

21

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR THE TIMBERS**

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

This Declaration is made on the date hereinafter set forth by Oaks Subdivision, LLC, a Texas limited liability company, duly authorized to do business in the State of Texas, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of that certain approximately 128.24 acres, more or less, acre, more or less, tract of land known as The Timbers, being a subdivision situated in Wilson County, Texas according to the plat ("Plat") thereof, recorded in the office of the County Clerk of Wilson County, Texas, after having been approved as provided by law, and being recorded in Document Number 98637, Volume 12, Page 82, in the records of the Deed and Plat Records of Wilson County Texas (hereinafter referred to as the "Property", "Properties" or the "Subdivision"); and,

WHEREAS, it is the desire of Developer to create a master planned community, and as part of doing so to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to ensure the preservation of such uniform plan for the benefit of both the present and future owners of Lots in said Subdivision.

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon the Property these Restrictions, and declares the following reservations, easements, restrictions, covenants, and conditions applicable thereto, for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1.01 "Approved Contractor" shall be a contractor approved to participate in construction or alteration of improvements as set forth in Article V, Section 5.02 below.

Section 1.02 "Association" shall mean The Timbers of La Vernia Homeowners Association, the mandatory association of Owners of Lots within the Property, established pursuant to Article III below.

Section 1.03 "ACC" shall mean and refer to the Architectural Control Committee of the Association, as defined more fully in Article V below.

Section 1.04 "Builders" shall mean and refer to persons or entities that purchase Lots and build custom homes thereon for third party purchasers.

Section 1.05 "Common Areas" and "Common Facilities" shall mean and refer to all property leased, owned, or maintained by the Association for the use and benefit of the Members of the Association. Common Facilities may include but are not necessarily limited to the storm water detention pond shown on the Plat.

Section 1.06 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot in the Subdivision.

Section 1.07 "Developer" shall mean Oaks Subdivision, LLC, as well as any other person or entity who is a successor to Oaks Subdivision, LLC, or who shall have had their rights or duties as Developer assigned to them.

Section 1.08 "Lot" shall mean and refer to any plot of land identified as a Lot or home site on the plat of the Subdivision, except for any Common Area.

Section 1.09 "Member" shall mean and refer to a person who is a member of the Association.

Section 1.10 "Owner" shall mean and refer to the record owner (which shall include any purchaser under contract with the Texas Veterans Land Board) whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including (i) contract sellers, but excluding those having such interest merely as security for the performance of an obligation and those who have only an interest in the mineral estate, (ii) Developer (except as otherwise provided herein,) and (iii) Builders.

Section 1.11 "Property", "Properties" and/or "Subdivision" shall mean and refer to The Timbers, as shown by the plat thereof recorded in the Plat Records of Wilson County, Texas, subject to the Reservations set forth herein and /or in the Subdivision Plats, and any additional properties made subject to the terms hereof, pursuant to the provisions set forth herein.

## ARTICLE II RESERVATIONS, EXCEPTIONS, DEDICATIONS AND ADDITIONS

Section 2.01 Plat of the Property. The plat ("Plat") of the Subdivision dedicates to the Public for use as such, subject to the limitations as set forth therein, the sewer system, water system, and easements shown thereon. The Plat further establishes certain reservations, exceptions and dedications applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, and/or any replat or amendments of the Plat of the Subdivision recorded or hereafter recorded, shall be construed as being included in each contract, deed, or conveyance executed or to be

executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

**Section 2.02 Easements.** Developer reserves the non-exclusive right to use the utility easements and right-of-ways shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Official Public Records of Real Property of Wilson County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of water, electric lighting, electric power, telephone line or lines, sanitary sewer, storm surface or underground drainage, cable television, Internet or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Property. Should any utility company furnishing a service covered by the general easements herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Nothing contained herein shall impose any obligation on Developer to contract to maintain any utilities. Neither Developer nor any utility company, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

**Section 2.03 Title Subject to Easements.** It is expressly agreed and understood that the title conveyed by Developer to any of the Lots by contract for deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water system, electric lighting, electric power, telegraph or telephone purposes, sanitary sewer, and other easements previously granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot.

**Section 2.04 Utility Easements.** Utility easements have been dedicated in accordance with the Plat. No 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 purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such utility easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each tract subject to said utility easements shall be responsible for (i) obtaining prior approval, if required, from each easement holder, (ii) any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such utility easements, and (iii) repairing any damage to said improvements caused by a utility district or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located

within the utility easements. In the event that a single owner shall own two or more adjacent Lots used as a single building site, then the utility easement along the interior and common Lot lines shall be considered vacated so long as no utilities have been previously installed therein and provided each utility company claiming rights to said easement releases such rights in writing. However, in the event that one such Lot shall thereafter be conveyed to any third party, the interior Utility easements along such interior and common Lot line shall again burden both such Lots.

