

ORIGINAL

RESTATED AND AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE WILDERNESS

STATE OF TEXAS §
 §
COUNTY OF FREESTONE §

THIS RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE WILDERNESS (TOGETHER WITH ANY AND ALL AMENDMENTS AS RECORDED IN THE REAL PROPERTY RECORDS OF FREESTONE COUNTY, TEXAS, THIS "DECLARATION") IS APPROVED, CONSENTED TO AND ADOPTED SO AS TO BE EFFECTIVE AS OF APRIL 22, 2006 (THE "EFFECTIVE DATE") BY GREATER THAN SEVENTY-FIVE PERCENT (75%) OF THE VOTES OF ALL MEMBERS/OWNERS CAST WITH RESPECT TO ALL LOTS WITHIN THE WILDERNESS (HEREINAFTER REFERRED TO AS THE "PROPERTY" AND DESCRIBED AS WILDERNESS AREAS I, II, III, IV, V, VI, VII, VIII, IX, X, AND XI ON EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF), AS REQUIRED BY THE PREVIOUSLY RECORDED RESTRICTIVE COVENANTS PERTAINING TO LOTS LOCATED WITHIN THE PROPERTY, IMPOSED BY DEEDS TO SUCH LOTS (COLLECTIVELY, THE "PRIOR RESTRICTIONS"), AND THIS DECLARATION AMENDS, COMPLETELY RESTATES, SUPERSEDES, REPLACES AND HEREBY RELEASES OF RECORD ALL OF THE PRIOR RESTRICTIONS IN THEIR ENTIRETY, INCLUDING, WITHOUT LIMITATION, THOSE RECORDED IN VOLUME 1261, PAGE 784 ET SEQ AND IN VOLUME 01291, PAGE 00191 ET SEQ OF THE REAL PROPERTY RECORDS OF FREESTONE COUNTY, TEXAS.

For the purpose of enhancing and protecting the value, utility, attractiveness and desirability of the land constituting the project, the undersigned hereby declare that all of the real property described above and each part thereof and all interests of any kind therein, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, shall be held, sold, and conveyed only subject to the following easements, authority, assessments, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I.
DEFINITIONS**

The following words as used in this Declaration shall have the following meanings:

Section 1. "Association" shall mean and refer to The Wilderness Property Owners Association, Inc., a Texas nonprofit corporation, and mandatory membership homeowners association, its successors and assigns of its entire interest, acting through and by its Board of Directors.

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Section 2. "Declarants" or "Developers" shall mean CW Dalcan Investments, Ltd., a Texas limited partnership (successor in interest to The Wilderness Realty Partners, L.P. and The Wilderness Land Partners, L.P.) and its successors and assigns which hereafter acquire all of the remaining undeveloped or unsold portions of the project for the purposes of development and sale consistent with and subject to this Declaration. "Declarants" or "Developers" shall not mean other real estate developers or builders, whether holding tracts for speculation, building spec homes, or otherwise.

Section 3. "tract" or "Lot" shall mean any plot of land or platted lot within the project (as may be divided and/or reconstituted in accordance with the provisions of this Declaration).

Section 4. "maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, drainage, irrigation systems, commons and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted.

Section 5. "Member" shall mean every person or entity who holds membership in the Association, each purchaser of property in the project automatically becoming a member of the Association upon such purchase and being a member during such ownership.

Section 6. "Mortgagee" shall mean a holder of bona fide mortgage or a beneficiary under or holder of a Deed of Trust.

Section 7. "Mortgage" shall mean a bona fide mortgage, a deed of trust, or a vendor's lien.

Section 8. "Authority" shall mean that authority as created herein and vested in the Association.

Section 9. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 10. "drives" shall mean any common areas reserved for use by Owners for vehicular traffic.

Section 11. "commons" shall mean any property reserved for or dedicated to the common use of property Owners, including, without limitation, Wilderness Area XI described on Exhibit A hereto and, the "Deer Park" areas shown on recorded plats.

