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**DECLARATION AND PROTECTIVE COVENANTS
AND RESTRICTIONS OF
HERITAGE OAKS**

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- 1.04 **Association; HOA.** "Association" and "HOA" means and refers to Heritage Oaks Homeowners' Association, Inc., a Texas nonprofit corporation.
- 1.05 **Association Rules.** "Association Rules" and "HOA Rules" means the rules and regulations adopted by the Board, as amended from time to time.
- 1.06 **Board.** "Board" means the Board of Directors of the Association.
- 1.07 **Builder.** "Builder" means Thielemann Construction Company, L.P., a Texas limited partnership, its successors and assigns.
- 1.08 **Bylaws.** "Bylaws" means the Bylaws of the Association, which may be adopted by the Board, as amended from time to time.
- 1.09 **Certificate of Formation.** "Certificate of Formation" means the Certificate of Formation of the Association that may be filed in the office of the Secretary of State of the State of Texas, if the Association is formed, and as amended from time to time.
- 1.10 **City.** "City" means the City of Brenham, Texas.
- 1.11 **Common Area and Facilities.** "Common Area and Facilities" means any Lots and other properties designated by Declarant and conveyed to the Association, if formed, along with any exclusive easements and other areas granted to Declarant or the Association and maintained for the common benefit of the Owners. Common Area and Facilities may be designated by Declarant and dedicated or otherwise conveyed to the Association, if formed, the Owners, or to any public agency, authority, or utility from time to time and at any time. If and at the time Declarant annexes additional real property to the Subdivision and Property in accordance with Section 2.02, additional Common Area and Facilities may be designated.
- 1.12 **Covenants.** "Covenants" means the covenants, conditions, and restrictions contained in this Declaration.
- 1.13 **Declarant.** "Declarant" means Thielemann Development Company, L.P., a Texas limited partnership, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in an acknowledged document recorded in the real property records of Washington County, Texas.
- 1.14 **Declaration.** "Declaration" means this instrument as amended from time to time.
- 1.15 **Dedicatorv Instruments.** "Dedicatorv Instruments" means this Declaration, Bylaws and rules of the Association, and standards of the ACC, as amended from time to time.
- 1.16 **Easements.** "Easements" means easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.
- 1.17 **Improvements.** Except as may otherwise be implied by context, "Improvements" and "Improvement" means every improvement other than a Living Unit or Residence and all appurtenances to structures of every type and kind, including but not limited to buildings, outbuildings, storage sheds, storage buildings, patios, decks, secondary living units, swimming pools, detached garages, fences, screening walls, retaining walls, other walls, gates, stairs, sidewalks, landscaping, fountains, gardens, arbors, gazebos, shade structures, outdoor kitchens, firepits, outdoor fireplaces, outdoor lighting, mailboxes, poles, signs, exterior air conditioning, water-softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines,

meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.18 **Living Unit: Residence.** "Living Unit" or "Residence" means a dwelling designed for and used as a dwelling by a Single Family and constructed on one or more Lots, including the attached garage serving it. "Secondary Living Unit" refers to a detached outbuilding constructed on one or more Lots intended as a dwelling for a member of the Single Family unit (for example, a mother-in-law suite). Reference to Living Unit or Residence include references to a Secondary Living Unit.

1.19 **Lot.** "Lot" or "Lots" means each tract of land designated as a lot on the Plat of the Subdivision, excluding lots that are part of the Common Area, if any. If the Plat is amended to combine one or more prior lots into a new single lot, then the newly platted lot shall constitute only one lot for purposes hereunder.

1.20 **Masonry.** "Masonry" means stucco, stone (natural, precast, or manufactured), and brick. Masonry specifically excludes fiber-cement siding (such as hardy plank), vinyl siding, and other siding materials.

1.21 **Member.** "Member" or "Members" means any Person(s) holding membership rights in the Association.

1.22 **Mortgage.** "Mortgage" or "Mortgages" means any mortgage(s) or deed(s) of trust covering any portion of the Property, but does not include the Mortgagee of a Mortgage.

1.23 **Mortgagee.** "Mortgagee" or "Mortgagees" means the holder or holder of any Mortgage or Mortgages.

1.24 **Owner.** "Owner" or "Owners" means every record owner of a fee interest in the surface of a Lot and does not include the Mortgagee of a Mortgage.

1.25 **Person.** "Person" or "Persons" means any individual(s), entity, or entities having the legal right to hold title to real property.

1.26 **Plans and Specifications.** "Plans and Specifications" means any and all documents designated to guide or control the construction or erection of any Living Unit and Improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.27 **Plat.** "Plat" or "Plats" means the Plat of the Subdivision and Property recorded or to be recorded in the Plat Records of Washington County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration from time to time.

1.28 **Property.** "Property" means all of the real property now and later constituting any portion, phase, block, or section of the Subdivision.

1.29 **Restrictions.** "Restrictions" means this Declaration, as amended from time to time, together with the Association Rules, the Certificate of Formation, and Bylaws.

1.30 **Single Family.** "Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a residence.

1.31 **Subdivision.** "Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

1.32 **Temporary Office.** "Temporary Office" means any temporary construction or marketing trailer, office, or building installed or constructed by Declarant or Builder on any Lot owned by Declarant or Builder, respectively, that is used for the storage of equipment or for office, administrative, sales, or marketing purposes during the construction and sale of Lots, Residences, and other Improvements within the Subdivision.

