

DECLARATION OF COVENANTS, CONDITIONS,
ASSESSMENTS, CHARGES, SERVITUDES,
LIENS, RESERVATIONS, AND EASEMENTS 38
(WINSFORD AT HOLLYTREE TIER 2)

THIS DECLARATION of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, (herein called the "Declaration") is made as of the 28th day of August 1995, by HOLLYTREE, LTD., a Texas limited partnership (herein called "Declarant").

WITNESSETH:

WHEREAS, Declarant owns certain real property in Smith County, Texas, and may acquire additional lands in the same area; and

WHEREAS, the Property, as hereinafter defined, constitutes a portion of approximately 441 acres of land owned or which has heretofore been owned by Declarant in Smith County, Texas, portions of which may have heretofore been conveyed by Declarant, which land Declarant has or intends to be developed into a residential community, consisting of multi-family and single-family sections, together with certain amenities, including a golf course and country club; and

WHEREAS, in order to enable Declarant to (i) integrate the Property into the overall development of all the Declarant Land, as hereinafter defined, (ii) implement a general plan of development and accomplish the development of such lands as a first-class residential development of high quality and standards in a consistent manner with continuity, and (iii) to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property, as hereinafter defined, to the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements hereinafter set forth (herein collectively called the "Covenants").

NOW, THEREFORE, Declarant, hereby declares that the Property be held, sold, and conveyed subject to the Covenants.

Return to:
Hollytree
1400 Royal Oak
Tulsa, Ok. 74103

Filed for Record in:
SMITH COUNTY, TEXAS
MARY MORRIS - COUNTY CLERK

On Feb 21 1996
At 12:56pm

Deputy - Jemette Steveson

ARTICLE I

DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

- (A) "Additional Properties" shall mean properties added in accordance with Article XVIII, hereof.
- (B) "Amenities" shall mean the parts of the Reserved Areas which are designed for recreational or social activities, including without limitation the golf course, clubhouse, tennis courts, and swimming pool.
- (C) "Annual Assessment" shall mean the charge levied and assessed each year against the Property.
- (D) "Architectural Control Committee" shall mean the Declarant or, if and when applicable, committee, corporation, or association appointed by Declarant for the purposes of exercising architectural control, all as set forth in the Reservation of Architectural Control.
- (E) "Assessable Property" shall mean the Property, except, such part or parts thereof as may from time to time constitute Exempt Property.
- (F) "Assessment Lien" shall mean the lien created and imposed by Article VII.
- (G) "Covenants" shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements set forth herein.
- (H) "Declarant" shall mean Hollytree, Ltd., a Texas limited partnership, and any successor and assign of Declarant's rights and powers hereunder, but with respect to any such successor or assign (i) such successor or assign shall not be deemed to be a "Declarant" unless such successor or assign is designated as such pursuant to a written instrument signed by Declarant (which written instrument shall be filed of record in the Real Estate Records of Smith County, Texas, designating that part of the Property to which it relates) and (ii) such successor or assign shall only have those rights and powers of Declarant that are specifically assigned to such successor or assign pursuant to such written instrument.

- (I) "Declarant Land" shall mean such part or parts of the real property described on Exhibit "A" attached hereto and made a part hereof, including such part or parts of the Property, the Amenities, the Reserved Areas and the Lots, owned by Declarant, together with the buildings, structures and improvements thereon, if any, as may be owned now or at any time hereafter by the Declarant, for as long as the Declarant is the owner thereof.
- (J) "Declaration" shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.
- (K) "Deed" shall mean a deed or other instrument conveying the fee simple title to all or any portion of the Property, including but not limited to a Lot.
- (L) "Dwelling Unit" shall mean any portion of a building and all common elements appurtenant thereto actually constructed and completed upon a part of the Property.
- (M) "Exempt Property" shall mean the following parts of the Property.
 - (a) All land and Permanent Improvements owned by or dedicated to and accepted by the United States, the State of Texas, the County of Smith, the City of Tyler, or any political subdivision thereof, for as long as such entity or political subdivision is the owner thereof, or for so long as said dedication remains effective.
 - (b) All Declarant Land as defined in Paragraph I above.
 - (c) All Reserved Areas as defined in Paragraph V below.
- (N) "Homeowners' Association" shall mean and refer to any incorporated or unincorporated association which is formed to facilitate the maintenance and operation of the common elements appurtenant to each Lot, or is formed to enforce and administer any covenants, conditions, restrictions or regulations other than those contained herein. Every Owner shall be a member of the Homeowners' Association.
- (O) "Lot" shall mean, individually or collectively, those certain lots designated as Lots 1 through 9, of Block 1538 X and, Lots 2 through 51, Block 1538 Y, of the Winsford At Hollytree addition the City of Tyler, Smith County, Texas, as recorded in Cabinet C, Slide 146-D, of the Map and Plat Records of Smith County, Texas.