Section 12. "Owners" shall mean the record owners, including Declarants, whether one or more persons or entities, of fee simple title to any tract which is part of the project, and shall include purchasers under contract for deed, but shall not include those holding title merely as security for performance of an obligation; provided, however, that the foregoing shall not be interpreted or construed as restricting or prohibiting undivided ownership interests or ownership by a partnership or other entity.

Section 13. "project" or "The Wilderness" or "Wilderness Areas" shall mean the land herein described in Exhibit A to this Declaration, and such additions thereto as may later be brought within the jurisdiction of the Association as hereinafter provided, including, without limitation, if, when and to the extent so added by Zakanaka in accordance with the provisions of Section 3 of Article XI of this Declaration, applicable portions of the Adjacent Land pursuant to an Adjacent Land Amendment.

Section 14. "Adjacent Land" shall mean the land described on Exhibit B-1 attached hereto and made a part hereof.

Section 15. "Adjacent Land Amendment" shall have the meaning set forth in Section 3 of Article XI of this Declaration.

Section 16. "County" shall mean Freestone County, Texas.

Section 17. "Conversion Date" shall have the meaning set forth in Section 3 of Article VI in this Declaration.

Section 18. "Zakanaka" shall mean Zakanaka, LP, a Texas limited partnership (successor in interest with respect to certain property previously owned by Obe Veldman, individually, and as Trustee, and Roy Veldman), but not its successors or assigns.

Section 19. "Zakanaka Lots" shall mean Lot 33 in Phase I of The Wilderness (which is referred to as Wilderness Area I); Lot 50 in Phase IV of The Wilderness (which is referred as Wilderness Area IV); Lots 121, 122, 123, 125 and 126 in Phase V of The Wilderness (which is referred to herein as Wilderness Area V); and Lots 156 and 157 in Phase VI of The Wilderness (which is referred to herein as Wilderness Area VI).

Section 20. "Zakanaka Property" shall mean the property described on Exhibit B attached hereto and made a part hereof other than the Adjacent Land, and includes, without limitation, the Zakanaka Lots, a portion of Wilderness Area VIII, and all of Wilderness Areas IX and X, all of said Zakanaka Property constituting portions of The Wilderness and being subject to this Declaration.

ARTICLE II. EASEMENTS, DRIVES, ROADS, AND PRIVATE ROADS

Section 1. Private roads, drives, or access easements for installation and maintenance of utilities, irrigation and drainage, are established by separate instrument or instruments of record or to be placed of record by the Owner of the subject tract in the office of the County Clerk and as hereinafter set forth. Within such easements and private roads, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of service or utilities, or which may damage, interfere with, or change the direction or flow of drainage facilities in the easements, or which may interfere with passage along such private road easements. The easement area of such tract and all improvements therein shall be continuously maintained by the Owner of such tract, except for improvements for maintenance of which a public, private, or quasi-public authority or utility company is responsible.

Section 2. No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to representatives of the Association, to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarants, their successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, or under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

Section 3. The Association, through its duly authorized employees and contractors, shall have the right after reasonable notice to the Owner thereof, to enter any tract or common area at any reasonable time on any day to perform such maintenance within such easement, reservation or right-of-way as may be authorized herein.

Section 4. The private drive or roadway easements and other common areas as set forth on recorded plats and/or by separate instruments indicating that such areas are to be the property of the Association are/shall be owned by the Association for the private use and benefit of the Owners of the tracts within the project as therein prescribed, and under the conditions as therein set forth. No private drives, roadway easements or common areas as set forth on recorded plats and/or by separate instrument shall be deemed to be dedicated to the general public.

Section 5. The Association in its authority may take unto itself or execute unto any other fresh water supply or other utility entity right of way easements in the form and under the conditions as may at that time be required by said entity as a prerequisite to service of the project with fresh water or other utility; provided, however, that no portion of any tract on which a residence is or may be built (excluding any area already subject to an easement or within a building line or in any event which is within 35 feet of the right-of-way line of any street) shall be encumbered without the written consent of its Owner.