1.33 **Vehicle.** "Vehicle" means any automobile, truck, motorcycle, scooter, or other wheeled conveyance, whether self-propelled or towed.

ARTICLE 2 IMPOSITION OF COVENANTS AND RESTRICTIONS

2.01 **Imposition of Covenants.** Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots, by their acceptance of their deeds, leases, or occupancy of any Lot, agree that the Subdivision is subject to the Covenants.

2.02 **Covenants Run with the Land.** The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

2.03 **Agreement to Comply.** Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him or her to a fine, a cause of action for amount due to the Association, damages, injunctive relief, and/or other remedy available by law, whether equitable or otherwise, and maintainable by Declarant, the Board on behalf of the HOA, the ACC, an aggrieved Owner, or, if applicable, the City of Brenham, and/or any Municipal Utility District or municipality having jurisdiction over the Property.

2.04 **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 Declaration or Dedicatory Instruments 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 restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of the restrictive covenants, terms, or provisions assumes all risks of their validity and enforceability and, by acquiring the Lot, agrees to hold Declarant harmless if any restriction, covenant, term or provisions is held to be invalid or unenforceable.

ARTICLE 3 DEVELOPMENT

3.01 **Development; Plat and Easements Included.** Declarant may divide or subdivide the Property into several areas and develop some or all of the Property. The Plat, Easements, and all matters shown of record from time to time affecting the Property are part of the Declaration and are incorporated herein by reference.

3.02 **Use of Easement.** Declarant and each Easement holder may install, maintain, and connect facilities in an Easement. Owners do not own any utility facilities located in an Easement. Unless otherwise prohibited, an Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities.

3.03 **No Liability for Damages.** Neither Declarant nor any Easement holder is liable for damage to landscaping or any Improvement in an Easement.

3.04 **Additional Land.** Declarant may, at any time and from time to time, add land to the Property, and on such addition, this Declaration and the covenants, conditions, restrictions, and obligations set forth in it will apply to the added land, and the rights, privileges, duties, and liabilities of the persons subject to this Declaration will be the same with respect to the added land as with respect to the lands originally covered by this Declaration. In order to add lands to the Property subject to this Declaration, Declarant will be required only to record in the real property records of Washington County, Texas, a notice of addition of land containing the following provisions: a reference to this Declaration (including applicable recording information in the real property records of Washington County, Texas), a statement that the provisions of this Declaration will apply to the added land, and a legal description of the added land.

3.05 **Subdividing Lots.** Except as otherwise provided herein, no Lot will be further divided or subdivided, nor may any Easements on, or other interests relating to, a Lot less than the whole be conveyed by an Owner without the prior written approval of the ACC. When Declarant is the Owner, Declarant may further divide and subdivide a Lot and convey any easements or other interest less than the whole, all without any approval of the ACC.

3.06 **Combining Lots.** Any Owner or prospective Owner of one or more adjoining Lots may, with the prior written approval of Declarant and the ACC, consolidate such Lots in whole (and not in part) into one building site. In such a situation, a replat to consolidate such Lots into a newly designated single Lot shall be required prior to any construction and the Owner of such Lots (or prospective Owner) shall be solely responsible for all costs associated with pursuing and obtaining such replat and the relocation of any utilities associated therewith. Setback lines and Easements for the consolidated Lot shall be determined in the replatting process. The location of the Residence on a consolidated Lot shall be determined at the discretion of the ACC.

3.07 **Mining and Drilling.** No portion of the Property will 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.

ARTICLE 4 USE AND ACTIVITIES

4.01 **Single Family.** A Lot may be used only for an approved Residence, approved Secondary Living Unit, and approved Improvements for use by a Single Family. No Lot shall be used for any commercial purpose.

4.02 **Rentals.** Nothing in this Declaration will prevent the rental of any Lot and Residence and other Improvements on it by the Owner for single family residential purposes, provided that all rentals must be for terms of no less than 12 months. This restriction is intended to prohibit short-term rentals.

4.03 **No Illegal Activity.** No illegal activity is permitted on any Lot or any part of the Property.

4.04 **No Nuisance.** No noise, exterior lighting, or other activity that is a nuisance, noxious, offensive or detrimental to the peaceful enjoyment of any Lot or part of the Property or to its occupants is permitted to exist or operate on any Lot or any part of the Property.

4.05 **No Hazardous Activity.** No activities that are or might be hazardous to any person or property will be conducted on any Lot or any part of the Property. Nothing will be done or kept on any Lot that would increase the rate of insurance or cause the cancellation of insurance on any Lot or any part of the Property or any structure or other improvement thereon.

4.06 **Fires; Fireworks; Firearms.** No fireworks will be discharged on any Lot or any part of the Property. No open fires will be permitted except within safe and approved fireplaces, firepits, or other improvements designed for fires or in contained barbecue units while attended and in use for cooking purposes. No firearm will be discharged on any Lot or any part of the Property except for self-defense as may be permitted by law.