- (P) "Maintenance Charges" shall mean any and all costs assessed pursuant to Article V or Section 14.02.
- (Q) "Owner" shall mean the person or persons, entity or entities, who either own record fee simple title to the Property or any portion thereof or have entered, as an original party as purchaser thereunder or as a successor or assignee thereof, into a Contract for Deed with Declarant, its successor or assigns, covering a Lot or any other portion or parcel of the Property; the term "Owner" to exclude any person or persons, entity or entities, having an interest in a Lot or any such portion or parcel merely as security for the performance of an obligation; the term "Owner" to include Declarant if Declarant is a record owner of fee simple title to a Lot or any such portion or parcel, but only if with respect to such Lot or any such portion or parcel, Declarant has not entered into a Contract for Deed. For the purposes hereof, the term "Contract for Deed" shall be any contract executed by Declarant with another person containing as its title or as part of its title the term "Contract for Deed" pursuant to which such person is acquiring a Lot or any such portion or parcel on an installment basis whereby Declarant does not transfer fee simple title to the Lot or any such portion or parcel until such person has satisfied all of the terms and conditions of such contract.
- (R) "Permanent Improvements" shall mean with respect to any Lot or any other portion or parcel of the Property, any and all improvements, structures, and other materials and things (including, but without limitation, trees, berms, shrubs, hedges, swimming pools, tennis courts and fences) which, at the time of the assessment of each Annual Assessment are located thereon.
- (S) "Plat" shall mean the subdivision plat of any portion of the Property presently on file in the Map and Plat Records of Smith County, Texas, and any other plat or plats of all or any portion of the Property now or hereafter filed for record in the Map and Plat Records of Smith County, Texas (as such plat or plats may be amended from time to time).
- (T) "Property" shall mean:
- (a) At the time of recordation of this Declaration, the Lots 1 through 52, Block 1538-Y and Lots 1 through 9 Block 1538-X as Recorded in Cabinet C, Slide 146-D, of the Map and Plat Records of Smith County Texas; and
 - (b) From and after the addition of each parcel of land subjected to this Declaration pursuant to Article XX hereof, each such new parcel of land.

- (U) "Reservation of Architectural Control" shall mean that certain Reservation of Architectural Control executed by Declarant, recorded Recorded in Volume 3757, Page 121 of the Real Property Records of Smith County, Texas, and providing, among other things, for the reservation unto Declarant, or its delegate, or, if and when applicable the Architectural Control Committee, the rights set forth in Section 13.01 hereof.
- (V) "Reserved Areas" shall mean those areas of the Declarant Land (including without limitation streets, water plants, lift stations, drill sites, golf course, clubhouse, tennis courts and swimming pools), other than the Property, the ownership of such areas being reserved to Declarant and its successors and assigns. The term "Reserved Areas" shall specifically include the Amenities.
- (W) "Subsidiary Declaration" shall mean any condominium declaration, or any declaration of covenants, conditions, assessments, charges, servitudes, liens, reservations, easements, or restrictions applicable to any portion of the Property which is recorded after the effective date hereof or which is otherwise subject hereto.
- (X) "Supplemental Declaration" shall mean a supplement to this Declaration recorded as provided in Article XVIII.