Section 6. The Association in its authority may take unto itself or execute unto others right of way easements in the form and under the conditions as at that time may be required by said entity to distribute to each and every tract herein water for the purposes of irrigation; provided, however, that no portion of any tract on which a residence is or may be built (excluding any area already subject to an easement or within a building line or in any event which is within 35 feet of the right-of-way line of any street) shall be encumbered without the written consent of its Owner.

Section 7. It is understood and agreed that the easements granted herein and to be granted hereafter are reserved as permanent easements for the purpose set forth and are not subject to the time limit applicable to other restrictions.

Section 8. There is hereby reserved and established a utility easement adjacent and parallel to all roadway easements. Said utility easement is twenty (20) feet wide upon the ground and twenty (20) feet wide above the ground and extends from the outside boundary of the roadway easement into and upon the adjoining property on each side thereof.

Section 9. There is hereby reserved and established an easement for purposes of drainage and/or service of utilities upon and in addition to the purposes of any existing easement of record and being still valid, such easement now made subject to all the stipulations as herein otherwise set forth pertaining to utility and/or drainage easements.

**ARTICLE III
ARCHITECTURAL AND LANDSCAPE CONTROL**

Section 1. No building or other improvements (including homes, garages, decks, porches, boathouses, outbuildings and driving and/or parking surfaces) shall be erected, constructed, placed or, to the extent visible from the street, the waterfront or other Lots, altered, on or contiguous to any tract until the construction plans and specifications (with a proposed completion date) and a plan showing exterior materials to be used, exterior elevations, the location of the structure, and complete plan of septic system showing relation to tract lines and water lines have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation, all as appropriate. Unless written approval of development of a Lot in its natural state has been obtained from the Architectural Control Committee, Lots must be landscaped within one hundred fifty (150) days of completion of a residence on the Lot; provided, however, that upon written request from an Owner which

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sets forth good cause for an extension, which good cause shall include, without limitation, winter months, the Architectural Control Committee may grant reasonable extensions of such time period. Landscaping on Lots on which a residence has been constructed, and to the extent not retained in their natural state as contemplated by this Declaration, shall be maintained in a reasonably attractive manner, with any dead or significantly damaged landscaping being removed and/or replaced, as appropriate. All landscaped areas shall be regularly maintained and watered to the extent necessary to prevent unsightly areas of dead or damaged grass or other landscaping. Minimum standards for initial landscaping of Lots shall be as determined by the Board.

Section 2. The Board is hereby authorized to decide upon, publish and enforce specific building and/or landscaping standards and to amend same from time to time, enforce any building or fire codes, or any rules, restrictions or requirements concerning the construction of buildings or other improvements or landscaping in or related to the project, and/or concerning matters of unsightly appearance or construction or alterations not consistent with an upscale single-family residential community, whether imposed by this Declaration, the Board, the Architectural Control Committee, or by a local, county, state, or other authority having the legal authority to make such requirements. In the event that the Architectural Control Committee unreasonably delays with respect to the enforcement of any of such standards, rules or restrictions described in this Article III, the Board shall have the right to effectuate such enforcement.

Section 3. The Architectural Control Committee shall be composed of three persons appointed annually by the Board, one of which shall be a member of the Board and a majority of which shall be comprised of persons living in The Wilderness and/or members of the Board, each to serve for a term of one (1) year. In the event of death, dismissal, or resignation of any member of the committee, the Board shall designate a successor for the remainder of such member's term. Neither the members of the Architectural Control Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. Members of the Architectural Control Committee shall be held harmless and indemnified by the Association with respect to their actions taken in their capacity as members of the Architectural Control Committee.

