

Viva Farms LLC
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VIVA FARMS, LLC

**DECLARATION
OF
COVENANTS, CONDITIONS,
AND
RESTRICTIONS**

**LYNN & LUBBOCK
COUNTIES,
TEXAS**

This DECLARATION of COVENANTS, CONDITIONS, AND RESTRICTIONS is made effective as of the 1st day of January 2022, by VIVA FARMS, LLC, a Texas limited liability company (sometimes referred to herein as the “Declarant”):

PREAMBLE

Declarant is the owner of the following real property: 160.74 acres of land out of Section 28, Block 20, Lynn and Lubbock Counties, Texas (“Covered Land”), fully described in Exhibit “A” hereof.

Declarant intends to develop the Covered Land into a residential community. The purposes of this Declaration are to impose upon the Covered Land covenants, conditions, and restrictions, which shall run with the land and be binding upon and inure to the benefit of all present and future owners of the land and all persons claiming under them, as set forth herein. Specifically, Declarant proposes to establish and implement plans for residential living, recreational, aesthetic and quality-of-life considerations, such as protection against inappropriate development and use, assurance of compatibility of design and improvements within the community, securing and preserving sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment, providing for landscaping and the maintenance thereof, and generally encouraging construction of attractive, quality, permanent improvements that will promote the general welfare of the Declarant and those who may come to own portions of the Covered Land.

DECLARATION

The Declarant hereby declares that the Covered Lands, and such phases or additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, mortgaged, transferred, sold, conveyed, and occupied subject to the covenants, conditions, and restrictions, (sometimes collectively referred to hereinafter as the “Covenants”) hereinafter set forth.

ARTICLE I.

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

“Amended Declaration” shall mean and refer to each and every instrument recorded in the Official Real Property Records of Lynn & Lubbock County, Texas which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

“Covenants” shall mean and refer to all covenants, conditions, restrictions, and easement

set forth within this Declaration.

“Declarant” shall mean and refer to Viva Farms, LLC, and any or a successor(s) and assign(s) of Viva Farms, LLC, with respect to the voluntary disposition of all (or substantially all) of the assets and/or partnership interest in Viva Farms, LLC, and/or the voluntary disposition of all (or substantially all) of the right, title and interest of Viva Farms, LLC in and to the Properties. However, no person or entity merely purchasing one or more tracts from Viva Farms, LLC in the ordinary course of business shall be considered a “Declarant.”

“Declaration” shall mean and refer to this particular instrument entitled “Declaration of Covenants, Conditions, and Restrictions, together with any and all amendments or supplements hereto.

“Deed” shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Tract.

“Design Guidelines” shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof.

“Development Period” shall mean a period commencing on the date of the recording of this Declaration in the Official Real Property Records of Lynn & Lubbock County, Texas and continuing thereafter for a period of ten years.

“Dwelling Unit” shall mean and refer to any building or portion of a building situated upon the Properties which is designed and intended for use and occupancy as a residence by a single person, a couple, a family, or a permitted family size group of persons.

“Easement Area” shall mean and refer to those areas which may be covered by an easement specified in Article IV below.

“Improvement” shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

“Lot” shall mean and refer to each separately identifiable portion of the Properties which is platted, filed and recorded in the office of the County Clerk of Lynn & Lubbock County, Texas and which is assessed by any one or more of the Taxing Authorities and which is not

intended to be an “open space.”

“Owner” shall mean and refer to the holder(s) of record title to the fee simple interest of any Tract whether or not such holder(s) actually reside(s) on any part of the Tract.

“Properties” shall mean and refer to the land described within Exhibit “A” attached hereto, and shall include any property added to this Declaration pursuant to Article II hereof.

“Resident” shall mean and refer to:

- (a) each Owner of the fee simple title to any Tract within the Properties;
- (b) each person residing on any part of the Properties who is a bona-fide lessee pursuant to a written lease agreement with an Owner; and
- (c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona fide lessee.

