

**FOURTH AMENDMENT AND FIRST RESTATEMENT OF DECLARATION OF  
RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS OF OAK CREEK**

STATE OF TEXAS )

) KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GUADALUPE )

WHEREAS, Oak Creek is a subdivision located in Guadalupe County, Texas, as shown by plat recorded in Volume 7, Pages 341-343 of the Plat and Map Records of Guadalupe County, Texas (the “**Property**”);

WHEREAS, the Declarant of Oak Creek established the Declaration of Covenants, Conditions, and Restrictions of Oak Creek, dated August 18, 2007, recorded in Volume 2521, Page 0058 of the Official Records of Guadalupe County, Texas for the property located in Oak Creek

WHEREAS, the Declarant of Oak Creek established Bylaws for the Oak Creek Property Owner’s Association on December 18, 2007

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of OAK CREEK recorded in Volume 2521, page 0058 of the Official Records of Guadalupe County Texas, Amendment to the Declaration of Covenants, Conditions and Restrictions of Oak Creek recorded in Volume 2603, Page 551 of the Official Records of Guadalupe County, Second Amendment to the Declaration of Covenants, Conditions, and Restrictions recorded in Volume 2745, Page 732 of the Official Records of Guadalupe County, Texas, Clarification of Second Amendment to Declaration of Covenants, Conditions and Restrictions recorded in Volume 2803, Page 365 of the Official Records of Guadalupe County, and Third Amendment to the Declaration of Covenants, Conditions, and Restrictions recorded in Volume 2848, page 904 of the Official Records of Guadalupe County (hereinafter referred to as the “**Restrictions**”) all provide in Article XVII, that said Restrictions may be modified, amended, or revoked by the owners of 80% or more of the Lots in Oak Creek by filing a written instrument in the Office of the County Clerk of Guadalupe County, Texas: and

WHEREAS pursuant to Article XVII of the Restrictions, the lot owners (the “**Members**”) constituting at least 80% of the lot owners in Oak Creek deem it to be in the best interests of Oak Creek and any future purchasers of lots in Oak Creek that there be maintained a uniform for the continued maintenance and improvement of Oak Creek Subdivision as a residential subdivision of the highest quality, hereafter set forth by their signature to adopt these Fourth Amended and First Restated Declaration of Covenants, Conditions, and Restrictions of Oak Creek.

NOW THEREFORE, the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations, and obligations (collectively the “**Fourth Amended and First Restated Declaration of Covenants, Conditions, and Restrictions of Oak Creek**” or “**Declaration**”), shall run with the Property, and shall be a burden and benefit to all the lot owners

thereof and their respective heirs, legal representatives, successors, and assigns, with the intent that the Original Declarations shall have no further force or effect except as subsequently restated herein, and shall be replaced by this Fourth Amended and First Restated Declaration of Covenants, Conditions, and Restrictions of Oak Creek:

## **I. DEFINITIONS**

The following terms when used in this Declaration shall have the following meanings unless the context prohibits:

1. “Architectural Control Committee” or “Committee” shall mean the Architectural Control Committee referred to in Article VI hereof.

2. “Association” shall mean Oak Creek Property Owners Association, Inc., a nonprofit corporation which is referred to herein, and its successor and assigns.

3. “Board” shall mean the Board of Directors of the Association.

4. “Bylaws” shall mean the Bylaws of the Association to be adopted by the Board, as the same are from time to time amended.

5. “Common Areas” shall mean that portion of the Property on which Declarant or the Association may hereafter construct an entrance, including private entry gate and landscaping, roads, or any other property, which Declarant may hereafter designate as “Common Area”. Such Common Area shall include all property owned by the Association for the common use and enjoyment of the Members of the Association, including but not limited to the real property, personal property, fixtures, and Improvements thereto and thereon. The Common Areas to be owned by the Association include: (i) Lot 49 as shown on the Plat, including paved and unpaved areas and the landscaped areas of the right of way for such street within the Subdivision. (ii) those areas of land and Improvements thereon deeded to the Association by Declarant, and (iii) Lot 48 of the Subdivision as shown on the Plat of the Subdivision.

6. “Declarant” shall mean OVERBROOK SEGUIN, LP, a Texas Limited Partnership, and any other party to whom it assigns in writing any of its rights hereunder.

7. “Dwelling” shall mean and refer to a single-family residence and its attached or detached garage situated upon a Lot.

8. “Improvements” shall mean and include all buildings, outbuildings, patios, balconies, decks, fences, walls, hedges, landscaping, antennae, towers, poles, ponds, lakes, swimming pools, driveways, parking areas, utilities, signs and other structures, apparatus,

improvements, recreational facilities, plantings or equipment of a permanent or semi-permanent character located on a Lot in OAK CREEK. Included are both original Improvements made to a Lot in OAK CREEK and all subsequent changes, additions, treatments or replacements thereto.

9. "Lot(s)" shall mean any lot, plot, parcel or tract of land shown and designated by number on the recorded subdivision plat of OAK CREEK.

10. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title, to the surface estate of a Lot situated in OAK CREEK (including contract sellers), but excluding those having such interest merely as security for the performance of an obligation.

## **II. PERMITTED LAND USE**

The Lots are designed for single family homes. All of the lots in OAK CREEK shall be for singlefamily residential purposes only. Improvements are to be constructed for single family residential use only. No professional, business, commercial, or industrial activity to which the general public is invited shall be conducted on any Lot. No structure shall be erected, placed, altered or permitted to remain on any Lot other than (i) one detached single-family dwelling with (ii) an attached, or detached, enclosed private car garage or storage building as provided in Article X, paragraph 4 below, or utility rooms. No garage, storage building or utility rooms shall be erected on any Lot unless erected after or coincidental with the building of the single family dwelling unit thereon and for use in connection therewith. No Dwelling previously constructed elsewhere may be moved on any Lot controlled by these covenants, without prior approval the Architectural Control Committee."

