Each Owner is obligated to pay any such regular assessments to the Association on or before the due date as set by written notice of the assessment to the Owner. The Board of Directors of the Association may increase the amount of the regular assessment as needed in order to defray the expenses of such maintenance and repair upon notice to the Owners at least thirty (30) days in advance of any such increase.

C. Special Assessments. If the Board of Directors of the Association determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year because of the cost of any unexpected repairs, it shall make a special assessment for the additional amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments.

D. Liability for Assessments. Any portion of a regular assessment and each special assessment shall be a separate, distinct, and personal debt and obligation of the Owner against

whom the assessments are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent.

E. Payment of Assessments on Conveyance of Lot. On the sale or conveyance of a lot, all unpaid assessments against an Owner shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

(1) Assessments, liens, and charges in favor of the State of Texas and any political subdivision of the State of Texas for taxes past due and unpaid on the lot; and

(2) Amounts due under mortgage instruments duly recorded.

F. Lien and Foreclosure for Delinquent Assessments. The Association shall have a lien on each lot for any delinquent assessments attributable to that lot. The Association is authorized to enforce the lien through any available remedy, including non judicial foreclosure pursuant to Texas Property Code Section 51.002. The Owners expressly grant to the Association a power of sale in connection with and in enforcement of the Association's lien. The priority and the Association's foreclosure of the lien shall be as follows:

(1) The Association's lien for assessments is created by recordation of these Restrictions which shall constitute record notice and perfection of the lien. No other recordation of a lien or notice of lien is required.

(2) By written resolution, the Association may appoint, from time to time, an officer, agent, trustee, or attorney for the Association to exercise the power of sale on behalf of the Association. The power of sale and foreclosure of the Association's lien shall be exercised as provided by Section 51.002 of the Texas Property Code.

(3) The Association's lien shall be prior to other liens, except that such liens shall be subordinate, secondary, and inferior to (a) all valid liens for taxes or special assessments levied by the city, county and the state, or any political subdivision or special district thereof, and (b) valid liens securing amounts due or to become due under any purchase money vendor's lien and/or deed of trust filed for record. No such foreclosure shall affect or impair any such prior liens.

(4) The Association shall have power to bid in the Lot foreclosed on at the foreclosure sale; and to acquire, hold, lease, mortgage and convey the same on behalf of the Association. The purchaser acquiring title to such Lot at such foreclosure sale, whoever he may be, and his successors and assigns, shall not be liable for the share of the unpaid common expenses or assessments remaining unpaid after the application thereto of the proceeds of the foreclosure sale, such common expenses or assessments shall be deemed to be common expenses collectible from all of the Lot Owners, including purchaser or acquirer, his heirs, successors and assigns, on a pro-rata basis.

G. Termination of Assessments. After the Developer has conveyed all of the lots to third parties, the Association may, by a two-thirds vote, convey all of its interests in property and