“Structure” shall mean and refer to:

- (a) any thing or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Tract shall not adversely affect the appearance of such Tract) including but not limited to any building, garage, porch, shed, greenhouse or bathhouse, cabana, covered or uncovered patio, swimming pool, play apparatus, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Tract;
- (b) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Tract; and
- (c) any enclosure or receptacle for the concealment, collection and/or disposition of refuse;
- (d) any change in the grade of any Tract of more than three (3) inches.

“Taxing Authorities” shall mean and refer to Lynn & Lubbock County, the Lynn & Lubbock Independent School District(s) encompassing the Properties, any municipality encompassing the Properties, and the State of Texas and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Texas Constitution and applicable statutes and codes.

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The Covered Land which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is more particularly described within Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Section 2. Additions to Existing Property. Additional land(s) may become subject to this Declaration, or the general scheme envisioned by this Declaration, as follows: The Declarant may (without the joinder and consent of any person or entity) add or annex additional real property to the scheme of this Declaration within the next ten (10) years by filing of record an appropriate enabling declaration, generally similar to this Declaration, which may extend the scheme of the Covenants to such property. Provided further; however, such other declaration(s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept and purpose of this Declaration.

ARTICLE III.

USE OF TRACTS IN THE COVERED LAND: PROTECTIVE COVENANTS

The Covered Land (and each Tract situated therein) shall be constructed, developed, occupied, and used as follows:

Section 1. Residential Tracts. All Tracts within the Covered Land shall be used primarily for residential purposes. No building or Structure intended for or adapted to business or commercial purposes shall be erected, placed, permitted or maintained on such premises, or any part thereof, save and except those related to development, construction and sales purposes of the Declarant or any homebuilder who has received Declarant's permission for temporary construction or sales facilities. No Owner or Resident shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Tract or within any Dwelling Unit which would:

- (a) attract automobile, vehicular or pedestrian traffic to the Tract;
- (b) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the Owners

within the Covered Land.

The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of any other governmental authority having jurisdiction over the Covered Land.

Use of all Tracts within the Covered Land shall comply with the following:

- (a) No noxious or offensive activity shall be carried on upon any Tract nor shall anything be done thereon which may become an annoyance, danger, or nuisance to the neighborhood.
- (b) No old or second-hand Structures may be erected or placed on any Tract. All Structures on any Tract must be of new and quality construction, and must meet all applicable building codes.
- (c) Except as may be otherwise permitted herein, no Structure or improvement of a temporary character, including, but not limited to, a trailer, recreational vehicle, mobile home, modular home, prefabricated home, manufactured home, HUD code home, tent, shack, barn or any other Structure or building (other than the Dwelling Unit to be built thereon) shall be placed on any Tract either temporarily or permanently. However, the Declarant reserves the right to erect, place, maintain such facilities in and upon any Tract as in its discretion may be necessary or convenient during the period of or in connection with the improvement and/or sale of any Tracts, and to permit homebuilders to place such facilities on any Tracts during periods of construction and/or sales of any Tracts.
- (d) No more than two (2) large animals per acre shall be kept on any Tract(s) unless the same are regularly and primarily used for educational, scholastic, or academic purposes (e.g. 4-H, FFA). Large animal means a horse, mule, donkey, cattle, goat, sheep or any other animal of similar size or stature.
- (e) Waste disposal systems on any Tract must meet or exceed applicable standards prescribed by any governmental authority having jurisdiction over the Covered Land, including but not limited to State and County Health Department regulations.
- (f) No wrecked, significantly damaged, abandoned, dilapidated, junked, or unregistered/unlicensed vehicles shall be permitted on any Tract.
- (g) No wrecking yards, feedlots, junkyards, or operations of similar kind and character shall be maintained on any Tract.

- (h) Any underground pipelines or underground irrigation lines under any Tract or under the Covered Land shall be disturbed by any Owner or Resident or any person or entity acting under the direction or control thereof.

Section 2. Minimum Tract Size. No Tract shall be less than one (1) acre in size. No Tract shall be subdivided into tracts less than one (1) acre in size.

Section 3. Minimum Floor Space; Density. Each Dwelling Unit constructed or existing on any Tract shall contain not less than 1,500 square feet of air-conditioned living area, exclusive of garages, basements, porches, breezeways, outbuildings, and the like. Notwithstanding the foregoing, this minimum floor space requirement shall not apply to secondary dwellings such as guest houses or pool houses on a Tract, provided that a primary Dwelling Unit meeting the minimum floor space requirement exists on such Tract. No more than one (1) Dwelling Unit, including secondary dwellings, per acre may shall be erected, placed, permitted or maintained on any Tract.