## **III. BUILDING REQUIREMENTS (INITIAL CONSTRUCTION)**

Prior to the beginning of construction on any Lot, the owner shall present to the Architectural Control Committee (as herein defined) the site plan and all other construction plans and specifications including such information and such specificity and detail as the Architectural Control Committee may require (including construction materials to be used) for said Committee's inspection and approval or disapproval. The plans and specifications must also include a landscaping and drainage plan, which must show the location and species of each plant, tree and shrub to be located on any Lot and contain plans for an underground sprinkler or irrigation system for watering all vegetation on a Lot, which must be approved by the Architectural Control Committee. Construction shall be done solely in accordance with the site plan and other plans and specifications as approved by the Architectural Control Committee. The owner or builder must, if requested by Declarant or Architectural Control Committee, place portable toilets and trash dumpster at a Lot on the day construction commences. In the event the plans for the Dwelling or the Dwelling fails to qualify for the Guadalupe Valley Electric Cooperative's all-electric rate, the owner shall become responsible for and shall pay to the Declarant, upon demand, a sum equal to any and all charges or costs incurred by Declarant from GVEC resulting from such failure multiplied by a factor of 1.1. Construction must be completed within twelve (12) months after construction has been commenced. No residence shall be occupied until 100% of the exterior of the house is complete and a certificate of occupancy is obtained. Additionally, within thirty (30)

days after occupancy, the underground sprinkler or irrigation system must be installed and the Lot must be landscaped, at a minimum, with (a) full sodded front and side yards (in front fences), and (b) two hardwood shade trees in the front yard on all Lots. The hardwood shade trees required by this Section shall be no smaller in size than 2 ½ or 3 inches caliper. Alternatively, the Lot may be landscaped using drought-resistant landscaping techniques or water-conserving turf, provided that such drought-resistant landscaping or turf be approved by the Architectural Control Committee in keeping with the aesthetic of the neighborhood as a whole, such approval to not be unreasonably withheld by the Architectural Control Committee.

#### **IV. SUBDIVISION OR COMBINATION OF LOTS**

No further subdivision of a platted Lot in OAK CREEK shall be permitted. An Owner may, however, combine or integrate two adjoining lots into one Dwelling and Landscaped area or three (3) adjoining lots into two (2) Dwellings and landscaped areas at the time any of said lots are first improved, it being understood that no Lot can remain vacant and unimproved. When three (3) lots are combined into two Dwelling and landscaped areas, none of the two Dwelling and landscaped areas may be smaller than the smallest of the combined lots. Any Lot resulting from such consolidation shall bear and the owner thereof shall be responsible for all assessments theretofore applicable to the lots which are consolidated, and each such building site shall meet all lawful requirements of any applicable statute, ordinance or regulation. For the avoidance of doubt, any lot owner who consolidates or combines lots shall be responsible for the fees and assessments for each of the individual lots that have been combined or consolidated, even if the lots have been replatted as one singular lot.

#### **V. BUILDING REQUIREMENTS (RENOVATIONS)**

Prior to the beginning of any construction for a renovation, remodeling, or other such construction on a Lot, the owner shall present to the Architectural Control Committee the site plan and all other construction plans and specifications (including construction materials to be used) for said Committee's inspection and approval or disapproval. The construction or remodeling, renovation or other similar construction shall be done solely in accordance with the site plans and other plans and specifications as approved by the Architectural Control Committee. Construction must be completed within eight (8) months after the receipt of approval from the Architectural Control Committee unless the Architectural Control Committee shall extend the time for completion in writing.

#### **VI. ARCHITECTURAL CONTROL**

1. Declarant shall designate and appoint an Architectural Control Committee consisting of not less than three people. The Declarant and their appointees shall be the initial Architectural Control Committee. The Committee shall serve at the pleasure of the Declarant until such time as Declarant may terminate this right or transfer this right to another entity or transfer the right to appoint an Architectural Control Committee to the Association. In case the Declarant shall cease, in its sole discretion to serve as the Architectural Control Committee, the Architectural Control Committee shall consist of at least three (3) persons, who shall be appointed by and serve at the pleasure of

the Association. The Architectural Control Committee may designate a member of the Committee to act for it in any and all matters for any period of time. In the event of such designation, such member shall have full authority to act on behalf of the Architectural Control Committee.

2. In the event of the death or resignation of any member of the Committee, the remaining member(s) may act without filling the vacancy or shall have full authority to designate a successor or successors. In event all members of the Committee shall cease to serve, Declarant or, in the event of 100% of the lots in OAK CREEK have been sold, the Association as herein described, may appoint the needed successors to the Committee. Notwithstanding anything to the contrary herein, the Declarant and its appointees shall cease to serve on the Architectural Control Committee at such time as the Declarant has sold 100% of the lots in Oak Creek and the Association shall appoint the successors to the Committee, provided that the Declarant and its appointees may continue to serve if they are thereafter appointed in writing by the Association and elect to continue to serve in such capacity.

3. The goal of the Committee is to encourage the construction of buildings of architectural design, quality, and proper size compatible with Declarant's conceptual plan for OAK CREEK as such conceptual plan may evolve. Buildings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such material as will, in the judgment of the Committee, create an attractive and harmonious blend with existing and proposed homes and the natural surroundings. The Committee may disapprove the construction or design of a home on purely aesthetic grounds where, in its sole judgment, which judgment shall be final and not subject to review by any third party, such disapproval is required to protect the continuity of design or Declarant's conceptual plan for OAK CREEK as same may evolve. Prior judgments regarding matters of design or aesthetics shall not be deemed binding upon the Architectural Control Committee if the Committee feels in its sole discretion that repetition of such matters will have an adverse effect on OAK CREEK.

4. The process for appealing a decision by the Architectural Control Committee to reject construction or design of a home or improvement shall be as follows:

a. A decision by the architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision may be appealed to the board. A written notice of the denial must be provided to the owner by certified mail, hand delivery, or electronic delivery. The notice must:

- (i) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and
- (ii) inform the owner that the owner may request a hearing under Subsection (b) on or before the 30th day after the date the notice was mailed to the owner.

b. The board shall hold a hearing under this section not later than the 30th day

after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Only one hearing is required under this subsection.

c. During a hearing, the board or the designated representative of the property owners' association and the owner or the owner's designated representative will each be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner under Subsection (d).

d. The board or the owner may request a postponement. If requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties.

e. The property owners' association or the owner may make an audio recording of the meeting.

f. The board may affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority as consistent with the subdivision's declaration.

5. No building, fence, wall or other structure, including but not limited to houses, garages, greenhouses or other accessory building, shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing by the Architectural Control Committee as to the harmony of external design and location in relation to surrounding structures and natural surroundings and/or the Declarant's conceptual plan for OAK CREEK.

6. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, it shall be conclusively presumed that the Architectural Control Committee has disapproved the plans and specifications. The Architectural Control Committee shall have authority to grant variances in the restrictions as the Committee in its discretion, deems reasonable and appropriate. Such variances must be in writing. The granting of such variances shall in no event be considered or deemed to constitute a waiver or abandonment of the respective restriction and shall not prevent enforcement of the restriction for violations for which no variance has been granted.

7. Upon approval of final submittals, a Building Approval will be issued by the Architectural Control Committee and construction may begin. All such permits must be prominently displayed at the job site and covered with clear plastic to protect weathering.

8. Neither the Declarant, the Association, the Architectural Control Committee nor any of the members of such Committee or owners of the Declarant shall be liable for damages or otherwise

to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake or judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications. The Association shall hold harmless and indemnify the Architectural Control Committee and each of its members, the Declarant and each of its owners and officers, from and against any claim (including, without limitation, claims for money, damages or injunctive relief and any judgments awarded for same) that may be asserted against the Architectural Control Committee or any member thereof based in whole or part on the duties and responsibilities delegated to the Architectural Control Committee by this Declaration. **THIS INDEMNITY SHALL APPLY WHETHER OR NOT SUCH CLAIM IS BASED IN WHOLE OR PART ON A NEGLIGENT ACT OR OMISSION OF THE ARCHITECTURAL CONTROL COMMITTEE OR ANY OF ITS MEMBERS OR DECLARANT OR ANY OWNER OR OFFICER THEREOF.** This indemnity shall further apply to any costs or expenses including, without limitation, attorney's fees that the Architectural Control Committee or any of its members may incur relating to a matter indemnified against.

9. The Architectural Control Committee shall have the authority to charge a reasonable fee in order to review the plans and specifications required by these covenants or to defray the cost incurred by it in doing so. The plans and specifications will not be reviewed and no decision will be rendered by the Architectural Control Committee until the fee has been paid.

## **VII. DESIGN GUIDELINES**

1. Size of Dwellings. In no event shall any residence be erected on any Lot without heated living area of at least one thousand eight hundred (1,800) square feet, exclusive of porches, garages, or other appendages.

2. Building Lines. All buildings or other roofed structures shall be located on any Lot within the building set back lines shown on the Plat, or as noted thereon. However, if the Dwelling is to be located on more than one Lot, the side set back lines shown on the Plat shall not apply to the common Lot line.

3. Building Heights. No residential structure or any other Improvement shall exceed the applicable maximum height set forth in the applicable building code.

4. Building Materials. A minimum of eighty percent (80%) of the outer walls, exclusive of windows, of all residences and garages must be constructed of brick, rock or stucco. No more than eighteen (18) inches of slab not covered by exterior building material approved by the Architectural Control Committee shall be visible from any angle. The Architectural Control Committee shall have final approval of which portions of a building may be of some material other than brick, rock or stucco and what materials constitute brick, rock or stucco. For example, the Architectural Control Committee may (but shall not have to) require that any portion of a residence that is not brick, rock or stucco must be located on the side or rear of a residence. The builder shall include his proposal for exterior wall material to the Architectural Control Committee when he submits the proposed plans and specifications to the Committee for approval. Notwithstanding the

foregoing, the Architectural Control Committee is empowered to waive the requirement that 80% of the exterior walls, exclusive of windows, be brick, rock or stucco and may allow, in its sole discretion, the 80% requirement to be satisfied with some other masonry material, which may include HardiPlank, in the Committee's sole discretion. All foundations of Dwellings must be of concrete, unless waived by the Architectural Control Committee.

5. Roofs. Roof pitch shall be a minimum of 6 on 12. All roofs must be fire retardant and consist of a minimum 30-year dimensional composition shingles. All other types of roofing must be approved by the Architectural Control Committee.

6. All Electric Homes. Each residence located on a Lot must be an all-electric home and must use electricity rather than propane or natural gas for its heating, air-conditioning, hot water, and major appliances, except as allowed by the following sentence. Underground propane tanks, natural gas, and portable gas cylinders may be allowed in the back yard only and may not be visible from the street, provided that Lot owners will be responsible for paying any fee or charge to GVEC that results from such use.

7. Compliance with the Agreements with Guadalupe Valley Electric Cooperative, Inc.

a. Each residence must comply with the Declarant's agreements with Guadalupe Valley Electric Cooperative, Inc. (GVEC).

b. Each residence constructed on any Lot must qualify for GVEC's all-electric rate, which shall include, but not be limited to, adequate thermal insulation, electric range, properly sized electric central heat pump unit, and permanently installed 40 gallon or larger electric water heater. Each owner agrees to allow GVEC to install a load control switch on each residential water heater and central heat pump unit. Alternatively, Lot owners may install one or more propane or electric on-demand tankless water heaters, so long as such tankless water heaters are not visible from the street or in front of the residence.

c. Each residence must have installed at least a 200 ampere meter base and main disconnect switch assembly with raceway approved by GVEC from the bottom of the meter base to a point of approximately two (2) feet below the ground line to include a 90 degree ell. Grounding must be provided in accordance with the National Electric Code. The meter base and main disconnect switch assembly must be located on the side of each residence built nearest to the pad mounted transformer or secondary pedestal serving the structure, and further must be located as close to the front of the house as practical.

d. Each owner, by purchasing a Lot, consents to allow GVEC access to the meter location on a residence from the front yard of the residence with the meter location not being located within a fenced area.



## **VIII. FENCES, TREES, AND SHRUBS**

1. Plans for fencing must be submitted to the Architectural Control Committee for approval or disapproval, prior to the commencement of erection of any fence on a Lot. Wooden privacy fences are required along the exterior property line of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 20, 24, 25, 30, 31, 35, 36, 37, 39, and 40 (referred to in this paragraph as a "Perimeter Lot"). Each owner of a Perimeter Lot, other than Declarant must erect wooden fences on their exterior property line. Wooden fences and other solid fences will also be allowed in the back yard of Lots no closer to the front property line of a Lot than the front of the main Dwelling House on a Lot. The exterior property line is that property line of a Lot that does not adjoin any other property in the Subdivision. All wooden or other privacy fences must be built to standard specifications provided by the Architectural Control Committee and must be maintained good condition by the Owner of said Lot. If said perimeter property line fence is not maintained in good condition by the Owner of the Lot it is on, the Declarant or Association shall have the right to maintain and repair the fence and bill the Lot owner the cost of doing so. For this purpose, a 10 foot maintenance easement is reserved to the Declarant adjacent to each fence (so long as Declarant owns a Lot) and to the Association.