4.07 **Animals; Household Pets.** Pets and animals permitted by the City of Brenham shall be allowed except that no sheep, goats, rabbits, chickens, turkeys, other poultry, or bees shall be permitted on a Lot and any part of the Property. No animal may be maintained, kept, cared for, or boarded for hire. No animal shelters or rescues shall be operated on any Lot or part of the Property. No kennels or breeding operations of any kind are permitted. No animal is allowed to run at large on any part of the Property. All animal enclosures must be approved by the ACC and at all times be maintained to be clean, sanitary, and reasonably free of refuse, insects, and waste. No more than four (4) animals may be kept as household pets. All Owners with any permitted pet are required to immediately and properly dispose of their pet's solid waste deposited on any portion of the Property not owned by such Owner.

4.08 **Rubbish and Debris.** No rubbish or debris of any kind will be placed or permitted to accumulate on any Lot or part of the Property, and no odors will be permitted to arise from it, so as to make any Lot or part of the Property, or any portion thereof, unsanitary, unsightly, offensive, or detrimental to any other Lot or to its occupants.

4.09 **Maintenance; Mowing.** Each Owner must at all times keep all shrubs, trees, grass, and plantings of every kind on the Owner's Lot cultivated, pruned, free of trash, and other unsightly material. Each Owner must also at all times keep all Residences, Secondary Living Units, and Improvements in good condition and repair and adequately painted or otherwise maintained. Declarant, the HOA, and the ACC have the right at any reasonable time to enter on any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary, to paint, repair, or otherwise maintain any Residence and Improvements in need of maintenance or repair, and to charge the cost of such maintenance or repair to the Owner of the Lot in the same manner as provided in Section 7.04 of these Restrictions.

4.10 **Drainage.** There will be no interference with the established drainage patterns over any Lot or part of the Property, except by Declarant or Builder, unless adequate provision is made for proper drainage and the ACC grants prior written approval.

4.11 **Travel Trailers and Recreational Vehicles.** Travel trailers, other trailers, or vehicles with living quarters, campers, buses, and recreational vehicles shall not be permanently stored or maintained on any Lot or part of the Property unless stored or maintained out of view in

an enclosed and approved Improvement. Travel trailers, other trailers or vehicles with living quarters, campers, buses, and recreational vehicles may be parked or placed on a Lot on a temporary basis not to exceed three consecutive days

4.12 **No Mobile Homes.** No mobile home may be placed on a Lot or any part of the Property except as may be permitted for a Temporary Office.

4.13 **Boats; Watercraft.** Boats, jet skis, or other watercraft and their trailers shall not be permanently stored or maintained on any Lot or part of the Property unless stored or maintained out of view in an enclosed and approved Improvement. Boats, jet skis, or other watercraft and their trailers may be parked or placed on a Lot on a temporary basis not to exceed three consecutive days.

4.14 **Inoperable and Racing Vehicles.** No vehicle that is inoperable or does not have a current license tag or that is a racing vehicle is permitted to be visible on any Lot or parked on any roadway within the Subdivision. Such vehicles may be stored or maintained on a Lot only in an approved garage or other Improvement.

4.15 **Vehicles; Parking.** Owners are generally expected to park and store their Vehicles in their garages or other approved Improvement. No Vehicle may be parked in a yard. Each Lot shall have adequate designated parking areas to avoid routine parking of Vehicles on any roadway within the Subdivision. Guest parking on a roadway within the Subdivision to accommodate a party or other event at a Residence shall be limited to a consecutive 10-hour period. Overnight guest parking on a roadway within the Subdivision to accommodate visitors and guests shall not exceed three consecutive days without the prior written approval of the Board. Parking of any Vehicle on a roadway within the Subdivision in a manner that obstructs the safe and orderly flow of traffic or access to any Lot or part of the Property is prohibited.

4.16 **Signs.** No sign of any kind will be displayed to the public view on any Lot without the prior written approval of the ACC except for (a) signs that are part of Declarant's overall marketing or construction plans or activities for the Subdivision, (b) one sign no more than five square feet advertising any Lot within the Subdivision for sale or rent, and (c) signs advertising a political candidate or ballot item for an election, so long as (i) the signs are ground-mounted and no more than four (4) feet by six (6) feet, (ii) the signs are displayed no earlier than 90 days before the date of the election to which the signs relate and no later than nine days after that election date, and (iii) no more than one sign is displayed for each political candidate or ballot item.

ARTICLE 5 CONSTRUCTION AND YARDS

5.01 **Approval of All Construction.** No Residence or any Improvements will be constructed on any Lot or part of the Property without the prior written approval of the ACC. The ACC is intended to have broad discretion in its approval process. All Residences shall be constructed by Builder (as defined in Section 1.07 of this Declaration).

5.02 **Temporary Office; Temporary Structures.** No temporary structures of any sort shall be permitted on any Lot or part of the Property except for a Temporary Office.

5.03 **Designation of Lot Types; Dwelling Size.**

(a) The following Lots within Section 1 of the Subdivision shall have a main Residence (excluding any Secondary Living Unit) with a minimum square footage of 1,850 square feet of enclosed living space, exclusive of porches (open or covered), decks, garages, and carport; and if such main Residence is more than one story in height, a minimum of 60% of the total square footage shall be on the ground floor:

Block 1, Lots 1, 2, 19, and 20; and

Block 2, Lots 1 and 2.