Section 4. Construction Standards. All Dwelling Units must be constructed of new materials.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 1. Duration. This Declaration and the covenants and restrictions set out herein shall run with and bind the Tracts, and shall inure to the benefit of and be enforceable by every Owner, including Declarant, and its respective legal representatives, successors and assigns, for a term beginning on the date this Declaration is recorded, and continuing fifty (50) years, after which time said covenants shall be automatically extended for successive periods often (10) years each, unless terminated as provided in Section 2 herein below.

Section 2. Amendments; Termination. The covenants, conditions and restrictions of this Declaration may be amended or terminated only as follows:

BY THE OWNERS: This Declaration may be amended or terminated only by the affirmative vote of the Owners of not less than two-thirds (2/3rds) of the total number of Tracts. Each Tract shall be entitled to a single vote, and, in case there are multiple Owners of a Tract, that Tract's vote shall be cast as determined by a majority of its Owners. The Declarant shall be considered an Owner and shall be entitled to one vote for each Tract owned. Under no circumstances may the Owners terminate the covenants, conditions and restrictions of this Declaration at any time within the next ten years from the date that this Declaration is filed in the Real Property Records of Lynn & Lubbock County, Texas, unless the Declarant joins in and agrees to such termination.

- (a) BY THE DECLARANT: During the Development Period, or for so long as Declarant remains the Owner of at least twenty percent of the Tracts, whichever period is longer, a majority of the Tracts, Declarant reserves to itself and shall have the continuing right, at any time, and from time to time, without the joinder or consent of any party, to amend this Declaration by any instrument in writing duly executed, acknowledged and filed of record for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or for adding or deleting any restriction, term or provision of this Declaration, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration, and shall not impair or materially adversely affect the vested property or other rights of any Owner.

Section 3. Enforcement. Enforcement of the covenants and restrictions contained herein shall be by any proceeding at law or in equity against any persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages. Failure by the Declarant or any other Owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. Declarant shall have no special obligation to any Owner to enforce any of the covenants and restrictions contained in this instrument, and any Owner or Owners aggrieved by any violation or alleged violation of these covenants and restrictions shall be responsible for enforcing the same (provided that Declarant shall have the right to join in such enforcement in the event Declarant, in Declarant's sole discretion, elects to do so).

Section 4. Additional Restrictions. Declarant may make additional restrictions applicable to any Tract by appropriate provision in the deed conveying such Tract to the Owner, without otherwise modifying the general plan set forth herein, and any such other restrictions shall inure to the benefit of and be binding upon the parties to such deed in the same manner as if set forth at length herein.

Section 5. Severability of Provisions. If any paragraph, section, sentence, clause, or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court with competent Jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses, and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

Section 6. Notice. Wherever written notice to an Owner is permitted or required hereunder, such notice shall be given by mailing the same to such Owner at the address of such Owner designated in the Deed conveying a Tract or Tracts to that Owner, as recorded in the

Lynn & Lubbock County Clerk's office, or to the address of the Owner shown in the records of the Lynn & Lubbock County Central Appraisal District, or other governmental authority imposing or collecting ad valorem taxes on such Tract. Such notice shall conclusively be deemed to have been given by placing same in the United States mail, properly addressed, whether received by the addressee or not.

EXECUTED as of the day and year first above written.

DECLARANT:

VIVA FARMS, LLC,

a Texas limited liability company

By:  _____

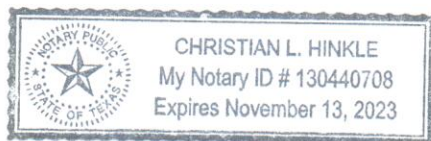
Brent Preston, Manager

STATE OF TEXAS §

§

COUNTY OF LUBBOCK §

This instrument was acknowledged before me on the 21 day of Feb, 2022, by BRENT PRESTON, Manager of VIVA FARMS, LLC, a Texas limited liability company, in the capacity herein stated.




