

3610

945066 DEED RESTRICTIONS

VOL 0507 PAGE 722

WITNESSETH

WHEREAS, Declarant is the original three owners for the purposes of this Declaration affecting that certain property known as The Evergreen Wood, A certain three tracts of land in the Samuel McCarley Survey, Abstract Number 43, Waller County Texas, out of the residue of an original 90.00 acre tract described in deed to O.C. Quinn and wife, Dorothy Quinn, recorded in Volume 302, Page 832 of the Deed Records of Waller County, Texas.

WHEREAS, it is the desire of Declarant to place certain restrictions, covenants, conditions, stipulations and reservations upon and against such property in order to establish a uniform plan for the development, improvement and sale of such property, and to ensure the preservation of such uniform plan for the benefit of both the present and future owners of said property:

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon The Evergreen Wood, and declares the following reservations, easements, restrictions, covenants and conditions applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the land, which reservations, easements, covenants, restrictions and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

SECTION 1. "Properties" shall mean and refer to The Evergreen Wood, subject to the reservations set forth herein.

SECTION 2. "Parcel" shall mean and refer to the parcels shown upon the Property Plat, in part or in whole, which are restricted hereby to use for residential purposes.

SECTION 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Parcel which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and those having only an interest in the mineral estate.

(1)

SECTION 4. "Property Plat" shall mean and refer to the map or plat of The Evergreen Wood, a certain 52.455 acres as recorded in the Samuel McCarley Survey, A-43, Waller County, Texas.

SECTION 5. "Association" shall mean and refer to The Evergreen Wood Homeowner's Association.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

SECTION 1. The Property Plat dedicates for use as such, subject to the limitations set forth therein, the driveway easement shown thereon, and such Property Plat further establishes certain restrictions applicable to the Properties, including, without limitations, restrictions and reservations shown on the Property Plat are incorporated herein and made a part hereof, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property or any part thereof, whether specifically referred to therein or not.

SECTION 2. Declarant reserves the easements and rights-of way as shown on the Property Plat for the purpose of constructing, maintaining and repairing a system or systems of roadways, ponds, electric lighting, electric power, telephone lines, gas, or any other utility Declarant sees fit to install in, across and/or under the Properties.

SECTION 3. Declarant reserves the right to make changes in and additions to the above easement for the purpose of most efficiently and economically installing the improvements.

SECTION 4. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damages done by them, or their assigns, agents, employees or servants, to fences, shrubbery, trees or flowers or other property of the Owner situated on the land covered by said easements.

SECTION 5. It is expressly agreed and understood that the title conveyed by Declarant to any Parcel of land within the Properties by contract, deed or any other conveyance shall be subject to any easement affecting same for roadways or drainage, ponds, water, gas, electric light, electric power, telephone purposes and shall convey no interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenance thereto constructed by or under Declarant or any easement Owner, or their agents, through, along or upon the premises affected thereby, or any part thereof, to serve said land or other portion of the

Properties, and where not affected, 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, and such right is hereby expressly reserved.

SECTION 6. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, and other service vehicles to enter upon the Properties in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Properties to render any services.

ARTICLE III

USE RESTRICTIONS

SECTION 1. Land Use and Building Type. All Parcels shall be known and described as Parcels, of no less than five (5) acres, for single family residential purposes only. As used herein, the term "residential purposes" shall be construed to prohibit the use of said Parcels for duplex houses, garage apartments or apartment houses: and no Parcel shall be used for any commercial or manufacturing purpose. No mobile homes shall be placed or erected on said Properties, except for temporary purposes while building permanent structure, said mobile home must be screened from view of other Parcels and all entry roads.

SECTION 2. Dwelling Size. The ground floor area of the main residential structure, exclusive of open porches and garages, shall not be less than 2,000 square feet for a one (1) story dwelling, nor shall the ground floor area plus the upper floor area of the main residential structure of any multi-story dwelling be less than 2,200 square feet.