(b) The following Lots within Section 1 of the Subdivision shall have a main Residence (excluding any Secondary Living Unit) with a minimum square footage of 2,000 square feet of enclosed living space, exclusive of porches (open or covered), decks, garages, and carports; and if such main Residence is more than one story in height, a minimum of 60% of the total square footage shall be on the ground floor:

Block 1, Lots 3, 4, 5, 6, 7, 8, 15, 16, 17, and 18; and

Block 2, Lots 3, 4, and 5; and

Block 3, Lots 1, 2, 7, 8, 9, 10, 11, and 12.

(c) The following Lots within Section 1 of the Subdivision shall have a main Residence (excluding any Secondary Living Unit) with a minimum square footage of 2,500 square feet of enclosed living space, exclusive of porches (open or covered), decks, garages, and carports; and if such main Residence is more than one story in height, a minimum of 60% of the total square footage shall be on the ground floor:

Block 1, Lots 9, 10, 11, 12, 13, and 14; and

Block 3, Lots 3, 4, 5, and 6

5.04 **Location Upon Lot.** The location of the Residence, any Secondary Living Unit, and Improvements on a Lot shall comply with all Easements and is subject to ACC prior written approval. The Residence shall face the front of the Lot, except as otherwise approved in writing by the ACC.

5.05 **Beginning of Residence Construction.** Each Owner shall submit Plans and Specifications for the Residence to be constructed on such Owner's Lot to the ACC for approval on or before the expiration of 6 months from the date such Owner becomes the Owner of the Lot. Exceptions to this requirement may only be granted at the discretion of the Board and ACC.

5.06 **Landscaping.** An initial landscaping plan is required to be submitted to and approved by the ACC as part of the construction of the Residence and included within the Plans and Specifications. The initial landscaping plan must be constructed as part of the Residence. A minimum of one live oak tree is required in the initial landscaping plan and must be maintained on each Lot at all times. A landscaping plan must also be included in any subsequent Plans and Specifications or other construction plans of any Secondary Living Unit and Improvement and completed as a part thereof. Additional and subsequent landscaping plans to be implemented must be approved by the ACC. The front and side yards of all Lots, from the front wall of the house,

will be fully sodded with St. Augustine, Bermuda, Prairie Buffalo Grass, or other sod, drought-resistant landscaping, or water-conserving natural turf approved by the ACC.

5.07 **Building Height.** No Residence or Improvement greater than two and one half (2 1/2) stories in height may be constructed on any Lot without obtaining a written variance from the ACC.

5.08 **Sight-Line Obstruction.** No Improvement that obstructs sight lines will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the case of a rounded property corner, from the intersection of the street line extended. The same sight-line limits will apply on any Lot within ten (10) feet from the intersection of street property lines with the edge of a driveway or alley pavement. No tree will be permitted to remain within such distance of these intersections, unless the foliage is maintained at sufficient height to prevent obstruction of the sight lines.

5.09 **Materials.** Each Living Unit and Improvement must be constructed of materials approved by the ACC (which may include Masonry and non-Masonry materials). Non-Masonry materials may not include standard cementitious 8-inch horizontal lap siding.

5.10 **Roofing.** The roof of any Residence, Secondary Living Unit, or Improvement may not be constructed of galvanized or galvalume steel sheets or 3-tab composition shingles. The ACC must approve roof materials, roof fans, attic ventilators or other roof penetrations if any portion thereof is visible from the front property line. All projections from a Residence, Secondary Living Unit or Improvement, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings, and exterior stairways, must match the color of the surface from which they project, or must be of a color approved by the ACC.

5.11 **Driveways.** Driveways shall be constructed entirely of concrete, exposed aggregate concrete, brick pavers, or landscape pavers. Any other driveway material shall require a written variance by the ACC.

5.12 **Exposed Concrete.** Not more than one foot of vertical surface of concrete slab of any Residence, Secondary Living Unit, or Improvement shall be exposed to view from any public view or adjacent Lots.

5.13 **Antennae.** No exterior radio or television antenna or aerial or satellite dish receiver that is visible from any adjacent street within the Subdivision will be erected or maintained on any Lot without first obtaining a written variance from the ACC.

5.14 **Solar Collectors.** No solar collector shall be installed without the prior written approval of the ACC. Solar collectors shall be installed in a location not visible from the public street in front of the Residence.

5.15 **Water and Other Tanks.** No water, fuel, swimming pool, or other tank shall be installed without the prior approval of the ACC. Any approved tank must be screened so as not to be visible from any other Lot or part of the Property. No individual water-supply systems will be permitted on any Lot, including but not limited to water wells, cesspools, or water-collection tanks; however, rain barrels and rain harvesting devices will be permitted subject to the right of the ACC to approve the location, size, type, and shielding of, and the materials used in the construction of, any such rain barrels, rain harvesting devices, and related appurtenances.

5.16 **Walls, Fences.** No fence on any Lot or part of the Property may be constructed of chain link or hurricane fencing materials or PVC or similar piping materials. All interior fences and walls, including location and materials, must be approved by the ACC. All perimeter fencing and entrances along Cantey Street and Gun & Rod Road, along with the property line of Reserve E and the north side of Reserve A, will be built by the Declarant and maintained by the Declarant and/or HOA. The initial construction of the perimeter fencing on the south side of the subdivision, including Block 1, Lots 1 through the corner of Lot 12, shall be constructed by Declarant. Any subsequent repairs to the perimeter fencing on the south side of the subdivision, including Block 1, Lots 1 through the corner of Lot 12, shall be the responsibility of the Owner on whose Lot the portion or section in need of repair is situated. The initial construction of all perimeter fencing, as well as any future repairs to the same, shall be performed in accordance with the specifications of the ACC.