**Section 2.05 General Drainage Easements.** Drainage easements are defined on the Plat. The drainage easements were determined by a drainage study prepared by a Registered Professional Engineer and sufficient studies were made to ensure that the 100-year flood plains, the extensions thereof, and areas of shallow flooding are contained within the easements and setback lines shown on the Plat. Owners are responsible for maintenance of drainage easements on their Lots and may not utilize these easements for any purpose detrimental to their intended use. No fence of any type may be installed in or across any drainage easement without first obtaining written approval from the ACC. Any drainage easement, drainage structure, drainage pattern and/or earthen tank embankment established on the Property cannot be altered or blocked in any manner whatsoever. The Plat grants Wilson County the right of access to all drainage easements.

**Section 2.06 Maintenance Easements.** Developer hereby reserves a five-foot easement along the boundary of each Lot abutting any other Lot, for the benefit of the adjacent Lot Owner, to enable to maintain, inspect, repair, and replace their landscaping and improvements.

### ARTICLE III ASSOCIATION MEMBERSHIP

Each Owner shall automatically be a member of an association of owners of land within the Subdivision so long as they are an Owner. Membership in the Association is a mandatory requirement incident to ownership of a Lot. No Owner may exempt themselves from membership in the Association. There shall be one vote per Lot.

### ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREA AND COMMON FACILITIES

**Section 4.01 Members' Easements of Enjoyment.** Subject to the provisions of Section 4.03 of this Article IV, every Member shall have a common right and easement of enjoyment in and to the Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

**Section 4.02 Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The rights and easements existing or hereafter created in favor of others as provided for in the Subdivision Plat, recorded instruments on file in the Official Public Records of Real Property of Wilson County, Texas, and/or in Article II hereof.

- (b) The rights of the Association, once it has obtained legal title to the Common Facilities, to do the following:
- (1) to borrow money for the purpose of constructing or improving the Common Facilities and, in aid thereof, to mortgage said properties and facilities, in accordance with the terms hereof and of the Articles of Incorporation and Bylaws of the Association;
  - (2) to take such steps as are reasonably necessary to protect the above-described properties and facilities against foreclosure;
  - (3) to enter into one or more contracts or agreements for the maintenance or improvement of the Common Facilities;
  - (4) to suspend Common Area and Common Facilities usage rights, pursuant to Article IX below;
  - (5) to convey, transfer, encumber and grant easements to governmental entities, public agencies, and/or utility providers, upon such terms and conditions as may be approved by two-thirds of each Class of membership, voting in person or by proxy at a meeting duly called for such purpose; and,
  - (6) to establish and enforce rules and regulations for occupancy and use, including parking regulations and procedures for towing of vehicles parked in unauthorized locations.

**Section 4.03 Title to Common Areas.** The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Areas which may be established. From and after the date on which title to any Common Area vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering occurrences on the Common Areas. The policy limits shall be determined by the Board of Directors of the Association. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of members, Directors and the management company retained by the Association (if any), insuring each against liability to each other insured as well as third parties.

The Association shall not convey or mortgage any Common Area without the consent of two-thirds or more of the Lot Owners.

## ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

**Section 5.01 Creation and Composition of the ACC.** There is hereby created an Architectural Control Committee (hereinafter called the "ACC"), which shall be initially composed of Rachael Frisenhahn, Donna Gembler and Lawrence Gembler, to serve until their successors are named. A majority of the ACC may act for the ACC and no notice of any of its meetings shall be required. In the event a vacancy on the ACC shall arise, the remaining member or members of the ACC may fill such vacancy by appointment, and if they fail to do so within thirty days, then Developer may do so. In the event any vacancy on the ACC shall not be filled within sixty days, then the Board of Directors of the

Association may fill such vacancy by appointment provided, however, that in the event that Developer still owns any Lots subject to the jurisdiction and assessments of the Association, the Board shall first give Developer written notice of such vacancy and thirty days within which to make such appointment. Subject to the terms hereinafter set forth, Developer shall have the right to remove or add members to the ACC and fill vacancies in the committee membership and Developer may assign such rights to the Association. The sale of the last Lot owned by Developer within the Properties shall be deemed to be an assignment to the Board of Directors of the Association of Developer's powers with respect to ACC membership. The ACC shall be duly constituted and shall continue to function for the entire duration of this Declaration, including any extensions thereof. After the Developer sells their last Lot in the Subdivision no person may be appointed to or serve on the ACC if they are a current member of the Board of Directors, their spouse or a resident of their household. ACC members shall not be entitled to compensation for their services rendered in such capacity.

**Section 5.02 Approval Required.** No building, fence, wall, outbuilding, driveway, flatwork, swimming pool, structure, or regrading shall be erected, altered, added onto, placed or repaired on any lot in the Subdivision until the complete plans including site plans, floor plans, exterior elevations, any other plans or information deemed necessary by the ACC for the performance of its function ("Required Plans"), are submitted and approved in writing by the ACC as to the conformity and harmony of exterior design and the apparent conformity with the requirements of this Declaration. The ACC shall have the power to employ professional consultants to assist it in discharging its duties and may create and impose reasonable fees for processing of applications, including charges for reimbursing the ACC for expenses incurred in doing so.