All fences on the interior of the subdivision must be approved by the Architectural Control Committee prior to erection. In granting or denying approval of a fence, the Committee shall be guided by the uniformity of the fence height with existing fences and architecture, the planned dwelling on the Lot and Declarant's concept of the Subdivision.

2. No shrub, tree, fence or wall that obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadway shall be constructed, planted or permitted to remain on any Lot corner within the triangular area formed by the edge of the pavement of such intersecting streets, or the extensions thereof, and of a line connecting this edge at points twenty-five (25) feet back from their intersection.

The same sight line limitation shall apply on any Lot within ten (10) feet of the intersection of a street pavement edge and the edge of a driveway. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six (6) feet above ground level.

## **IX. EASEMENTS**

1. Easements for the installation and maintenance of utilities, and drainage facilities are reserved as shown on the Plat and/or as provided by instruments now or to be hereafter recorded. The areas designated utility easements on the Plat may also be used as locations for cable television facilities. Within these easements, if any, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction or flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such easement shall be maintained continuously by the Owner of the Lot, except for those

Improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements, except as may be required by state, county or municipal statutes, ordinances, rules or regulations or by the Association or by custom and practice of such utility company. The Declarant and the Association shall have the right but not the obligation to maintain and keep clear of all obstructions all drainage easements and sight clearance easements shown on the Plat or otherwise placed on any Lot in OAK CREEK, including by this Declaration. Neither Declarant nor the Association shall be liable for any loss or damage to person or property by reason of any such drainage or sight clearance easement not being properly maintained or kept clear of obstructions.

2. No owner of any Lot may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such drainage easements. No owner may:

a. Alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements, provided, however, that Lot owners must plant grasses in any drainage easement that does not have existing grasses and must maintain and mow such easement grasses to encourage water flow and prevent erosion; or

b. Alter, change or modify the existing configuration of the drainage easements; or fill, excavate or terrace such easements or remove trees or other vegetation therefrom; or

c. Construct, erect install a fence or other structure of any type or nature within or upon such drainage easements; provided, however, fences may be permitted in the event proper openings are incorporated therein to accommodate the natural flow of water over said easements; or

d. Permit storage, either temporary or permanent, of any type upon or within such drainage easements; or

e. Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

The failure of any Owner to comply with the provisions of this Article or any other provision of this Declaration shall in no event be deemed or construed to impose liability of any nature on the Architectural Control Committee and/or Declarant and/or the Association, and such Committee, Declarant and/or Association shall not be charged with any affirmative duty to police, control or enforce such provisions. The drainage easements provided for in this Article shall in no way affect any other recorded easement in OAK CREEK.

3. All access to Lots shall be exclusively to and from the interior road system of OAK CREEK, such being designated as Lot 49 on the Plat. Declarant or the Association may erect a gate on Lot 49 near the entrance into Oak Creek to attempt to maintain privacy and control traffic into the subdivision. The Association may provide a code or other method to open the gate and provide the code or other procedure to open the gate to Members of the Association and others. The Association may adopt rules and regulations that provide for the gate to remain open and not closed during certain times of the day and closed at other times. Declarant and the Association do not represent that the gate will increase the safety and security of the Subdivision and are not responsible for the safety and security of the Lot Owners or occupants or their invitees and guests.

Declarant reserves for itself and its successors, assigns, and designees the non-exclusive right and easement, to enter upon any Common Area located within the Property to install, repair, and maintain the interior road ways constructed on Lot 49. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own property subject to this Declaration, or such earlier time as Declarant may decide, in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Lots abutting Lot 49 to the extent reasonably necessary to exercise their rights and responsibilities under this section.

4. Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Areas to the Association, free and clear of all monetary encumbrances and liens.

5. There is hereby created an easement upon, across, over, and under all of the easement areas affecting the Property for ingress and egress in connection with installing,

replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, gas, cable television, telephones, and electricity lines and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no electrical lines, water lines, or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Control Committee. The utility companies and other entities furnishing service shall have the right to remove all trees situated within the utility easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

6. Declarant reserves for itself and its successors, assigns, and designees the non exclusive right and easement, but not the obligation, to enter upon the ponds, streams, and wetlands, if any, located within the Property (including the Common Areas), (a) to install, keep, maintain and replace pumps in order to obtain water for the irrigation of any portion of the Common Areas, (b) to construct, maintain and repair any wall, dam or other structure retaining water therein, and (c) to remove trash and other debris and fulfill their maintenance responsibilities as provided in this Declaration. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own property subject to his Declaration, or such earlier time as Declarant may decide in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Lots abutting or containing any portion of any of the ponds, streams, or wetlands, if any, to the extent reasonably necessary to exercise their rights and responsibilities under this section.

7. Declarant reserves for itself, the Association, its successors, assigns and designees an access easement over and across any of the Lots in connection with installing, replacing, repairing, and maintaining any and all fences located on the perimeter line of the Subdivision. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own property subject to this Declaration, or such earlier time as Declarant may decide, in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Lots abutting or containing any portion of any such fences, to the extent reasonably necessary to exercise their rights and responsibilities under this section.

8. Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Control Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Control Committee.

9. Surface Areas. Each Owner shall maintain the surface area of all easements located within his Lot and all Improvements located therein, except for such Improvements for which a

public authority or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

10. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways, Common Area or any drainage, water, gas, sewer, storm sewer, electrical light, electrical power, telegraph or telephone way, or any pipes, lines, poles or conduits on or in any utility facility, or appurtenances thereto, constructed by or under Declarant or its agents, through, along or upon any Lot, or any part thereof, to serve said Lot or any other portion of the Property; and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency, or to any public service corporation or to any other party, is hereby expressly reserved in Declarant and to the Association after the Declarant no longer owns a Lot.