SECTION 3. Building Location. No building shall be located any nearer to the front Parcel line than 100 feet. No building shall be located nearer than 30 feet to an interior lot line.

SECTION 4. Annoyance or Nuisances. No noxious or offensive activity shall be carried on upon any Parcel nor shall anything be done thereon which may become an annoyance to the neighborhood. The Association determinations as to what constitutes a noxious or offensive activity shall in all cases be final and conclusive.

SECTION 5. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment. No mobile homes, trailer, camper, boat or truck, or similar vehicles or equipment shall be parked or stored permanently or semi-permanently on any public street, right-of-way or any driveways. Permanent or semi-permanent storage of such vehicles or items must be screened from the view of other Parcels and the public.

SECTION 6. Signs and Billboards. No signs, billboards, posters or advertising devices of any character may be erected permitted or maintained except for one sign of not more than 7 square feet to advertise a particular Parcel of land for sale or rent.

SECTION 7. Oil and Mining Operations. No oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Parcel, nor shall tanks, tunnels, mineral excavations or shafts be permitted upon or in any Parcel, (oil and gas wells shall be exempted).

SECTION 8. Garbage and Refuse Storage and Disposal. All Parcels and Property shall at all times be kept in a healthful, sanitary and attractive condition. No Parcel or any part of any portion of the Properties shall be used or maintained as a dumping grounds for garbage, junk or other waste matter. All garbage, trash or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tightly fitting lids, and screened from public view. No Parcel shall be used for open storage of any materials whatsoever, which storage is visible from the street or any other Parcels.

(4)

ARTICLE IV

The Evergreen Wood HOMEOWNERS ASSOCIATION

SECTION 1. Membership. Every person or entity who is a record Owner of any of the Parcels which are subject to maintenance charge assessment by the Association, including contract sellers, shall be a member of The Evergreen Woods Homeowners Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association. Ownership of such land shall be the sole qualification for membership.

SECTION 2. Maintenance Assessments. Declarant imposes on each Parcel within the Properties and hereby covenants and each Owner of any Parcel by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following: (1) annual assessments of charges to be established and collected as hereinafter provided, and (2) special assessments for capital improvements. The annual and special assessments, together with interest, costs and reasonable attorney's fee's shall be a charge on the land and shall be secured by a vendor's lien which is hereby reserved in favor of the Association and its successors and assigns, upon each Parcel against which such assessment is made to the same extent as if retained as a vendor's lien by Declarant in each deed to any such Parcel and expressly assigned to the Association without recourse to any extent unto Declarant. Each such assessment together with any accrued interest and all collection costs and reasonable attorney's fees incurred to enforce payment thereof, shall also be the personal obligation of the person or entity owning such Parcel at the time when each assessment becomes due and payable. The personal obligation for delinquent assessments shall pass to such person's or entity's assignee or successor in title unless such assignee or successor in title notifies the Association of its purchase of the Parcel and obtains the Association's certification that prior assessments have been paid and are current.

(5)

SECTION 3. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties for the improvement and maintenance of any Common Area, the Common Interior Road, and for paying other valid business expenses of the Association, including but not in limitation of insurance premiums, management fees, professional fees, and other fees for materials and /or services purchased by the Association. The Association shall be entitled to expend such amounts and for such of the foregoing enumerated purposes as it shall determine, in the exercise of its reasonable and prudent judgement, to be necessary and proper.

SECTION 4. Maximum Annual Assessment. The initial rate of assessment for each Parcel shall be \$300 per year: provided. however, that for any calendar year, the Association may increase said rate as the needs of the Association and the judgement of the Association require: except that any such increase shall cause the annual assessment to rise no more than the proportionate yearly rise, if any, of the Consumer Price Index as published by the United States Department of Labor for the preceding month of July: or no more than one hundred ten percent (110%) of the amount assessed in the preceding calendar year, whichever is greater. Any larger increase than stipulated herein above shall require the vote of two-thirds (2/3) of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy against all Parcels, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area or Road, including fixtures and personal property related thereto, provided that any such assessment must have the consent or assent of two-thirds or the members who are voting in person or by proxy, at a meeting duly called for this purpose.