Also, all contractors, general and subcontractors, must be designated in writing as an Approved Contractor by the ACC prior to and at all times during construction of improvements. Approval as an Approved Contractor may be revoked by the ACC if the Contractor violates any provision of this Declaration or any Design Guideline, or if they cause any damage to Common Area and do not promptly and diligently cause the damage to be fully and properly repaired.

**Section 5.03 Procedure for Review.** Within thirty days after the Owner has submitted to the ACC the Required Plans and written notice that the Owner desires to obtain ACC approval, the ACC shall notify Owner in writing whether the Required Plans are approved or disapproved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject the balance. In the event the plans submitted by the Owner have not been approved or disapproved within forty-five after being submitted, the plans so submitted will be deemed to have been approved but a deemed approval shall not permit a violation of any of the terms of this Declaration nor extend to any deviation from or alteration to the plans actually submitted nor to any matter requiring a written variance.

**Section 5.04 Design Guidelines and Scope of Discretion Granted.** The ACC is granted authority to adopt and amend Design Guidelines to supplement, interpret and further

define the restrictions on construction design, materials, locations, procedures, and methods, which shall be binding on all Owners to the same extent of this Declaration. The ACC shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or compatible of more than one interpretation. The goal of the ACC is to encourage the construction of dwellings and other improvements of good architectural design, quality and proper size compatible with Developer's conceptual plan for the subdivision. Dwellings and other improvements should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such materials, which, in the sole judgment of the ACC, create an attractive and harmonious blend with existing and proposed dwellings in the immediate area and the natural surroundings. The ACC may disapprove the construction or design of a dwelling or other improvement on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or values of the neighborhood and of other homeowners or to preserve the serenity and natural beauty of any surroundings.

Section 5.05 Variances. The ACC shall have the right, but not the obligation, to grant variances and waivers relative to deviations and infractions of the Declaration or to correct or avoid hardships to Owners. Upon submission of a written request for same, the ACC may, from time to time, in its sole discretion, permit an owner to construct, erect or install a dwelling or other improvement which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration. In any case, however, the dwelling or other improvement with such variances must, in the ACC's sole discretion, blend effectively with the general architectural style and design of the neighborhood and must not detrimentally affect the integrity of the subdivision or be incompatible with the natural surroundings. All requests for variances shall be in writing, shall be specifically indicated to be a request for variance, and shall indicate with specificity the particular standard sought to be varied and the nature of the variance requested. All requests for variances shall be deemed to be disapproved if the ACC has not expressly and in writing approved such request within forty-five days of the submission of such request. No member of the ACC shall be liable to any owner for any claims, causes of action or damages arising out of the grant of any variance to an owner. No individual member of the ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the ACC. Each request for a variance submitted hereunder shall be reviewed independently of similar requests and the grant of a variance to any other Owner shall not constitute a waiver of the ACC's right to deny a variance to another Owner.

Section 5.06 Remedies for Violations. In the event of construction of improvements or threatened construction of improvements in violation of this Declaration, any Owner, the Association, Developer or the ACC may seek to enjoin such construction or seek other relief against the Owner or builder responsible therefor, provided that each such offending party shall first be given written notice of the perceived violation and the opportunity to remedy the violation prior to the filing of suit. No notice shall be required if the enforcing party files suit seeking a temporary restraining order and/or a temporary injunction.

Section 5.07 Immunity. Members of the ACC and their representatives shall not be liable to any person subject to or possessing or claiming the benefits of these restrictive covenants for any damage or injury to property or for damage or loss arising out of their acts hereunder. The ACC's evaluation of Required Plans is solely to determine compliance with the terms of this Declaration and the aesthetics of the proposed improvements and the ACC disclaims any responsibility to determine compliance with any applicable building code or other standard for construction. Neither the Developer, the ACC, nor any member of the ACC shall be liable in damages, or otherwise, to anyone submitting plans and, specifications for approval or to any Owner who believes himself adversely affected by this Declaration by reason of mistake of judgment, negligence or misfeasance in connection with the approval or disapproval of plans or requests for variance.

## ARTICLE VI CONSTRUCTION REQUIREMENTS

Section 6.01 Dwellings. Only one single-family residential dwelling with a detached or attached side entry garage only may be constructed on any Lot. Two-story dwellings require 2,700 square feet, with 2,400 minimum square feet of living area. In addition, one guest dwelling may be constructed on any Lot, so long as such guest dwelling is attached to the primary residence by a common roof and appears to be part of the main dwelling, as determined by the ACC. The term "dwelling" does not include single-wide, double-wide or multi-section manufactured homes, pre-fabricated homes, modular homes, and homes are not permitted within the Subdivision. All dwellings and outbuildings must be constructed with new materials, except that used brick, stone, wooden beams, and doors may be used for antique effect if such use is appropriate for the structure and does not detract from the appearance of the structure or the Subdivision. All residential dwellings must be site built and constructed upon a monolithic full concrete slab foundation. More specifically, no concrete pier, beam or similar structure may be used as a foundation. As used herein, the term "single family residential dwelling" shall be construed to prohibit the use of Lots for duplex houses, multi-plex houses, condominiums, or apartments.