ARTICLE II

COVENANTS BINDING ON PROPERTY AND OWNERS

2.01 Property Bound. From and after the date of recordation of this Declaration, the Property shall be subject to the Covenants and the Covenants shall run with, be for the benefit of, bind, and burden the Property.

2.02 Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and inure to the benefit of each Owner and his heirs, executors, administrators, personal representatives, successors, and assigns, whether or not so provided or otherwise mentioned in the Deed. Except with respect to the Exempt Property, each Owner, for himself, his heirs, executors, administrators, personal representatives, successors, and assigns, expressly agrees to pay, and to be personally liable for, the assessments provided for hereunder, and to be bound by all of the Covenants herein set forth. Except with respect to Exempt Property, each Owner shall be and remain per

sonally liable, regardless of whether he has transferred title to his portion of the Property, for the amount of assessments (together with interest, costs, and attorneys' fees as provided in Section 6.01) which fell due while he was an Owner. No Owner shall escape personal liability for the assessments herein provided by non-use of the Declarant Land, the Reserved Areas or the Amenities, or by transfer or abandonment of the Property.

2.03 Homeowners' Association Bound. Upon the incorporation of the Homeowners' Association; the Covenants shall be binding upon and shall inure to the benefit of the Homeowners' Association.

ARTICLE III

GENERAL RESTRICTIONS

3.01 Single-Family Residential Purposes. All Lots in the Property shall be used only for single-family residential purposes. No noxious or offensive activity of any sort shall be permitted, nor shall anything be done in or about any Lot which may be or become an annoyance or nuisance to the neighborhood. No Lot shall be used for any commercial, business or professional purposes. No Dwelling Unit shall be rented by an Owner for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days, nor shall less than the entire Dwelling Unit be rented or leased. Any lease shall be in writing and shall be made subject to this Declaration and the rules and regulations promulgated from time to time by the Homeowners' Association. Any such lease shall be expressly provide that the violation of any provision of this Declaration and/or of any rule or regulation promulgated by the Homeowners' Association shall be a default pursuant to the terms of the Lease.

3.02 Type of Structures. No building shall be erected, altered or permitted to remain on any Lot in the Property other than one (1) single-family residential dwelling not to exceed two and one-half (2 ½) stories in height. Each such dwelling unit shall have a private garage which shall not be detached from the main residential structure and which shall be fully enclosed and covered.

3.03 Minimum Square Footage. The living area of each residence (exclusive of porches, patios, garage, terraces or driveways) on each Lot shall be not less than 2200 square feet for Lots 21 through 43 of Block 1538-Y, 2800 square feet for Lots 44 through 51 of Block 1538-Y, 3600 square feet for Lots 1 through 9 of Block 1538-X, 3600 square feet for Lots 3 through 19 of Block 1538-Y and 2900 square feet for Lots 2 and 20 of Block 1538-Y.

3.04 Setbacks. As to any Lot, except with respect, to walls, fences, planters, hedges or other screening material, no Permanent Improvement or any part thereof may be nearer to any side street line than the side setback line established on the plat. No Dwelling Unit may be located nearer to the rear property line of the Lot than the rear setback line established on the plat. No Permanent improvement may be located on any Lot nearer to the front street line or any adjacent lot line of such Lot than the setback established on the Plat.