11. Owner's Easements of Enjoyment of Common Areas. Each Owner shall have an easement of use and enjoyment in and to all Common Areas which shall be appurtenant to and shall pass with title to such Owner's Lot, subject to the following provisions:

a. The right of the Association to suspend the Owner's voting rights and right to use the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association; provided that the Owner shall not be denied ingress and egress over Lot 49 to access their home on a Lot. No such suspension shall be effective unless written notice is given to the Owner by certified mail, return receipt requested describing the violation, in accordance with V.T.C.A., Property Code Section 209.006 and an opportunity to be heard in accordance with V.T.C.A., Property Code Section 209.006.

b. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association.

c. The right of the Association to make reasonable rules and regulations regarding the use of the Common Areas and any facilities thereon.

d. The right of the Association to contract for services with third parties on such terms as the Association may determine.

12. Neither Declarant nor the Architectural Control Committee nor the Association shall be responsible for or liable to any person for any act or omission of any utility service provider including, without limitation, electrical, water, garbage, telephone, cable television, etc.

## **X. GENERAL RESTRICTIONS**

1. Temporary Structures. No building previously constructed elsewhere including, but not limited to, manufactured housing or mobile homes shall be moved on any Lot in OAK CREEK. No manufactured housing, mobile home, recreational vehicle, camper, tent, shack, garage, basement, barn, or other out-building shall be used or maintained on any Lot, street or easement within OAK CREEK at any time, temporarily, or permanently as a residence. This provision shall also apply to storage containers during the construction phase of any residence within OAK CREEK.

2. Garages and Driveways. Each Dwelling constructed in OAK CREEK shall have a garage suitable for parking a minimum of two standard-sized automobiles and shall conform in design and materials with the main structure. All garages are subject to prior written approval of the Architectural Control Committee, which may be denied for any reason. Driveways shall be constructed of concrete or a similar material and shall be of a size and configuration to accommodate the parking of two standard size automobiles. Carports are not allowed.

The owner of each Lot is solely responsible for all expenses for building a driveway and for driveway drainage. Driveways shall be constructed of reinforced concrete not less than 12 feet wide and no less than 4 inches thick. No gravel driveways are permitted. If a driveway requires a culvert pipe, the pipe shall be of corrugated metal or concrete culvert pipe and will be installed with concrete with minimum 4 inch thick head walls on both sides of pipe.

3. Utilities Service Connections. Utility service connections to any and all area utility and telephone lines must be installed below ground from the structure being served to the utility line connection. Electrical utility line must be of single phase.

4. Storage Buildings. A storage building may be built unattached to the house. Storage buildings shall be no larger than 10 feet in width x 15 feet in length x 12 feet in total height and no nearer to the street than the rear building line of the Dwelling house located on the Lot. It must be built of the same type of material as the Dwelling house and comparable in quality. The Architectural Control Committee shall be given wide latitude in granting variances regarding the dimensions of and materials used for any storage building.

5. Mail Boxes. Provided the United States Postal Service will so allow, the U. S. Mail service shall be provided by mailboxes located on the common property lines of adjacent lots so that in general every other property line will have a mailbox. Each mailbox will consist of one mailbox structure with two mailboxes so that each adjacent Lot has its own mailbox. The Architectural Control Committee must approve the size, shape and color of each mailbox before it is placed on any Lot and may adopt a standard mailbox for the Subdivision. In the event that it is

impractical for certain lots to be served with a joint mailbox on a common property line, the Architectural Control Committee may grant a variance, subject to approval of the United States Postal Service. All Lot Owners agree to obey the rules and requirements of the United States Postal Service. The Lot Owners shall install their mailboxes at their expense and only at locations approved Architectural Control Committee and said mailbox must be installed prior to the residence on a lot being occupied. In the event that a mailbox is installed to service a Lot before Lot is conveyed to an Owner, the Owner shall be responsible for reimbursing to the person who installed the mailbox one-half of the cost incurred to pay and to install the mailbox.

6. Pets. No animals, livestock or poultry, rabbits, pigeons, hogs, pigs, swine, insects or reptiles of any kind shall be kept, bred or raised on any Lot, except dogs and cats or other household domestic pets of a reasonable number, provided that they are not kept, bred, or maintained for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on any portion of the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. All animals shall be kept in accordance with all local laws and ordinances, and all animals shall be restrained from going onto Lots other than those of the animal owner.

7. Supply Tanks And Earth Ponds. No portable water supply tank shall be operated or maintained on any Lot. No portable fuel tank or similar storage facility shall be installed, operated or maintained on any Lot without the prior approval of the Architectural Control Committee. All tanks shall be screened so as not to be visible from any other portion of the Property. No earth ponds shall be built. Swimming pools are permitted except that no above ground swimming pools shall be allowed. No swimming pool shall be built or installed except in the back yard of a Lot.

8. Water Wells. A water well may be drilled upon any building Lot, or any contiguous building Lot owned by the same owner. The water well shall be drilled by a reputable water well driller. The water well shall be located and drilled only to the rear of the residence on said Lot. Water well houses shall have same exterior material as the main Dwelling, constructed on the same Lot. All water wells must comply with all applicable governmental codes and regulations. The fact that water wells are allowed does not imply that there is in fact underground water beneath the Property. The restrictions as to location of water wells shall not apply to any water wells that may be drilled by Declarant or the Association on a Common Area.

9. Garbage And Refuse. No trash, garbage construction debris, or other refuse may be dumped or disposed of on a Lot, vacant or otherwise. No odors from a Lot so as to render the Lot or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants shall be permitted. Trash, garbage or other waste must be kept in normal acceptable covered, sanitary containers and such containers shall be kept within enclosed structures or appropriately screened from view. All other equipment for the storage or disposal of waste material shall be kept in a clean and sanitary condition.

10. Construction Debris. The builder shall, if requested by the Declarant, deposit the sum of \$500.00 with the Declarant to insure that the Lot and adjacent areas are properly cleaned of debris from the construction site during construction. If the Lot and adjacent areas are properly cleaned the deposit will be refunded to the builder following construction completion. If the Lot and adjacent areas are not properly cleaned of all debris, all or part of the deposit will be used to clean the Lot and the balance, if any, will be refunded to the builder. All construction materials must be removed within ninety (90) days of occupancy of a completed residence.