5.17 **Basketball Goals.** Permanent basketball goals are allowed but must be approved by the ACC before installation. Portable basketball goals may be used, but they must be stored in an enclosed structure or screened from view at all times when not in use.

5.18 **Lighting.** No exterior lighting may be constructed or installed on any Lot without the prior written approval of the ACC, including without limitation post lamps.

5.19 **Alteration or Removal of Improvements.** Any construction, alteration, or removal, other than normal maintenance, that in any way alters the exterior appearance of any Residence, Secondary Living Unit, or Improvement must be approved by the ACC.

5.20 **ACC Approval and Variances.** Each Owner is responsible to request ACC approval for all actions, activities and construction that require the approval of the ACC prior to the action, activity, or beginning of construction. The ACC may approve, or not approve, any action, activity, or construction, in the ACC's sole discretion. The ACC's decision to approve, or not approve, an action, activity, or construction must be in writing by the ACC and delivered to the Owner. An Owner may request a variance from compliance with any provision of the Dedicatory Instruments to the ACC. Any such request must be in writing and delivered to the ACC. The ACC may, in its sole discretion, approve, or not approve, a requested variance. The ACC's decision to approve, or not approve, a variance request by an Owner must be in writing by the ACC and delivered to the Owner.

5.21 **Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of a Residence or Improvements on any Lot. Specifically, no construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that the construction is pursued to completion with reasonable diligence and conforms to usual practices in the area as determined by the ACC. If during the course of construction on any Lot there is excessive accumulation of debris of any kind that would make the Lot or any portion of it unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection with removal, which amount will be an Assessment against the Owner's Lot, secured by a lien against the Owner's Lot and collectable in the same manner as provided for in Section 9.06, including but not limited to foreclosure of the lien.

ARTICLE 6 COMMON AREA AND FACILITIES

6.01 **Common Area and Facilities.** No land within any Common Area and Facilities will be improved, used, or occupied, except in the manner approved by Declarant, in its sole and absolute discretion. This required approval will extend to the nature and type of use, occupancy, and improvement. Declarant may, by written instrument, delegate its right to grant this approval to the Board. Access to any Common Area and Facilities may be limited to Persons currently paying Assessments, fees, and other charges, or otherwise conditioned or restricted, or made available to non-owners, all on the terms and conditions determined by Declarant in its sole and absolute discretion.

6.02 **Maintenance.** Declarant may, but will not be obligated to, in its sole discretion, maintain the Common Area and Facilities at its own cost and expense. If Declarant elects to not maintain the Common Area and Facilities, maintenance of any Common Area and Facilities will be the obligation of the HOA and will be governed by Section 7.05 of these Restrictions, and Assessments may be levied on the Owners under Article 9 of these Restrictions. Under no circumstances will Declarant be liable to the Owners, the HOA, or any other Person for maintaining or failing to maintain the Common Area and Facilities.

6.03 **Condemnation.** If all or any part of the common Area and Facilities is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), Declarant, or the Association, if applicable, will be entitled to participate in the proceedings incident to the taking or threatened taking. The expense of participation in the proceedings by the Association will be a common expense to be paid out of Assessments. The HOA is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other Persons as the HOA, in its discretion, deems necessary or advisable to aid it in many matters relating to the proceedings. All damages or awards for any taking will be the property of Declarant, or, if applicable, deposited with the HOA. The HOA, if applicable, in addition to the general powers set forth in this Declaration, will have the sole authority to determine whether to contest or defend any proceedings, to make any settlement with respect to any proceedings, or to convey the property to the condemning authority in lieu of condemnation.

6.04 **Liability of Owners for Damage to Common Area and Facilities.** No Owner will in any way alter, modify, add to, or otherwise perform any work on any portion of the Common Area and Facilities without the prior written approval of the Board. Each Owner is liable to the Declarant, the HOA, the Owners, and any public agency, authority, or utility if the Common Area and Facilities have been dedicated or otherwise conveyed to any of these parties, for any and all damages to (a) the Common Area and Facilities or (b) any Improvements constructed on any Lot, the maintenance of which has been assumed by any of these parties, which damages were caused by the neglect, misuse, or negligence of an Owner, a member of the Owner's family, or by any tenant or other occupant of the Owner's Lot, or any guest or invitee of the Owner. The full cost of all repairs of the damage will be an Assessment against the Owner's Lot, secured by a lien against the Owner's Lot and collectable in the same manner as provided for in Section 9.06, including but not limited to foreclosure of the lien.

ARTICLE 7 THE HOMEOWNERS' ASSOCIATION

7.01 **Organization.** The Association, also called the HOA, is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws and in this Declaration. Neither the Certificate of Formation nor Bylaws will for any reason be amended or otherwise changed or interpreted so as

to be inconsistent with this Declaration. The HOA will not be dissolved unless 85% of the votes at a meeting of the Members held in accordance with the Bylaws vote to dissolve the HOA.

7.02. **Membership.** Any Person who is or who becomes an Owner will automatically become a Member of the HOA. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to the Lot.