SECTION 6. Owner's Easement of Enjoyment. Each Owner shall have a right and easement of enjoyment in and to any Common Area or Road which shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

(a) The right of the Association to dedicate or transfer all or any part of any common Area or Road to any public agency, authority or utility for such purposes and subject to any conditions as may be agreed to by the members.

(b) The right of the Association to collect and reimburse those funds as set forth in Section 2.

SECTION 7. Voting Right. The Association shall have one class of voting membership:

Class A. Members shall be all Owners, and shall be entitled to one vote for each Parcel owned. When more than one person holds an interest in any Parcel, all such persons shall be members, however, the vote of such Parcel shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to each Parcel.

SECTION 8. Effect of Non-payment Assessment. If any regular or special charge or assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest non-usurious rate allowed under the laws of the State of Texas, or other applicable law, and, if placed in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount, but not less than fifteen percent (15%) of the amount owing, as attorney's fees. The Association, as a common expense of all Members thereof, may institute and maintain an action at law or in equity against any defaulting Member thereof to enforce collection an/or for foreclosure of the liens against his Parcel. All such actions may be instituted and brought in the name of the Association and may be maintained and prosecuted by the Association in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

SECTION 9. Liens to Secure Charges and Assessments. All regular and special maintenance charges or assessments, as hereinabove provided for, shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each Parcel and all improvements thereon, for the benefit of the Association and all Members thereof. Subject to the conditions that such Association be made a party to any Court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) All liens for taxes or special assessments levied by the City, County and State governments, or any political subdivision or special district thereof; and

(b) All liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable; and

(c) All liens, including, but not limited to, vendor's liens, deeds of trust and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Parcel when the same is purchased from a builder, or by an Owner, or for any part of the cost of constructing, repairing, adding to, or remodeling the residence and appurtenances situated on any Parcel to be utilized for residential purposes.

Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through Court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges of assessments which became due prior to such foreclosure, however no such foreclosure shall free any Parcel from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges of assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

SECTION 10. Enforcement. In the event of any violation or attempted violation of any of the terms of provisions hereof, including any of the restrictions of covenants set forth herein, enforcement of the terms and provisions hereof shall be authorized by any proceedings at law or inequity against any person or persons so violating or attempting to violate any of the provisions hereof, including by means of actions to restrain or prevent such violation or attempted violation by injunction, prohibitive or mandatory, and it shall not be a prerequisite to the granting of any such injunction that there be inadequate remedy at law or that there be any showing of irreparable harm or damage if such injunction is not granted. In addition, any person entitled to enforce the provisions hereof may recover such damages, either actual or punitive, as such person may show himself justly entitled by reason of such violation of the terms and provisions hereof. The terms and provisions hereof may be enforced by Declarant, by the Association (and the Association is hereby expressly authorized to use its funds for the purpose of the enforcement of the terms and provisions hereof), or by the Owner of any Parcel. Failure by the Association or any Owner to so enforce any covenant or restriction hereof shall not be construed to constitute a waiver of the right to thereafter enforce such provision or any other provision hereof. No violation of any of the terms or provisions hereof, or any portion thereof, shall affect the rights of any mortgagee under any mortgage or deed of trust presently or hereafter placed of record covering any of the land shown to be within the plat establishing The Evergreen Wood.

ARTICLE V

GENERAL PROVISIONS

SECTION 1. Term. These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of FORTY (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then Owners of the Parcels has been recorded agreeing to change or terminate said covenants herein. It shall be lawful for the Association, the Declarant, its successors or assigns, or other Parcel Owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from doing so or to recover damages or other dues for such violations.

SECTION 2. Amendment. These restrictions may be amended, at a regular or special meeting of the members, by a majority vote of a quorum of two-third (2/3) members of the Association present in person or by proxy.