11. Signs. No signs or advertising device may be displayed on any Lot except for the following:

a. One "For Sale" sign, when a Lot and/or Dwelling is on the market to be sold or a Dwelling is under construction on a Lot. There may be only one For Sale sign per Lot with said sign being no more than six (6) square feet in size. Prior to completion of construction of a residence on a Lot, a builder may place no more than two temporary directional signs of no more than six (6) square feet in size, one being on a Lot owned by the builder and another on a Lot owned by the Declarant, with Declarant's prior written consent. Such signs on a Lot owned by the Declarant must be located in a location approved by Declarant or the Architectural Control Committee and must be removed when the Lot is sold by Declarant.

b. Political Signs. Lot owners may have political signs on or after the 90<sup>th</sup> day before the election to which the sign relates. No Lot may contain more than one political sign related to a particular candidate or measure and may not display the sign beyond ten days after the election date. Political signs may not contain roofing materials, siding, paving materials, flora, balloons, lights, or any other similar building or decorative components. Political signs must be ground mounted and may not be larger than four by six feet. No political sign may contain language or graphics that would be offensive to the ordinary person. The Association reserves the right to remove any sign displayed in violation of this section.

12. Antennae. No stand-alone television or radio tower shall be allowed on any Lot. Antennae on a roof shall be no higher than eight (8) feet above the contiguous roof ridge line and shall not be located on the front part of a Dwelling. Lot owners must use reasonable efforts to screen satellite dishes, solar panels, discs, etc. from view of adjacent lots or streets.

13. "Vehicles, Boats, Abandoned Vehicles Or Inoperative Vehicles, Etc. No abandoned vehicle, stripped-down vehicle, junked vehicle or wrecked vehicle may be located on any Lot. Any vehicle without a current license plate or inspection permit will be deemed a junked vehicle under these restrictions. Any vehicle without a current license plate and registration will be deemed abandoned. Trailers, boats, recreational vehicles, campers, truck campers, slide in truck campers and commercial vehicles must be placed on a Lot so as not to be visible from any street or Lot. No vehicle service or repair may be conducted on any Lot or property within OAK CREEK, including but not limited to, the streets and other access ways in OAK CREEK. No commercial vehicles greater than 1 ton, other than those on routine delivery or being used in temporary connection with the installation or repair of a residence are permitted to park in OAK CREEK. The Declarant and/or the Association, are empowered to establish additional or different rules and regulations relating



to the parking and storage of vehicles, equipment, and other property on Lots and streets as it may from time to time deem necessary and such rules and regulations shall, when promulgated, be in all respects binding on and enforceable against all Owners.

14. Nuisances. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done or material be stored or placed thereon, which may be or may become an annoyance or nuisance to the neighborhood, or which is prohibited by law. No exterior light of any sort shall be installed or maintained on any Lot where the light source is offensive or a nuisance to neighboring property, except reasonable voltage landscape lighting and street lights which may be installed by Declarant or the Association. No exterior speakers, horns, whistles, bells or other annoying devices are permitted, except for security for the main Dwelling house.

15. Firearms and Fireworks. The discharge of any firearm, including BB guns and pellet guns, and the discharge of any fireworks within OAK CREEK is strictly prohibited and each Owner shall ensure that his guests and family members do not violate such prohibition. Additionally, the use of any bow and arrow, slingshot, or other launching or catapulting device is strictly prohibited.

16. State, County or Other Governmental Laws. No owner shall allow or engage in any activity on any Lot which is in violation of any state, county or other governmental laws and regulations.

17. Street Lights. The Declarant shall install street lights in OAK CREEK. The electricity and maintenance costs for such lighting shall be paid for by the Association.

18. Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no open fires shall be lighted or permitted except within safe and well-designed interior or exterior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

19. Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon.

20. Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

21. Maintenance. Each Owner shall keep all shrubs, trees, grass, and all plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. All Improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot. Declarant, the Association, and the Architectural Control Committee shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed

necessary; to paint, repair, or otherwise maintain any Improvements in need thereof; and to charge the cost thereof to the Owner of the Lot as provided herein.

22. Doors and Windows. No aluminum foil, reflective film or similar treatment shall be placed on any windows or glass doors.

23. No Window Units. No window or wall type air conditioner that is visible from any street shall be permitted to be used, placed or maintained on or in any structure on any part of the Property.

24. Compliance with the Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and may result in fines to the Owner, or shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by an aggrieved Owner.

25. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions, shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless there from.

## **XI. CASUALTY**

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its original condition prior to such destruction. Reconstruction, if any, shall be undertaken within three (3) months after the damage occurs, and shall be completed within twelve (12) months after the damage occurs. In the event that the Owner shall determine not to rebuild or repair such damaged structure, the Owner shall clean the Lot within three (3) months of the loss. If the Owner does not clear or clean the Lot, the Declarant or the Association may cause the Lot to be cleared and cleaned, including removal and disposal of debris and materials. The cost of such clearing and cleaning may be assessed against the Owner in the same manner and with the same force and effect as the maintenance assessments prescribed in this Declaration.

## **XII. EXTERIOR MAINTENANCE**

All improvements and properties shall be kept and maintained in a neat and orderly appearance, to the degree necessary to be consistent with the intent and purpose of these restrictions as a whole and shall not be allowed or caused to deteriorate in appearance or structural soundness. If an Owner of any Lot fails to maintain the premises in a neat and orderly manner, including the mowing of the grasses on the Lot, the Declarants or the Association shall have the right, through its agents

and employees, to enter the Lot in order to repair, maintain, and restore the Lot, including landscaping, and the exterior of any buildings and other improvements located on the Lot, all at the expense of the Owner.

### **XIII. ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

1. Membership. Except as otherwise provided in this paragraph, every person or entity who is a record Owner of a fee or undivided fee interest in a Lot which is a part of the Property, and which is subject to this Declaration, shall hold a membership in the Association. The foregoing does not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation or those who own mineral rights in the property but do not own the surface rights of a Lot in OAK CREEK. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership.

2. Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two (2) preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

a. Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact such Association rules and Bylaws, as it deems proper, covering any and all aspects of its functions. The content of the Association rules and Bylaws may be established by the Board, provided the same are not in conflict with this Declaration.

b. Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.

c. Records. To keep books and records of the Association's affairs, and to make all such books and records available for inspection by any Owner upon request and at reasonable times and intervals.

d. Assessments. To levy assessments as provided in Article XIV below, in order to raise the total amount for which the levy in question being made.

e. Right of Entry and Enforcement. To enter at any time in an emergency or in the case of a non-emergency, after written notice, by certified mail return receipt requested, without being liable to any Owner, upon any Lot, excluding Dwellings thereon, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, or other facility, excluding Dwellings, to conform to the provisions herein. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article XIV hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the provisions herein. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors, or assigns.

f. Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

g. Conveyances. To grant and convey to any person the real property and/or other interest therein, including fee title, leasehold estates, easements, rights of-way or mortgages out of, in, on, over or under any Association property for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar public, quasi-public or private improvements or facilities.

h. Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any

omission or improper exercise by the Manager of any such duty, power or function so delegated.

i. Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for all Common Area; to maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, non-standard street signs, non-standard street lights, trails, detention ponds, retention ponds, lakes and other areas of the Property, as appropriate; and to own and operate any and all types of facilities for both active and passive recreation.

j. Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.

k. Construction on Association Property. To construct new Improvements or additions to Association properties, subject to the approval of the Architectural Control Committee as provided in this Declaration.

l. Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any park or Common Area or to provide any service or perform any function on behalf of Declarant or any person.

3. Indemnification. The Association shall indemnify any person who was, is or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Association against any claim (including, without limitation, claims for money, damages or injunctive relief and any judgments awarded for same) and expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, and (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such,

whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

4. Voting Rights. There shall be one class of membership entitled to voting rights in the Association and it shall be as follows:

a. Each Lot owned shall be entitled to one vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors. When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest, for that particular Lot, shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine by majority vote.

b. Good Standing Members. Only members in good standing shall be entitled to vote. Any Member shall not be in "good standing" if such person or entity is: (a) in violation of any term or provision of this Declaration, or any rule or regulation promulgated by the Board; or (b) is delinquent in the full, complete and timely payment of any annual assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of this Declaration, the Association's Bylaws or any rule or regulation promulgated by the Board. The Board may make such rules and regulations, consistent with the terms of the Declaration and its Bylaws, as it deems advisable for: any meeting of members; proof of membership in the Association; the status of good standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

#### **XIV. COVENANT FOR MAINTENANCE ASSESSMENTS AND EASEMENT**

1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot which shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be expressed in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

a. Annual or monthly assessments or charges;

b. Special assessments for capital improvements; and

c. Any other sum to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided and as provided in the Bylaws of the Association. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made as hereafter provided.

2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of paying the street light costs, maintaining any common areas, maintaining the streets and roads in Oak Creek and any improvements erected by the Declarant or the Association, paying for private garbage collection, if the Association enters into a contract for same, and carrying out other duties or obligations relating to OAK CREEK as provided herein and/or as may hereafter be undertaken by the Association.

3. Effect of Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien; and Remedies of Association.

a. Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment or charge shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the rate of 12% per annum or the highest rate of interest per annum allowed by applicable law, if less, and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner which shall bind such Lot in the hands of the Owner and the Owner's heirs, executors, administrator, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the Owner to pay such assessment, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided herein by non-use of the roads or abandonment of the Lot. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation

to pay such assessments being a separate and independent covenant on the part of each Owner;

b. The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment or charge;

c. If any assessment, charge or fine or part thereof is not paid within 10 days after it is due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent assessment, charge or fine shall bear interest from and after the date when due at the lesser of 12% per annum or the highest lawful rate of interest per annum until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorney's fees and other costs of collection incurred by the Association;

d. The Association may, at its discretion but subject to all applicable debt collection statutes: (i) prepare and file a lien affidavit in the public records of Guadalupe County, Texas, which specifically identifies the unpaid assessments, charges or fines; and (ii) publish and post, within one or more locations within Oak Creek, a list of those individuals or entities who are delinquent until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association;

e. All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit validly prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit, allowed by law, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest. If such excessive interest exceeds the unpaid balance



of the actual annual assessment hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

4. The lien described within the proceeding section is and shall be a contract Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within OAK CREEK, has granted, sold and conveyed and by these covenants does grant, sell and convey unto Declarant, its successors or assigns, as Trustee, such Owner's Lot. To have and to hold such Lot, together with the rights, privileges, and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.

This conveyance is made in trust to secure payment of each and all assessments and other obligations prescribed by this Declaration to and for the benefit of the Association as the beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, beneficiary may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code and any other provisions of the Texas Property Code that may apply), and in the event of default in the payment of said indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the trustee, or its successor or substitute as hereinafter provided, at the request of beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended (and any other provision of the Texas Property code that may apply), and otherwise complying with that statute, the trustee shall sell the Lot, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Lot as an entirety or in such parcels as the trustee acting may elect, and make due conveyance to the purchaser or purchasers, with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees provided for, and then to beneficiary the full amount of principal, interests, attorney's fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his heirs or assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the purchaser or purchasers shall be full

It is agreed that in the event a foreclosure hereunder should be commenced by the trustee, or its substitute or successor, beneficiary may at any time before the sale of said property direct the said trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Payment and Performance Lien; it is further agreed that if beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract lien, that it may at any time before the entry of a final judgment in said suit dismiss the same, and require the trustee its substitute or successor to sell the Lot in accordance with the provisions of this section. Beneficiary, if it is the highest bidder, shall have the right to purchase at any sale of the Lot, and to have the amount for which such Lot is sold credited on the debt then owing. Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Lot is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event any sale is made of the Lot, or any portion thereof, under the terms of this section, the Owner, his heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of his failure to do so he shall thereupon from and after the making of such sale be and continue as tenants at will of such purchaser, and in the event of his failure to surrender possession of said property upon demand, the purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof is situated. The foreclosure of the continuing contract lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing lien from securing all obligations arising from and after the date of foreclosure. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of trustee.

a. bona-fide first mortgages or deed of trust liens for purchase money, home construction or improvement purposes or valid home equity loans, placed upon a Lot in which event the Association's lien shall automatically become subordinate and inferior to such lien(s);

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c. such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided, however, such subordination shall apply only to: (i) the assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien: (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Areas. Such sale shall not relieve such Lot from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay assessments and/or to hinder the Association in performing its functions hereunder.

6. The Association may enter into an alternative payment plan for assessments with a Member of the Association, should an alternative payment plan be requested by the Member. The minimum term of an alternative payment plan shall be no less than three months. However, the Association may not be required to allow a payment plan that extends the obligation to pay the assessment for more than 18 months. The Association is not required to enter into any alternative payment plan with a Member if a Member does not request an alternative payment plan within 45 days of being notified of any delinquent payment of the assessment. The Association may not be required to allow a Member to enter into a payment plan more than once in a 12-month period.