Section 6.02 Outbuildings. Outbuildings may be constructed, so long as they are set on a slab foundation, built on site, designed and constructed of materials so as to match the front of the dwelling, of good construction, kept in good repair, and not used for temporary or permanent residential purposes. All outbuildings must be approved in writing by the ACC.

Section 6.03 Garages. A garage capable of housing at least two vehicles shall be erected and maintained on each Lot beginning no later than the time at which a dwelling is constructed. Garages may be attached or detached from the dwelling, as approved by the ACC.

Section 6.04 Masonry. Each residential dwelling must have one hundred percent brick, rock or stucco masonry construction, or a combination thereof on all exterior walls.

Hardi cement board siding (for example, Hardi-Plank) may be used to fulfill any portion of the masonry requirement hereunder. The requirements of this Section may be modified or waived by the ACC.

**Section 6.05 Lot Lines/Setbacks.** No building of any kind shall be located on any Lot nearer than five feet to any side property line, nearer than fifteen feet to rear property lines. The ACC shall determine the setback requirements for corner lots and any other lot for which interpretation may be required. The Developer reserves the right for the Developer and/or the ACC to grant exceptions to the setback lines shown on the plat and upon filing notice of such exception for record in the Official Public Records of Real Property of Wilson County, Texas, the setbacks in such exception shall supersede and replace the setbacks established in the Subdivision plat. "Rear and side Lot lines", respectively, as used in this paragraph, in respect to any two or more contiguous whole Lots owned by the same owner and used as a single building site, shall mean, respectively, the outermost rear Lots and side Lot lines considering said contiguous whole Lots as one Lot; provided, however, that in the event that more than one Lot are owned jointly, and thereafter ownership is separated, the lines between the separated Lots shall be burdened by the setback lines described herein, as if they had never been treated jointly for setback purposes. The requirements of this Section shall be interpreted, and may be modified or waived, by the ACC.

**Section 6.06 Governmental Requirements.** No building, structure or improvement shall be placed, erected, modified or constructed on any Lot unless and until all applicable governmental requirements, including issuance of permits and/or licenses, have been met.

**Section 6.07 Duty to Complete Promptly.** Any building, structure or improvement commenced on any Lot shall be completed as to exterior finish and appearance within nine months from the date construction materials were first delivered to the Lot.

**Section 6.08 Swimming Pools.** In-ground swimming pools may be constructed with ACC approval. All necessary pumps, filters, and plumbing must be screened from public view by a building or fence meeting the requirements of these Restrictions. No above-ground pools are allowed.

**Section 6.09 Fences.** All fences must be constructed with new materials, and shall not be constructed or put in place unless and until approved in writing by the ACC. The design of the fence and materials used must, in the ACC's sole discretion, blend effectively with the general architectural style and design of the neighborhood and must not detrimentally affect the integrity of the subdivision or be incompatible with the natural surroundings. Barbed wire, hog wire, chain-link fencing, field fencing and other similar materials are not allowed. Wood fences are also not allowed. No fence shall be constructed across or within any dedicated drainage easement. Gates measuring at least fifteen feet wide shall be constructed as that part of any fence which crosses any utility easement, absent express ACC approval otherwise.

**Section 6.10 Driveways.** No driveway shall be constructed on any Lot until all required permits from the appropriate regulatory agencies have been obtained, and approval has

been obtained from the ACC. All driveways must be constructed of concrete and installed such that an impediment to the free flow of water in the drainage easements, setbacks, and street right-of-ways is not created. Where required for a Lot, driveway drainage culvert specifications have been determined by a Registered Professional Engineer and must be used when constructing such driveways. Where drainage culverts are not required for a Lot, the driveway must be installed such that the top of the concrete paving is level with the existing ground from the edge of street pavement to the edge of the right-of-way fronting the Lot.

**ARTICLE VII**  
**USE RESTRICTIONS**

Section 7.01 **Single Family Residential Use.** All Lots must be used for single family residential purposes only. No dwelling shall be occupied even on a temporary basis until water service and sanitary sewer are connected. The phrase “single family residential use” shall include occupancy by unrelated caretakers, companions and/or servants of the residents of the dwelling.

Section 7.02 **Use of Temporary Structures.** No structure of a temporary character, whether trailer, recreational vehicle, camper, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently. However, the Developer reserves the right to grant approval to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the Subdivision. This sentence shall take precedence over any conflicting provision of these Subdivision restrictions.

Section 7.03 **Prohibition of Offensive Activities.** Except as otherwise provided in this Declaration, operation of a business on a Lot will not be permitted. This Restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done therein which may be or become an annoyance or nuisance to the neighborhood.

Section 7.04 **No Further Subdividing.** No Lot shall be subdivided, used as the point of street access to any other Lot or adjacent properties, or dedicated for public use without the written consent of the Developer, its successors and assigns, which consent may be granted or withheld at the sole discretion of the Developer, its successors or assigns.

Section 7.05 **Harvesting of Natural Resources.** Lot Owners shall not excavate, remove or sell the soil, nor cut, sell or remove timber other than as necessary for the construction of residential and related improvements upon their Lot and as may be necessary for the reasonable use, upkeep and maintenance of their Lot. No drilling or excavation for minerals is allowed.