Section 4. The approval or disapproval of the Architectural Control Committee as required in these covenants shall be in writing, a copy of which shall be promptly delivered by the Architectural Control Committee to the Board, together with copies of all correspondence, plans and other information and requests relevant to such approval or disapproval. In the event the Architectural Control Committee, or its designated representative fail to approve or disapprove within thirty (30) days after all relevant plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with. No construction requiring approval under the terms of this Declaration shall be commenced until the later to occur of (i) such plans and specifications (including a proposed completion date) having been either approved by or deemed approved by the Architectural Control Committee as provided in this Declaration, and (ii) all fees owed under the terms of this Declaration in connection with such construction and any delinquent amounts owed by the subject Owner having been paid in full.

Section 5. All construction must be completed within two hundred forty (240) days unless an extension of such time has been granted in writing by the Architectural Control Committee in response to a written request therefor setting forth the reasons for the delay. Starting date is defined as the date forms for foundation are installed and finishing date is defined as when the house is ready for occupancy, electricity and water service is connected and on site sewer system is inspected and approved by Tarrant Regional Water District. Once commenced, construction will be diligently pursued to completion and

may not be left in a partially finished condition for more than forty-five (45) consecutive days without the written approval of the Architectural Control Committee. Buildings destroyed by fire or natural disaster must be demolished, removed or repaired and new construction begun within ninety (90) days or such longer period as may be approved in writing by the Architectural Control Committee in the exercise of its reasonable discretion. Any Owner who is in violation of this section will be fined two hundred fifty dollars (\$250.00) per day unless a special extension is granted in writing by the Architectural Control Committee. Any fine not paid within thirty (30) days of demand for payment may be enforced by recordation of an affidavit evidencing the lien on the property securing same and otherwise as with respect to any other amounts owed to the Association and secured by the lien in favor of the Association as provided in this Declaration. All homes must be site built by a builder approved in writing by the Architectural Control Committee. A copy of the building plans shall be kept at The Wilderness office during the entire construction period. A Building Permit must be obtained from the Association prior to commencement of construction. The permit will issue upon payment of (i) a Building Permit fee based on \$0.67 (67 cents) per square foot of new construction under roof, including approved outbuildings and garages (but excluding boathouses), and (ii) any other amounts then owed to the Association in accordance with the provisions of this Declaration by the Owner applying for the permit, including, without limitation, any water meter fees, delinquent assessments, late charges or expenditures reimbursable to the Association in accordance with the terms of this Declaration. Notwithstanding the designated amount in (i) above with respect to the calculation of the Building Permit fee, the Board may, from time to time by written notice to all Owners, reasonably adjust the amount per square foot on which the Building Permit fee is based.

Section 6. Each construction site shall have a container for building debris and a construction field toilet which are to remain on the site for the entire construction period. The container for debris must be large enough to contain all building trash on the building site, but in no event less than 15 cubic yards in volume. During the period that a site and/or building is under construction, the following minimum measures will be required to minimize disturbance to adjacent property.

(a) All trucks hauling dirt or trash must be covered.

(b) The construction site shall be cleaned on a daily basis. Construction debris shall not be allowed to accumulate or be stored on any construction site. No dumping of construction materials, waste or trash shall occur in the project.

(c) Subcontractors and others shall not play radios or other devices at unreasonably high decibel levels in the sole judgment of the Developers and/or Association.

Section 7. Prior to commencement of any site work or other construction or regular use by RVs, campers or other large vehicles which could cause ruts to be formed adjacent to or cause damage to street surfaces, a culvert approved by the Architectural Control Committee as to adequate diameter and width (but in no event less than twenty-two (22) feet wide) shall be placed at the road entrance to each Lot, unless waived in writing by the Architectural Control Committee. Waiver of this Section may be granted provided topography and drainage conditions warrant a waiver in the judgment of the Architectural Control Committee. All costs and expenses associated with any damage to any roadway or surrounding property caused by failure to comply with the provisions of this Section shall be the sole responsibility of and shall be paid for by the Owner of the Lot in violation of this Section. The Association shall have the option to (i) require such Owner to repair such damage and cause the subject culvert to conform to the requirements of the Architectural Control Committee, or (ii) perform such repair

