RESTRICTIVE COVENANTS AND CONDITIONS WITH RECIPROCAL EASEMENTS AGREEMENT FOR RETAMA CREEK

 On this the 16 day of May 2024 (“Effective Date”), NEWCO, LLC, a Texas limited liability company (“Developer”), acting herein by and through its duly authorized officer, as owner, in order to create and carry out a general and uniform plan for the improvement, development, sale and use of the hereinafter described property for the benefit of all present and future owners of the property, does hereby execute this Restrictive Covenants and Conditions with Reciprocal Easements Agreement (the “Agreement”) and further does adopt, impress and establish the following Covenants on said property:

RECITALS

A. Developer is the owner of approximately 469.61 acres of real property situated in Webb County, Texas and described in **Exhibit A** attached hereto and incorporated herein (the “Development”). Developer intends to sell those certain parcels of the Development as depicted in the survey shows in **Exhibit B** attached hereto and incorporated herein by this reference (the “Parcels”).

B. The parties hereto desire to impose certain easements upon the Parcels, and to establish certain covenants, conditions and restrictions with respect to said Parcels, for the mutual and reciprocal benefit and complement of the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Developer hereby covenants and agrees that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

1. Definitions. For purposes hereof:

(a) The term "Owner" or "Owners" shall mean the owner or owners and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Subdivision, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(b) The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as described on **Exhibit A**.

(c) The term "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

(d) The term “Commercial Tracts” shall mean Tracts 1, 2 and 3 as shown on **Exhibit B**.

(e) The term “Residential Tracts" shall mean Tracts 4, 5, 6, 7, 8, and 9 as shown on **Exhibit B**.

 (f) The term “Site Plan” shall mean that site plan of the Parcels attached hereto as **Exhibit B** and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification of the Parcels and the Easement Tract only.

(g) The term “Driveway” shall mean that certain driveway and related improvements located on Tract 1 and providing access to State Highway 359, in the location shown on **Exhibit B**.

(k) The term “Declarant” shall mean Newco, LLC, a Texas limited liability company and its successors and assigns.

2. Grant of Reciprocal Access Easements. Subject to any express conditions, limitations or reservations contained herein, the Developer hereby grants, establishes, covenants and agrees that the Parcels, and all Owners and Permittees of the Parcels, shall be benefitted and burdened by a nonexclusive, perpetual, and reciprocal easement (the “Easement”), which is hereby imposed upon the Parcels and all present and future Owners and Permittees of the Parcels, for reasonable access, ingress and egress over those certain portions of the Parcels as depicted on **Exhibit B** and identified by metes and bounds on **Exhibit C** attached hereto and incorporated herein (collectively, the “Easement Tract”), so as to provide for the passage of motor vehicles and pedestrians from the Parcels to and from State Highway 359 furnishing access to such Parcels. The Easement is not an easement for parking, storage, or construction and is subject to the terms and conditions of this Agreement.

3. Maintenance and Reasonable Use of the Easement Tract.

1. The Easement herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and enjoyment of the Parcel by any other Owner or its Permittees.
2. No barriers, fences, walls, grade changes or other obstructions shall be erected on any part of the Easement Tract so as to (i) interfere with or restrict in any way the free flow of vehicular and pedestrian traffic between and among the Parcels and State Highway 359, or (ii) interfere with or restrict the use and enjoyment of the Driveway by the Owners or their invitees. The Owners acknowledge and agree that the access to State Highway 359 over the Driveway is essential to the Owners’ land and is not to be interfered with in any way.
3. The Owner of each Parcel encumbered by the Easement shall maintain their portion of the Easement Tract upon their Parcel in a good and clean manner as reasonably necessary to maintain the Easement Tract in good operating condition at all times and to insure the provision of safe access by all vehicular traffic, including emergency vehicles over and across the Easement Tract.

4. Restrictions on Residential Tracts. The following restrictions are hereby imposed upon the Residential Tracts and are further subject to any Webb County or other regulatory requirements:

(a) Residential and Hunting Use. All Residential Tracts may be used only for residential, hunting and ranching purposes. None of the Residential Tracts nor part thereof shall be used for the uses prohibited by the terms of this Section.

(b) No Commercial Uses. The Residential Tracts may not be used for any commercial uses, including, but not limited to, any parking of vehicles, commercial storage, raising of any domesticated animals, day hunting, any sort of manufacturing, mining, retail, office, or any other uses that are commercial in nature or which creates a nuisance.

(c) Hunting Blinds. No hunting blinds, trailers or other fixtures or improvements may be situated, either permanently or temporarily, within 50 yards of the boundary line between any of the Residential Tracts.