Section 7.06 **Storage, Gardens, Refuse, and Prohibited Items.** No Lot shall be used or maintained as a dumping ground for rubbish. No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the road. New building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, as long as the construction progresses without undue delay, until the completion of the improvements. No leaves, brush, timber, debris, or trash of any nature shall be placed, disposed of or burned on the road right-of-ways. No household trash or garbage may be burned anywhere in the Subdivision. There shall not be any dumping or placing unsightly objects of any kind on the Property.

**Section 7.07 Prohibited Vehicles.** No automobile, truck, or vehicle of any kind shall be stored or kept on any Lot on which construction of a residential dwelling has not commenced. No trailer, boat or recreational vehicle may be kept on any Lot unless kept behind privacy fence out of public view from the road. No abandoned, junked, unsightly, or inoperable automobile, truck, trailer, boat, recreational vehicle, or vehicle of any kind shall be stored or kept on any Lot, except in an enclosed structure which meets the requirement of these Restrictions. A vehicle shall be deemed "inoperable" if it does not have a current vehicle license registration required for use of said vehicle on public roads or waterways. Further, no vehicle repair work or dismantling shall be conducted on any portion of any Lot except in an enclosed garage or in facilities protected from the view of the public and other residents. No dump trucks, large commercial trucks (i.e., having a load-bearing capacity of greater than one and one-half ton), trailers designed for use with large commercial trucks, or heavy commercial equipment may be parked on or near any Lot except temporarily as needed for residential construction or maintenance of easements by easement holders to the Property. Recreational vehicles and boats, if commercially manufactured and not abandoned, junked, unsightly, or inoperable, may be parked, kept, or stored on Lots, if on concrete surfaces or in an enclosed structure which meets the requirements of these Restrictions. No other recreational vehicles or boats may be kept in the Subdivision unless behind a privacy fence on stored in building.

**Section 7.08 Statutory Architectural Restrictions.** All restrictions allowed under Chapter 202, Texas Property Code, pertaining to control over various structures and things, as they now exist and may hereafter from time to time be amended, are hereby adopted. As of the date of the adoption of this Amended and Restated Declaration those things include but are not limited to composting systems, rainwater harvesting systems, rain barrels, efficient irrigation systems, water-conserving natural turf, political signs, solar energy devices, flags and flag poles, roofing material, religious displays, swimming pool enclosures, security measures and generators.

**Section 7.09 Vehicle Parking.** Each Owner shall provide adequate concrete driveway space for parking of vehicles on his Lot. Vehicles may not be parked on any street, right of way or unpaved area of any Lot more than two days.

**Section 7.10 Sewage Treatment.** No outside toilet will be permitted except during construction as provided in Section 6.08 above. No sanitary sewage disposal system shall be installed on any Lot until a permit is issued by the regulatory authority having jurisdiction over same.

**Section 7.11 Signs.** Except as for political signs, which are governed by Section 7.08, and school signs for children's sports such as football, volleyball, etc., no signs, advertisements, billboards or advertising structure of any kind may be erected or maintained on any Lot except one professionally made sign not more than 18" x 24", advertising an Owner's Lot for sale or rent or during home construction. Developer shall have the right to remove any such sign, which is placed on any Lot in violation of these restrictions, and in doing so, shall not be liable, and is hereby expressly relieved from any liability, for trespass or other action in connection therewith, or arising from such

removal. Developer shall have the right to erect any size sign for the purpose of identifying and advertising property. Signs erected by Builders may be erected and maintained with ACC approval. Political signs are allowed subject to compliance with the restrictions allowed on them by Section 259.002, Texas Election Code.

Section 7.12 Animals. The following animals may be raised or kept on the property:

- a. common household pets, such as cats, dogs or birds;
- b. livestock animals raised for 4-H and FFA school supervised programs as long as used as a school project;
- c. horses and cattle, provided no more than one head per acre of area. Otherwise, no animals may be raised or maintained on any Tract. In no case shall any commercial feedlot operation be allowed, not the breeding and raising of animals as a commercial operation;
- d. no pigs or hogs may be raised, kept or bred, except for 4-H or FFA school supervised programs;
- e. dogs must be kept in fenced area or under leash;
- f. chickens are allowed behind privacy fencing and chicken pens must be closed in so chickens cannot roam outside the enclosed pen to prevent chickens from going on other property; and,
- g. roosters are not allowed.

Section 7.13 Drainage. Natural drainage shall not be altered, nor shall any drainage ditch, culvert, or drainage structure of any kind be installed or altered, nor shall any curb or other such impediment to the free flow of water be installed or altered, without prior written consent of the Developer, its successors heirs or assigns.

Section 7.14 Water Wells. A permit is required from Evergreen Underground Water District for a private water well. Site location for any water well must be such that any required sanitary easement is provided for and contained solely on this Tract, and must be screened from view by a privacy fence approved by the Architectural Control Committee.

Section 7.15 Hunting/Firearms. Hunting and/or discharging of firearms is expressly prohibited in the Subdivision.