7.03 **Voting Rights.** There will be two classes of membership for the purpose of voting on any HOA matter. The Class A Members will include each Owner (excluding Declarant) of a Lot within the Property, and each Owner will have one (1) vote for each Lot owned except as otherwise provided herein. The Class B Member will be Declarant, and Declarant will have 100 votes for each Lot it owns. The Class B Membership will convert to a Class A Membership if Declarant voluntarily converts the Class B Membership to a Class A Membership by written instrument recorded in the real property records of Washington County, Texas. If an Owner owns two or more Lots that are combined into a new single Lot as provided in Section 3.06 of these Restrictions, such Owner shall have only one vote related to such new combined Lot. If an Owner owns two or more Lots that are not combined (or intended to be combined) as provided in Section 3.06 of these Restrictions, then such Owner shall have one vote per each Lot owned.

7.04 **Powers and Authority of the HOA.** The HOA will have the powers of a Texas nonprofit corporation, subject only to the limitations expressly set forth in this Declaration. It will further have the power to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or by the Declaration. Without in any way limiting the generality of the two preceding sentences, the HOA and the Board, acting on behalf of the HOA, will have the following powers and authority:

(a) **Rules and Bylaws.** To make, establish, promulgate, amend, repeal, and re-enact the HOA Rules and Bylaws. The content of the HOA Rules and Bylaws may be established by the Board, provided that they do not conflict with this Declaration.

(b) **Insurance.** To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the HOA's purpose and functions.

(c) **Records.** To keep books and records, including financial records, of the HOA's affairs.

(d) **Assessments.** To levy Assessments as provided in the Restrictions and Dedicatory Instruments.

(e) **Right of Entry and Enforcement.** To enter at any time in an emergency, or in a nonemergency after twenty-four (24) hours' written notice, without being liable to any Owner, on any Lot for the purpose of enforcing the Restrictions or ascertaining compliance with the Restrictions, and the expense incurred by the HOA in connection with the entry on any Lot and the maintenance and repair work conducted on it will be a personal obligation of the Owner of the Lot entered on, will be a lien on the Lot entered on, and will be enforced in the same manner and to the same extent as provided in Article 9 for Assessments. The HOA will 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 to it, 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 Restrictions. The HOA is also authorized to settle claims, enforce liens, and take all action as it may deem necessary or expedient to enforce the Restrictions; however, the Board will never be authorized to expend any HOA funds for the purpose of bringing suit against Declarant, Builder, or any successor or assign of Declarant or Builder.

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

7.05 Common Area and Facilities. Subject to and in accordance with this Declaration, the HOA, acting through its Board, will have the following duties:

(a) To accept, own, operate, and maintain all Common Area and Facilities that may be conveyed, assigned, or leased to it by Declarant, together with all Improvements of any kind and for any purpose that may be located in those areas, and to accept, own, operate, and maintain all other property, real or personal, conveyed, assigned, or leased to the HOA by Declarant and to maintain in good repair and condition all lands, improvements, and other HOA property owned by or leased to the HOA. Such maintenance will include, but will not be limited to, painting, mowing, and removing rubbish or debris of any kind.

(b) To pay all real-property taxes, personal-property taxes, and other taxes and Assessments levied on or with respect to Common Area and Facilities or any other property owned by or leased to the HOA to the extent that the taxes and Assessments are not levied directly on the Members of the HOA. The HOA will have all rights granted by law to contest the legality of the amount of the taxes and Assessments.

(c) To take out and maintain current a policy of liability-insurance coverage to cover accidental bodily injury or death caused by the use and enjoyment of the Common Area and Facilities. This insurance will be in an amount as the Board deems appropriate.

ARTICLE 8 ARCHITECTURAL CONTROL COMMITTEE

8.01 Membership of ACC. The ACC will consist of not more than three (3) voting Members ("Voting Members") and any additional nonvoting Members serving in an advisory capacity ("Advisory Members") that the Voting Members deem appropriate. The following Persons are designated as the initial Voting Members of the ACC: Arlen Thielemann, Glenda Stegent, and Tricia Schroeder.

8.02 Action by ACC. Items presented to the ACC will be decided by a majority vote of the ACC Voting Members.

8.03 Advisory Members. The ACC Voting Members may from time to time designate, by majority vote, one or more Advisory Members. Any designated Advisory Member shall serve in such capacity for such period of time as the ACC Voting Members designate or until the ACC Voting Members remove such Advisory Member, by a majority vote.

8.04 Term. Each ACC Voting Member will hold office until such time as he or she has died, resigned, been removed, or his or her successor has been appointed, as provided in the

Declaration. If any Voting Member dies or resigns, the remaining Voting Member or Voting Members will have full authority to act until a replacement Voting Member or Voting Members have been designated.

8.05 **Declarant's Rights of Appointment.** Declarant and its successors or assigns will have the right to appoint and remove all Voting Members of the ACC. Declarant may, but is not obligated to, delegate this right to the HOA Board by written instrument. After Declarant delegates this right, the HOA Board will have the right to appoint and remove all ACC Voting Members. An ACC Voting Member may be removed for any or no reason.

8.06 **Adoption of Rules.** The ACC may, but is not obligated to, adopt any procedural and substantive rules, not in conflict with this Declaration, that it, in its sole discretion, deems necessary or proper for the performance of its duties, including but not limited to a building code and specifications, a fire code, a housing code, and other similar codes and specifications.