## **XV. INTERPRETATION AND ENFORCEMENT**

1. The Declarant, the Association, or other persons having any right, title or interest in the surface estate in any Lot or parcel of land in this subdivision, shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all restrictions, covenants and reservations imposed by this Declaration. Violations of any restriction or condition or breach of any covenant herein contained shall give the Declarant or the Association, in addition to all other remedies, the right, but not the obligation, to enter upon the land, and to abate and remove the violation at the expense of the owner, and the Declarant, the Association, or its agents, shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. The right is expressly reserved to the Declarant and its successors and assigns, to interpret any and all conditions, limitations and restrictions but such right shall be without prejudice to the rights of enforcement prescribed in the above paragraphs. The reservation by Declarant of this right of enforcement shall not create a duty or obligation of any kind to enforce same, and Declarant shall not be subjected to any claim, demand, or cause of action from any Lot Owner by virtue of enforcing or not enforcing any restriction or other covenant herein contained.

2. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provision, and all other provisions shall remain in full force and effect.

3. If Declarant should assign its obligations (if any) and its rights under this Declaration to a person or entity that assumes same, then in such event Declarant shall be relieved of all obligations, liabilities or responsibilities under this Declaration.

#### **XVI. NO COMMON SCHEME DEVELOPMENT**

Declarant does not intend hereby nor shall any provision of this Declaration be construed to impose any restriction or limitation upon any other property not located within the Property. The purpose of this provision is to negate any implication the covenants and restrictions herein create a "common scheme of development" or otherwise apply by implication to any other property other than Oak Creek.

#### **XVII. ACCEPTANCE OF THE DEED**

By the acceptance of the deed to a Lot within this subdivision, the Owner thereof covenants and agrees they have read this Declaration and any amendments thereto and agree to comply with the terms and conditions of this Declaration and that said provisions are binding upon said Owner.

#### **XVIII. AMENDMENT AND DURATION**

At any time, the Owners of sixty-seven (67%) of the Lots within OAK CREEK may amend (including changing, revoking or modifying) the restrictions and covenants set forth herein by filing an instrument containing such amendment in the office of the County Clerk of Guadalupe County, Texas; provided, however, that so long as Declarant owns one or more lots in OAK CREEK, no such amendment shall be valid or effective without the written joinder of Declarant, unless Declarant specifically waives this requirement by written recorded instrument.

#### **XIX. RESERVATION OF RIGHTS**

THE DECLARANT SHALL HAVE AND RESERVE, SO LONG AS DECLARANT OWNS AT LEAST ONE LOT IN OAK CREEK OR OTHERWISE SUBJECT TO THIS DECLARATION, THE RIGHT AT ANY TIME AND FROM TIME TO TIME, WITHOUT THE JOINDER OR CONSENT OF ANY OTHER PARTY, TO AMEND THIS DECLARATION BY AN INSTRUMENT IN WRITING DULY SIGNED, ACKNOWLEDGED, AND FILED FOR RECORD TO CLARIFY ANY VAGUE OR AMBIGUOUS PROVISION HEREOF OR TO CORRECT ANY CLERICAL OR TYPOGRAPHICAL ERROR HEREIN."

#### **XX. NOTICE BY ASSOCIATION**

Whenever written notice to a member (or members) is permitted or required hereunder, such notice shall be given by the mailing of such notice to the member at the address of such member appearing on the records of the Association, unless such member has given written notice to the Association of a different address, in which event such notice shall be sent to the member at the address so designated. In such event, such notice shall conclusively be deemed to have been given by the Association by placing same in the United States Mail, properly addressed, whether received by the addressee or not.

Members may consent in writing to receive notice from the Association by email or such other electronic delivery method. Such written consent must be provided to the Board of Directors and placed in the records of the Association.

## **XXI. TITLES**

The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part hereof.

## **XXII. 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. The provisions hereof will not be construed against the Declarant because the Declaration was drafted by it. In the event of conflict of the provisions hereof with any of the organizational documents of the Association, the provisions hereof shall control.

## **XXIII. OMISSIONS**

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 here from, 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.

## **XXIV. COMPLIANCE WITH RESIDENTIAL REAL PROPERTY OWNERS ACT**

The provisions of this Declaration and the exercise of any and all rights and remedies granted herein are subject to the Texas Residential Property Owners Protection Act, Chapter 209 of the Texas Property Code, as same may have been heretofore or hereafter amended from time to time.

## **XXV. GENDER AND GRAMMAR**

The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions herein apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case full expressed.

## **XXVI. FINISHED FLOOR ELEVATIONS AND FLOOD PLAIN DISCLAIMER**

Each Owner is responsible for determining the requirements for the finished floor elevations of their residence. However, the following minimum finished floor elevations are established for the following Lots in accordance with the FEMA Flood Maps adopted by Guadalupe County, Texas:

Lots **25, 26A, 27A, 44, 45, 46A, and 47A** shall have a minimum finished floor elevation of **490** feet above sea level.

Lots **17A, 18A, 19A, 20A, 21, 28, 29, and 30** shall have a minimum finished floor elevation of **492** above sea level.

The above minimum floor elevations minimums and are no guaranties that flooding may not occur above said minimums. Each Owner must determine for themselves for each lot the appropriate elevation for finished floors.

**THE APPROXIMATE LOCATION OF THE 100 YEAR FLOOD PLAIN IS SHOWN ON THE PLAT OF OAK CREEK. IT SHALL BE THE RESPONSIBILITY OF THE OWNER OF A LOT WHO BUILDS A RESIDENCE THEREON OR PURCHASER OF A LOT WITH A DWELLING ON IT TO DETERMINE THAT THE DWELLING ON IT IS SUFFICIENTLY ELEVATED TO AVOID FLOOD DAMAGE AND EACH OWNER OR PURCHASER OF A LOT ASSUMES THE RISK THAT THE DWELLING ON THE LOT MAY FLOOD.** Neither Declarant (including partners and the directors, shareholders, agents or employees of Declarant or a partner thereof), nor the Architectural Control Committee nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of any flooding on any Lot or dwelling or improvement located thereon. This provision shall be in addition to and not in substitution of the non-liability provisions, indemnity agreement and other provisions contained in Article VI, Paragraph 8, hereof."

*Remainder of page intentionally left blank. Signature and acknowledgments follow on successive pages.*