Section 7.16 Home Office/Telecommuting. No business shall be conducted on any Lot; provided, however, that home offices and/or telecommuting shall not be prohibited. To be considered as a home office/telecommuting activity, the following applies: (a) The activity shall be at the residence of the person conducting the activity and it shall be entirely contained within the personal residence. (b) The activity is carried on only by the person(s) who reside(s) at that residence and specifically no outside employees. (c) The activity is incidental and secondary to the use of the property for residential purposes. The amount of space used for the activity shall not exceed 20% of the residential living area square footage. (d) The activity does not result in an objectionable noise, nor does it increase traffic volume or parking. (e) The activity does not include any window or outdoor displays and does not include any retail sales on the property. The residence where the activity is located shall not be used as a point for customer

visits, customer pick-up or customer deliveries. Outdoor storage of any items related to business activity is prohibited.

Section 7.17 Leases. No Owner may rent, lease or otherwise convey a temporary possessory interest to any Lot, or any improvement thereon, of less than twelve months. Each lease shall be in writing, be signed by all parties to it and shall require that the occupants of the Lot abide by these Restrictions. No lease for less than an entire Lot shall be valid. A true and correct copy of each and every lease agreement shall be provided by the Owner to the Association referenced in Article III herein. Each lease shall provide that failure of any tenant, their assigns and guests shall constitute an event of default under the lease. Before an Owner may let a tenant take possession of a Lot the Owner shall supply the Association with (1) contact information, including the name, mailing address, phone number, and e-mail address of each person who will reside on a Lot under a lease; and (2) the commencement date and term of the lease.

Section 7.18 Maintenance of Lots. Each Owner shall maintain their Lot in a neat and tidy manner. Lots shall be regularly mowed and other vegetation shall be pruned, manicured and otherwise not allowed to become overgrown, provided, however, that areas of Lots that are in the natural, unimproved and undisturbed state may be left as such provided that a threat to public health or safety is not created and that the areas are not, or do not become, unsightly; provided, however, that the vegetation on each Lot shall be mowed, trimmed and maintained from the edge of the street pavement to the area inside the Lot which is within the right-of-way. The Board of Directors of the Association shall be and is hereby granted the sole authority to determine compliance with the requirements of this Section.

Section 7.19 Maintenance of Improvements. Except for subdivision perimeter fencing, which shall be maintained by and at the expense of the Association, each structure and improvement located on each Lot shall be kept in a good state of maintenance and repair by the Owner of that Lot. Painted or stained objects shall be touched up as necessary to maintain an attractive appearance. No improvement, structure or other object located on any Lot, whether real or personal, shall be allowed to fall into or remain in disrepair or become unsightly. The Board of Directors of the Association shall be and is hereby granted the sole authority to determine compliance with the requirements of this Section.

## ARTICLE VIII ASSESSMENTS

Section 8.01 Creation of Lien and Personal Obligation of Assessments. Developer, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements or extraordinary expenses, and (3) initial capital contribution assessment, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual, special and the initial capital contribution assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on

the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time the obligation accrued.

**Section 8.02 Purpose of Assessments.** The assessments levied by the Association shall be used for the purpose of promoting recreation, health, safety and welfare of the Members, preserving or enforcing the rights and obligations of the Owners and the Association, or for the improvement, maintenance and operation of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the Members.

**Section 8.03 Basis and Maximum of Annual Assessments.** The annual assessments shall be determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made.

**Section 8.04 Special Assessments.** In addition to the annual assessments provided for in Section 8.03, the Association may levy, in any assessment year, a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Facilities, or to finance or defray the cost of any extraordinary expense of the Association, provided that any such assessment shall have the assent of two-thirds of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent at least thirty days in advance and shall set forth the purpose of the meeting.

**Section 8.05 Change in Basis and Maximum of Annual Assessments.** For all annual assessments accruing after January 1, 2022, the maximum annual assessment may be adjusted by majority vote of the Board of Directors but shall not be increased by more than ten percent above that of the previous year without a vote of the membership. Any increase in the maximum annual assessment of more than ten percent above that of the previous year shall require approval of two-thirds vote of each class of Members voting at a meeting duly called for that purpose.

**Section 8.06 Quorum for Any Action Authorized Under Sections 8.04 and 8.05.** The quorum required for any action by Members authorized by Sections 8.04 and 8.05 hereof shall be as follows:

At the first meeting called, as provided in Sections 8.04 and 8.05 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the requirements set forth in Sections 8.04 and 8.05, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than ninety days following the preceding meeting.

**Section 8.07 Date of Commencement of Annual Assessments: Due Date.** The annual assessments provided for herein shall commence as to all non-exempt Lots as the date this Declaration is recorded. The due date of any special assessment under Section 8.04 hereof shall be fixed in the resolution authorizing such assessment. If a Lot is exempt from an annual assessment as of January 1 of any year then it shall be exempt from the annual assessment for that entire year, and no annual assessment shall be pro-rated on such Lot if it becomes non-exempt during the year.

**Section 8.08 Duties of the Board of Directors.** In December of each year, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for the following year and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether said assessment has been paid or the balance due. Such certificate, when signed by an authorized officer or agent of the Association, shall be conclusive evidence of payment of any assessment herein stated to have been paid. The Association may charge a reasonable fee for issuing such a certificate.