Notary Public, State of Texas

EXHIBIT "A"

Property (including any improvements):

FIELD NOTES FOR A 160.74 ACRE TRACT OF LAND BEING THE SOUTHWEST QUARTER (SW/4) OF SECTION 28, BLOCK 20, H.E. & W.T. RR. CO. SURVEY, A-1541, LUBBOCK COUNTY AND A-1508 LYNN COUNTY, TEXAS, said SW/4 being further described by metes and bounds as follows;

BEGINNING at a 1/2" iron rod with blue plastic cap inscribed "CHT RPLS 6460" previously set at or near the center of County Road (CR) "1" (occupied 60 feet wide roadway, no record found) and the center of CR "L" (occupied 60 feet wide roadway, no record found) in the North line of a 10.01 acre tract as described in County Clerk Instrument (CCI) No. 2020-1503, Official Public Records of Hockley County, Texas (OPRHC), at the Southeast plat limits of Lots 1 Through 8, County Line Estates, according to the map, plat and/or dedication deed thereof recorded in CCI No. 2021-0250, OPRHC, same being the Southwest corner of said Section 28 and this tract;

THENCE N. 01°59'55" E. (bearings are relative to the Texas Coordinate System of 1983 (2011) Texas North Central Zone), contiguous with the common line of said County Line Estates and the West line of said Section 28, at 2,368.35 feet (distances are surface distances, U.S. Survey Feet) pass the Northeast plat corner of said County Line Estates and the Lubbock/Lynn County line (at which point CR "L" turns into CR "2040" (occupied 60 feet wide roadway, no record found), in all a total distance of 2,640.25 feet to a point for the West Quarter corner of said Section 28 for the Northwest corner of this tract from which a 1/2" iron rod with blue cap inscribed "CHT RPLS 6460" previously set at the common corner of Sections 27, 28, 29, and 30, said Block 20 bears N. 01°59'55" E. a distance of 2640.25 feet;

THENCE S. 88°21'33" E., contiguous with the common line of the Northwest Quarter (NW/4) and the SW/4 of said Section 28, at 30.00 feet pass a 1/2" iron rod with blue cap inscribed either "CHT RPLS 6460" or "CYRIL TURNER TX-RPLS 6460" (hereinafter referred to as an OJD-CHT cap) set in the East margin of said County Road "2040" for a reference corner, in all a total distance of 2,648.10 feet to an OJD-CHT cap previously set at the center of Section 28 for the Northeast corner of said SW/4 and this tract;

THENCE S. 01°50'34" W., contiguous with the common line of the Southeast Quarter (SE/4) and the SW/4 of said Section 28, at 233.68 feet pass the Lubbock/Lynn County line, at 2,610.96 feet pass an OJD-CHT cap set in the North margin of said CR "L" for a reference corner, in all a total distance of 2,640.96 feet to a 1/2" iron rod with 2" aluminum cap stamped "CYRIL TURNER TX-RPLS 6460" set in the South line of said Section 28 and the North line of a 10.01 acre tract of land described in CCI No. 2021-0596 at the South quarter corner of said Section 28 for the Southeast corner of this tract from which a 1/2" iron rod with red cap inscribed "RL SMITH" found at the Southeast corner of said Section 28, bears S. 88°20'36" E. a distance of 2,655.27 feet;

THENCE N. 88°20'36" W., contiguous with the South line of said Section 28, and the North line of multiple 10.01 acre tracts as described in CCI Nos. 2021-0596, 2021-0367, 2020-0378, 2020-0174, 2020-1498, 2020-1405, and 2020-1503, OPRHC, a distance of 2,655.27 feet to the place of BEGINNING.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



Kelly Pinion

Kelly Pinion, County Clerk
Lubbock County, TEXAS
02/23/2022 08:10 AM
FEE: \$62.00
2022008819

FILED FOR RECORD

AT 9:15 O'CLOCK A M

ON THE 23rd DAY OF Feb

A.D., 2022

Instrument # 2022-0319

In the OPR Records

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Karen Strickland

Karen Strickland

COUNTY CLERK, LYNN COUNTY, TEXAS



KS