EXECUTED this 13 day of Dec, 1994

Guadalupe and Rebecca S.A. Ramirez
(Declarant)

Guadalupe Ramirez
Rebecca Ramirez

Earnesto and Sylvia Salazar
(Declarant)

Earnesto Salazar
Sylvia Salazar

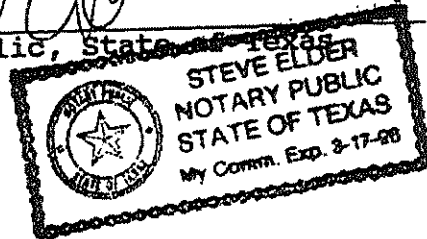
Michael J. and Leslie Smelek
(Declarant)

Michael Smelek
Leslie Smelek

THE STATE OF TEXAS §
COUNTY OF WALLER §

This instrument was acknowledged and sworn to before me on the 30th day of November, 1994, by Guadalupe Ramirez.

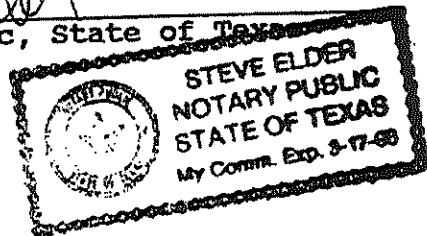
Steve Elder
Notary Public, State of Texas



THE STATE OF TEXAS §
COUNTY OF WALLER §

This instrument was acknowledged and sworn to before me on the 30th day of November, 1994, by Rebecca S. A. Ramirez.

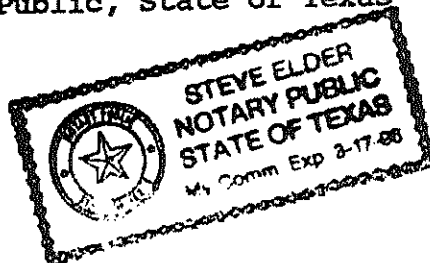
Steve Elder
Notary Public, State of Texas



THE STATE OF TEXAS §
COUNTY OF WALLER §

This instrument was acknowledged and sworn to before me on the 30th day of November, 1994, by Ernesto Salazar.

Steve Elder
Notary Public, State of Texas



THE STATE OF TEXAS

§

VOL 0507 PAGE 731

COUNTY OF WALLER

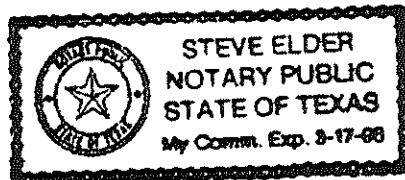
§

This instrument was acknowledged and sworn to before me on the 30th day of November, 1994, by Sylvia Salazar.

Notary Public, State of Texas

THE STATE OF TEXAS

§



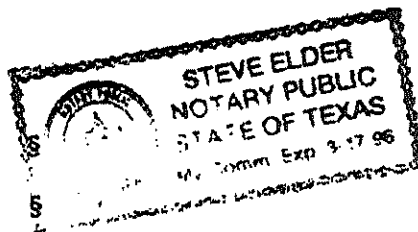
COUNTY OF WALLER

§

This instrument was acknowledged and sworn to before me on the 30th day of November, 1994, by Michael J. Smelek.

Notary Public, State of Texas

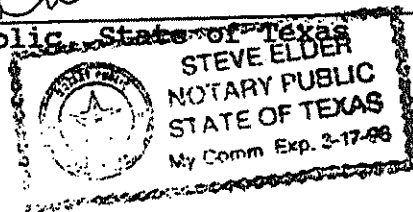
THE STATE OF TEXAS



COUNTY OF WALLER

This instrument was acknowledged and sworn to before me on the 30th day of November, 1994, by Leslie Smelek.

Notary Public, State of Texas



(11)

Filed for Record Dec. 2 A.D., 1994 at 4:20 o'clock P. M.

RECORDED Dec. 9 A.D., 1994 at 3:30 o'clock P. M.

ELVA D. MATHIS, County Clerk, Waller County, Texas

By Debra Nolan Deputy