**Section 8.09 Initial Capital Contribution Assessment.** In addition to the annual assessments provided for in Section 8.03 and the special assessments provided for in Section 8.04, there is hereby created an assessment in the amount of \$250.00, imposed uniformly against each Lot (referred to in these Restrictions as an "initial capital contribution assessment"). The initial capital contribution assessment is a one-time charge, payable immediately after each Lot is sold, transferred or conveyed by the Developer, to be paid at closing by the purchaser of each such Lot. The initial capital contribution assessment is intended to serve as mechanism to fund the start-up of the Association and provide it with financial reserves to assist the Association in meeting its obligations during development of the Properties. Once a Lot has been sold, transferred or conveyed by the Developer and the initial capital contribution assessment has been paid by the purchaser, there shall be no subsequent obligation for any Owner to pay such assessment on that Lot, even if a Lot is re-acquired by the Developer and later resold, it being Developer's intention that each Lot shall be subject to a single initial capital contribution assessment.

**Section 8.10 Effect of Non-Payment of Assessments: The Lien; Remedies of the Association.** If any assessment or other sum due the Association hereunder is not paid on the date when due, then such assessment or amount shall become delinquent and shall, together with such interest thereon and cost of collection thereof provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the assessment is not paid within fifteen days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent per annum, or the highest allowed by law, whichever is less, and the Association may bring an action at

law against the Owner to pay the same or to foreclose the Association's lien against the property, and there shall be added to the amount of such assessment all reasonable expenses of collection including the costs of preparing and filing the complaint, reasonable attorney's fees and costs of suit. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, with a power of sale in connection with said lien. The lien shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner shall be freed of liability for any assessments provided for herein by virtue of non-use of Common Areas, or non-existence of Common Area.

In addition to the foregoing charges for delinquent accounts, each owner shall be obligated to pay to the Association all actual costs of collection incurred by the Association and such reasonable late charges and collection charges as the Board of Directors may establish, all of which costs and charges shall also be subject to the liens of the Association.

Section 8.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the Lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 8.12 Exempt Property-Developer Owned Lots. Lots owned by Developer are exempt from all assessments while so owned.

Section 8.13 Exempt Property-Builder Owned Lots. Any Lot owned by a Builder is exempt from the annual assessment provided for in Section 8.03 and the special assessments provided for in Section 8.04 until such time the Builder no longer owns the Lot or until December 31<sup>st</sup> of the second calendar year following closing on the sale of the Lot from the Developer to the Builder, whichever occurs sooner.

Section 8.14 Exempt Property-Lender Foreclosed Lots. If a person or entity engaged in the business of residential real estate lending forecloses its security interest in a Lot, then such Lot shall be exempt from the annual assessment provided for in Section 8.03 and the special assessments provided for in Section 8.04 until such time as the lender no longer owns the Lot or until December 31<sup>st</sup> of the second calendar year following foreclosure on such Lot by the lender, whichever occurs sooner.

Section 8.15 Consolidation of Lots. Notwithstanding anything in the Declaration to the contrary, when an Owner of more than one Lot desires to consolidate such Lots for the purposes of creating a single home site, they may, with prior written approval of the

Developer or the Board of Directors of the Association, construct improvements across the common Lot line(s). Provided that all easement holders vacate their easement with a recordable release, and the approved improvements for the consolidated Lots have been constructed, thereafter the Lots so consolidated shall be treated as one Lot for purposes of assessments.

ARTICLE IX  
ENFORCEMENT

In addition to the remedies for enforcement provided for elsewhere in this Declaration or by law, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or of any guidelines, rules, or regulations herein referenced or permitted, by any Owner, his family, guests, lessees or licensees shall authorize the Association (in the case of all of the following remedies) or any Owner [in the case of the remedies provided in (c) below], to avail itself of any one or more of the following remedies:

- (a) The suspension by the Association of rights to use any Association property for a period not to exceed thirty days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy;
- (b) The right of the Association to enter the Lot to cure or abate such violation through self help and to charge the expense thereof, if any, to such Owner, plus attorney's fees incurred by the Association with respect to the exercise of such remedy; or
- (c) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs.
- (d) The imposition by the Association of a special charge not to exceed One Hundred Dollars (\$100.00) per violation; provided that the aggregate amount of fines imposed for a single violation may not exceed one year's assessment.

In the case of a violation that can be cured, before the Association may invoke the remedies as set forth in Sections (a) and (d) above, it shall give written notice of such alleged violation to Owner and shall afford the Owner a hearing. If after the hearing, a violation is found to exist, the Association's right to proceed with the special charge and/or suspension of privileges shall be absolute. Each day a violation continues after notice thereof has been given Owner shall be deemed a separate violation. Failure of the Association or of any Owner to take any action upon any violation shall not be deemed a waiver of any right to take enforcement action thereafter or upon a subsequent violation. No Owner shall have the right to compel or require the institution of enforcement proceedings or the filing of suit by the Association.