(d) Rubbish and Debris. No trash, refuse or debris of any kind (including brush, clippings, or material of any nature that may reasonably pose fire or other threat) shall be placed or permitted to accumulate upon any of the Residential Tracts nor shall there be permitted the burning of any trash, refuse or debris, and no odors or loud noises shall be permitted to arise therefrom so as to render any portion of any of the Residential Tracts unsanitary, unsightly, offensive or detrimental to any other Parcel or to its occupants. Notwithstanding the foregoing, this paragraph shall not be construed to prevent the normal construction of improvements upon any Parcel, or typical hunting, ranching and farming activities.

5. Indemnification. Each Owner having rights with respect to the Easement granted hereunder shall indemnify and hold the Owner whose Parcel is subject to the Easement harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

6. Access Over Driveway. The Driveway shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on Exhibit B. There shall be maintained on the Driveway a smooth and level surface and a smooth grade transition to allow the use of the Driveway for pedestrian and vehicular ingress and egress as set forth herein. Except with respect to the Driveway, each Owner shall be permitted to maintain a fence, curbing, landscaping or other improvements along the boundary line of the Easement Tract on its Parcel.

7. Maintenance.

1. General. Until such time as improvements are constructed on a Parcel, the Owner thereof shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.
2. Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, at its sole cost and expense, the residential and related structure(s) located from time to time on its respective Parcel in good order, condition and repair. Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement), or (b) demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition. Nothing contained in subparagraph 3.2(b) shall be deemed to allow an Owner to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and such Owner's Permittee.

8. Restrictions on all Parcels. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition to the foregoing, throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of any Parcel shall be used, directly or indirectly, for purposes of a cocktail lounge, bar, disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, car wash, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, blood bank, the outdoor housing or raising of animals, off track betting establishment, bingo parlor, or any use which creates a nuisance.

1. Taxes and Assessments. Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.

10. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of any Parcel or the Easement Tract. No easements shall be implied by this Agreement; in that regard, and without limiting the foregoing, no easements for parking, signage, drainage or utilities are granted or implied.

11. Remedies and Enforcement.

11.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

11.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank of America, N.A. (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, and/or (ii) blockage or material impairment of the easement rights, and/or an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

11.3 Lien Rights. Intentionally Deleted

11.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

11.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

11.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2 - 9, cumulative of this Agreement, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2 - 9, cumulative, of this Agreement, the non-defaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 - 9, cumulative, of this Agreement.

12. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the County Clerk of Webb County and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of all of the Parcels in accordance with paragraph 13.2 hereof.

13. Miscellaneous.

13.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

13.2 Amendment. The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of all Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Clerk of Webb County, Texas

13.3 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

13.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

13.5 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

13.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefitted thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

13.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

13.8 Separability. Each provision of this Agreement and the application thereof to each Parcel are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of any or all Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

13.9 Time of Essence. Time is of the essence of this Agreement.

13.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

13.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Owner may change from time to time their respective address for notice hereunder by like notice to any other Owner. The notice addresses of the Developer is as follows:

Developer: Newco, LLC

 Attn: Mitchell Starnes

 310 West Sunset

 San Antonio, Texas 78209

13.12 Governing Law. The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Agreement. Venue shall be in Webb County, Texas.

13.13 Estoppel Certificates. Each Owner within twenty (20) days of its receipt of a written request from the other Owner(s), shall from time to time provide the requesting Owner, a certificate binding upon such Owner stating: (a) to the best of such Owner’s knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

13.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

13.15. Non-Merger. This Agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Properties, or any parts thereof, may be vested in one party or entity.

13.16 Conformity with Applicable Laws. Nothing in this Agreement will be construed as requiring or permitting any person or entity to perform any act or omission that violates any local, state or federal law, regulation or requirement in effect at the time the act or omission would occur. Provisions in this Agreement which may require or permit such a violation will yield to the law, regulation or requirement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Newco, LLC

A Texas limited liability company

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Mitchell Starnes, Authorized Signatory

STATE OF TEXAS §

§

COUNTY OF BEXAR §

The foregoing document was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2024, by Mitchell Starnes, Manager of Newco, LLC, a Texas limited liability company, on behalf of said company.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for the State of Texas

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name Printed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commission Expires

Exhibit A -- Description of the Development

Exhibit B -- Site Plan with descriptions of each Parcel

Exhibit C -- Description of Easement Tract

RETURN RECORDED DOCUMENT TO:

Bryan Lopez

CJMA Business Law and Litigation

111 West Sunset

San Antonio, Texas 78209

Exhibit A -- Description of the Development

Exhibit B -- Site Plan with descriptions of each Parcel

Exhibit C -- Description of Easement Tract