8.07 **Review of Proposed Construction.** Whenever in this Declaration the approval of the ACC is required, the ACC will have the right to consider all of the Plans and Specifications for the Residence, Secondary Living Unit, other Improvement or proposal in question and all other facts that, in its sole discretion, are relevant. Except as otherwise specifically provided in this Declaration, before the commencement of any construction of any Residence, Secondary Living Unit, or Improvement on the Property or any portion of it, the Plans and Specifications must be submitted to the ACC, and construction may not commence unless and until the ACC has approved the Plans and Specifications in writing. The ACC will consider and act on any and all Plans and Specifications submitted for its approval under this Declaration and perform the other duties assigned to it by this Declaration or as from time to time assigned to it by Declarant or the Board. The ACC may also inspect any construction in progress to ensure its conformance with Plans and Specifications approved by the ACC. The ACC may review Plans and Specifications submitted for its review and any other information it deems proper. Until the ACC receives any information or documents it deems necessary, it may postpone review of any Plans and Specifications submitted for approval. No Residence, Secondary Living Unit or Improvement will be allowed on any Lot that is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes, and materials and similar features as to be incompatible with development within the Property and the surrounding area. The ACC will have the authority to disapprove any proposed Plans and Specifications, Residence, Secondary Living Unit, or Improvement based on the restrictions set forth in the preceding sentence. The ACC is intended to have broad discretion in approving and disapproving items presented. Decisions of the ACC will be final and binding if made in good faith and shall be binding on all Owners. The ACC will not be responsible for reviewing any proposed Residence, Secondary Living Unit, or Improvement, nor will its approval of any Plans or Specifications or inspection of any construction in progress be deemed approval from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

8.08 **Variances.** The ACC may, but is not obligated to, grant variances from compliance with any of the provisions of this Declaration when, in the opinion of the ACC, in its sole and absolute discretion, the variance will not impair or detract from the high-quality development of the Property and the variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by written instrument in recordable form, and must be signed by at least two of the ACC Voting Members. The granting or denying of a variance will not operate to waive or amend any of the terms or provisions of the covenants and restrictions applicable to the Lots for any purpose except as to the particular property and the particular instance covered by the variance, and a variance will not be considered to establish a

precedent or future waiver, modification, or amendment of the terms and provisions of this Declaration.

8.09 **Actions of the ACC.** The ACC may, by a resolution unanimously adopted in writing by the ACC Voting Members, designate one or two of its Voting Members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the ACC. In the absence of such a designation, the vote of the majority of the ACC Voting Members taken without a meeting will constitute an act of the ACC. Despite anything to the contrary, if the ACC fails to respond to a request for approval of Plans and Specifications within 14 days of receiving all information requested by the ACC, the ACC will be deemed to have approved such Plans and Specifications.

8.10 **No Waiver of Future Approvals.** The approval or consent of the ACC of any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications or any other matter subsequently or additionally submitted for approval or consent by the same or a different Person or Owner.

8.11 **Work in Progress.** The ACC, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications.

8.12 **Address.** Plans and Specifications will be submitted to the ACC at 2310 S. Market Street, Brenham, Texas 77833 or at any other address as may be designated from time to time.

8.13 **Fees.** The ACC will have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review.

ARTICLE 9 FUNDS AND ASSESSMENTS

9.01 **Assessments.**

(a) The HOA may from time to time levy Assessments against each Lot. The level of Assessments will be equal and uniform between all Lots except as provided herein. The HOA is not required to charge any Assessment for any Lot owned by Declarant or any Builder.

(b) When the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment will be prorated as of the date when the obligation first arose in proportion to the amount of the Assessment year or other period remaining after that date.

(c) Each unpaid Assessment, together with the interest on it and the costs of collection, will be the personal obligation of the Owner of the Lot against which the Assessment fell due, and will become a vendor's lien against the Lot and all Residence, Secondary Living Units, and Improvements on it. The HOA may enforce payment of Assessments in accordance with the provisions of this Article and as otherwise provided by applicable law.

9.02 **HOA Funds.** The HOA Board may establish one or more operating, maintenance, and reserve funds or accounts. All moneys paid to the HOA will be deposited into these funds or accounts, and disbursements will be made from them in performing the functions of the HOA.

9.03 **Regular Annual Assessments.** Before the beginning of each fiscal year, the HOA Board will estimate the expenses to be incurred by the HOA during the year in performing its functions under the Restrictions, which will be limited to the costs incurred in exercising the powers granted to the HOA, the cost of enforcing the Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay the estimated net expenses will then be levied as provided in this Declaration, and the level of Assessments set by the Board will be final and binding if made in good faith. All regular Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in any other manner as the Board may designate in its sole and absolute discretion. In no event will the maximum regular annual Assessments per Lot be increased by more than ten percent (10%) per year, unless approved by at least two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for that purpose, with the same quorum as required for Special Assessments.

9.04 **Special Assessments.** In addition to the regular annual Assessments provided for above, the HOA Board may levy special Assessments to enable the Board to carry out the mandatory functions of the HOA under the Restrictions on the approval of at least two-thirds (2/3) of each class of Members at a meeting called for that purpose, by adequate notice, with at least fifty percent (50%) of such Members or their proxies present at the meeting. If fifty percent (50%) of the Members do not attend, a second meeting may be called with the same notice and the quorum needed for the second meeting will be thirty percent (30%) of the Members or their proxies.