All assessments, charges and costs imposed by the Association and unpaid when due shall bear interest at the rate of eighteen percent per annum, or the highest amount

allowed by law, whichever is less, from the date due until paid, said interest to be compounded monthly.

**ARTICLE X**  
**GENERAL PROVISIONS**

Section 10.01 Covenants Running with the Land. All of the restrictions, covenants, and easements, herein provided for and adopted apply to each and every Lot and shall be covenants running with the land. The owner of any Lot in the Subdivision, or any Unit thereof, shall have the right to either prevent a breach of any such Restriction or covenant, or enforce the performance thereof, by suit in law or equity, by way of injunction or damages, filed in any Court of competent jurisdiction. Nothing herein shall be construed as compelling the Developer to enforce any of these provisions, nor shall the failure of the Developer to enforce any of these provisions be deemed to be a waiver of the right of enforcement or prohibition. The Developer shall have no liability or responsibility at law or in equity on account of enforcement of, or on account of the failure to enforce these restrictions.

Section 10.02 Developer's Exemption. The Developer shall not be subject to these Restrictions, and no person, entity or owner shall be entitled to maintain a suit at law or in equity against the Developer for any alleged violations of these Restrictions by Developer. The Developer further expressly reserves the right to grant any waiver or variance from any of these Restrictions, and unilaterally amend same, however, Developer shall not have the authority to grant any waiver or amendment which has the effect of removing the limitation on the use of the property as single family residence dwellings.

Section 10.03 Partial Liability. Invalidation of any covenant or restriction shall not affect, in any way, the validity of all other covenants and restrictions, all of which shall remain in full force and effect. Acquiescence in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions.

Section 10.04 Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by the Owner of any Lot, and their respective legal representatives, heirs, successors and assigns, and, unless amended as provided herein, shall be effective for a term of twenty years from this date, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten years.

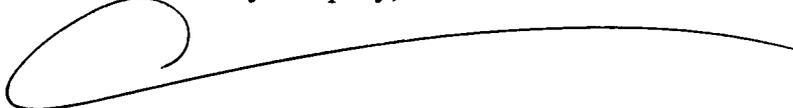
Section 10.05 Amendment. Subject to Section 10.02 paragraph hereto, the covenants, conditions and restrictions may be amended during the first twenty-year period upon the express consent of not less than two-thirds of the Lot Owners. No amendment shall be effective until recorded in the Official Public Records of Real Property of Wilson County, Texas, nor until the required approval of any governmental regulatory body shall have been obtained.

Section 10.06 Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

Section 10.07 Notice. Unless otherwise required by law, any notice required or permitted to be given to an Owner may be given by electronic mail message (i.e., e-mail), if possible.

EXECUTED this 4<sup>th</sup> day of April, 2022.

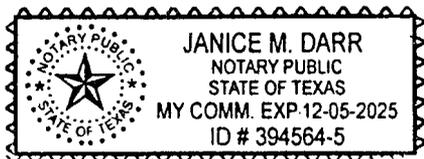
OAKS SUBDIVISION, LLC,  
a Texas limited liability company,

  
By: LAWRENCE W. FRIESENHAHN,  
Manager

  
By: LAWRENCE GEMBLER,  
Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF WILSON           §

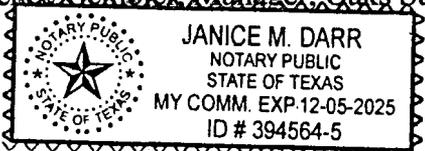
This instrument was acknowledged before on the date set for above me by Lawrence W. Frisenhahn, Jr., Manager, Oaks Subdivision, LLC, on behalf of said entity.



*Janice M. Darr*  
\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS           §  
  §  
COUNTY OF WILSON           §

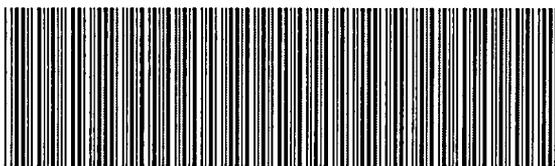
This instrument was acknowledged before me on the date set forth above by ~~Lawrence Gembler, Manager, Oaks Subdivision, LLC~~, on behalf of said entity.



*Janice M. Darr*  
\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**  
Tom L. Newton, Jr.  
ALLEN, STEIN & DURBIN, P.C.  
6243 IH-10 West, Suite 700  
San Antonio, TX 78201

6408 001/2243063



\*VG-1922-2022-119424\*

**Wilson County  
Eva S. Martinez  
Wilson County Clerk**

**Instrument Number: 119424**

Real Property Recordings

Recorded On: April 05, 2022 11:24 AM

Number of Pages: 22

**" Examined and Charged as Follows: "**

Total Recording: \$106.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 119424  
Receipt Number: 20220405000021  
Recorded Date/Time: April 05, 2022 11:24 AM  
User: Georgina L  
Station: cclerk01

**Record and Return To:**

THE OAKS LLC  
PO BOX 1076  
LA VERNIA TX 78121



STATE OF TEXAS  
Wilson County

I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Wilson County, Texas

*Eva S. Martinez*

Eva S. Martinez  
Wilson County Clerk  
Floresville, TX