9.05 **Owner's Personal Obligation for Payment of Assessments.** The regular and special Assessments provided for in this Declaration will be the personal and individual debt of the Owner of the Lot covered by the Assessments. No Owner may exempt itself from liability for the Assessments. For any default in the payment of any Assessment, the Owner of the Lot will be obligated to pay an annual interest rate at the highest rate allowed by then applicable law from the Assessment's due date, together with all costs and expenses of collection, including reasonable attorney fees. Any Assessment not paid within 30 days after it is due is delinquent. The Board may change the interest rate from time to time by 30-days' notice to the Members.

9.06 **Assessment Lien and Foreclosure.** All amounts assessed in the manner provided in this Article but unpaid will, together with interest as provided in Section 9.05 of these Restrictions and the cost of collection, including attorney fees as provided in these Restrictions, become a continuing lien and charge on the Lot covered by the Assessment that will bind the Lot in the hands of the Owner and the Owner's heirs, devisees, personal representatives, successors, or assigns. This lien will be superior to all other liens and charges against the Lot, except for tax liens and all amounts unpaid on a Mortgage lien of record of first or second priority granted to an institutional lender, securing in either instance amounts borrowed for the purchase or improvement of the Lot in question. The HOA will have the power to subordinate the Assessment lien to any other lien. This power will be entirely discretionary with the HOA Board and the subordination must be signed by a duly authorized officer of the HOA. To evidence the Assessment lien, the HOA may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by the lien and a description of the Lot. This notice will be signed by one of the HOA officers and will be recorded in the office of the County Clerk of Washington County, Texas. The lien for payment of Assessments will attach with

the priority above set forth from the date that the payment becomes delinquent. The HOA may direct its legal counsel to initiate legal proceedings in a court of competent jurisdiction seeking one or both of the following remedies:

(a) Foreclosure of the assessment lien. However, the HOA may not file an application for an expedited court order authorizing foreclosure of the HOA's assessment lien or a petition for judicial foreclosure of the HOA's assessment lien until the HOA has (i) provided written notice of the total amount of the delinquency giving rise to the foreclosure to all lienholders of record (evidenced by a deed of trust) whose liens are inferior or subordinate to the HOA's assessment lien, and (ii) provided each such lienholder an opportunity to cure the delinquency before the sixty-first (61st) day after the date the HOA mails the notice. The notice to lienholders must be sent by certified mail to the address for the lienholder shown in the deed of trust burdening the Lot(s) subject to the HOA's assessment lien.

(b) Recovery of a personal judgment against the current Owner and, where different, from the delinquent Owner or from the current Owner only, for all amounts owing arising from the unpaid Assessments and their collection, including all attorney fees and costs.

9.07 **Fines.** The Board may levy a fine against an Owner for a violation of any provision of any of the Dedicatory Instruments. All fines will be an Assessment against the Owner's Lot, secured by a lien against the Owner's Lot to the extent permitted by law, and collectable in the same manner as provided for in Section 9.06 to the extent permitted by law.

ARTICLE 10 MISCELLANEOUS

10.01 **Term.** This Declaration runs with the land and is binding for a term of 20 years from the date hereof. Thereafter this Declaration automatically continues for successive terms of 10 year each, unless within 6 months before the end of a term 85% of the votes at a meeting of the Members held in accordance with the Bylaws vote to not extend the term. An instrument reflecting the extension will be signed by the HOA and recorded in the Official Records of Washington County, Texas.

10.02 **Amendment.** This Declaration may be amended at any time if 85% of the votes at a meeting of the Members held in accordance with the Bylaws vote to approve the amendment. An instrument containing the approved amendment will be signed by the HOA and recorded in the Official Records of Washington County, Texas. The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any such correction must not impair or affect a vested property right of any Owner.

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

10.04 **Governing Law; Severability.** This Declaration is governed by and shall be interpreted under Texas law. If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration. Failure by the HOA or an Owner to enforce the Dedicatory Instruments is not a waiver.

SIGNATURE AND ACKNOWLEDGMENT PAGE OF DECLARATION AND PROTECTIVE COVENANTS AND RESTRICTIONS OF HERITAGE OAKS, A SUBDIVISION, IN THE CITY OF BRENHAM, WASHINGTON COUNTY, TEXAS

THIELEMANN DEVELOPMENT COMPANY
L.P., a Texas limited partnership

By: THIELEMANN MANAGEMENT, INC., a
Texas corporation, as the General Partner of
Thielemann Development Company L.P.

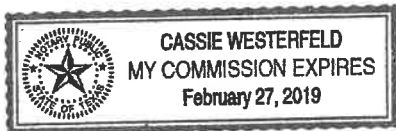
By: *Arle Thielemann*
ARLEN THIELEMANN, President

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF WASHINGTON

This instrument was acknowledged before me on January 12, 2018, by ARLEN THIELEMANN, President of THIELEMANN MANAGEMENT, INC., a Texas corporation, General Partner of THIELEMANN DEVELOPMENT COMPANY, L.P., a Texas limited partnership, on behalf of and as the act and deed of said limited partnership.



Cassie Westerfeld
Notary Public, State of TEXAS