3.05 Walls, Fences Hedges and Other Screening Material. As to any Lot, where a wall, fence planter, hedge or other screening material is not specifically prohibited under the Special Restrictions set forth in Article IV and is otherwise approved by the Architectural Control Committee, the following (as to any permitted wall, fence, planter, hedge or other screening material) shall apply, except as hereinafter provided: No wall, fence, planter, hedge or other screening material in excess of two (2) feet high shall be erected or maintained nearer to the front lot line than the front building setback line, nor on corner lots nearer to the side lot line than the building setback line parallel to the side street. No rear or side fence, wall, hedge or other screening material other than those built by Declarant shall be more than six (6) feet high. Notwithstanding the foregoing, no, wall, fence, planter, hedge or other screening material shall be permitted to unduly interfere with the view from any other Lot, as determined by the Architectural Control Committee in its sole discretion. Notwithstanding the foregoing, and unless otherwise specified by the Architectural Control Committee in writing, the plans and specifications for each Dwelling Unit, A) on Lots 21 through 28 of Block 1538-Y. Shall include the installation of (i) a brick wing wall five (5) feet in height extending along the zero (0) setback side from the rear of the Dwelling Unit to the rear setback line of the Lot upon which the Dwelling Unit is situated and (ii) a brick and wrought iron side fence four (4) feet in height with six (6) inches of brick as a base and three and one half (3 1/2) feet of wrought iron with brick column(s) as a top, beginning at the end of the wall described in (i) above and extending along the zero (0) setback side from the rear setback line to the rear line of the Lot upon which the Dwelling Unit is situated, B) on Lots 29 through 35 and 38 through 43 of Block 1538-Y shall include the installation of a brick wing wall five (5) feet in height extending along the zero (0) setback side from the rear of the Dwelling Unit to the rear line of the Lot upon which the Dwelling Unit is situated, C) on Lots 21 through 28 Block 1538-Y, shall include the installation of a brick and wrought iron fence, six (6) feet in height (measured from the golf course side) along the rear of the Lot, extending from the side fence at the rear of the Lot to the side fence of any adjoining Lot, D) on Lots 13 through 20 Block 1538-Y, shall include the installation of a brick and wrought iron fence, six (6) feet in height (measured from the golf course side), along the rear of said Lot and connecting to the fences at the rear of any adjoining Lots, if any E) on Lots 38 through 45 Block 1538-Y, shall included the installation of a brick wall six (6) feet in height (measured from the "high side") straddling that property line of said Lots, which property line is in the center of an easement, two (2) feet in width, identified as a wall easement on the plat as recorded in Cabinet C, Slide 146-D, of the Map and Plat

Records of Smith County, Texas, with that side of the wall which faces Lots 44 or 45 being bricked with a brick to be specified by Declarant and the southern end point of the wall straddling the rear line of Lot 43 being ten (10) feet from Lot 43's south property line. For the purposes of this Article 3.05 (E), the "high side" shall be (i) the north side of the wall which straddles the rear line of Lots 38 through 41 and (ii) the west side of the wall which straddles the rear line of Lots 42 and 43. F) on Lots 2 and 51 Block 1538-Y, shall not include any wall or fence along Winsford Drive other than those built by Declarant.

Each Lot owner whose property line straddles the wall described in Article 3.05 (E) above shall have a fifty (50) percent undivided interest in and responsibility for 1/2 of the "cost of construction" and maintenance of said wall. 1/2 of the "cost of construction" as used in this paragraph shall mean the lesser of 1/2 the actual cost or twenty (20) dollars per linear foot. The owner of each Lot mentioned in Article 3.05 (E) above specifically grants to any adjoining Lot owner an easement, one (1) foot in width, as shown on the plat described in Article 3.05 (E) above, permitting construction and maintenance of any wall built pursuant to Article 3.05 (E) above. The six (6) foot brick and wrought iron fences described in (C) and (D) of this Article 3.05 shall (i) have two (2) feet of brick as a base (measured from the golf course side) with four (4) feet of wrought iron with brick columns as a top and (ii) use materials and design as specified by Declarant.

3.06 Construction Materials. All materials used in the construction of the exterior of any Dwelling Unit or other structure must be approved by the Architectural Control Committee before commencement of construction. Any exposed exterior walls, exclusive of doors, windows and gable areas A) on Lots 1 through 9, Block 1538-X, Lots 2 through 20, Block 1538-Y and Lots 44 through 51, Block 1538-Y, shall not be less than seventy percent (70%) brick, brick veneer, stone or stone veneer with all other exterior construction materials to be of standard grade and quality, with the Architectural Control Committee having the authority to approve plaster in lieu of brick, brick veneer, stone or stone veneer, if plaster is appropriate in the Architectural Control Committee's sole opinion. B) on Lots 21 through 43, Block 1538-Y shall not be less than seventy (70) percent brick, or brick veneer using one of the brick selections specified by Declarant, with all other exterior construction materials to be of standard grade and quality.

All solar collectors and panels to be incorporated into the design of any Dwelling Unit must receive specific approval from the Architectural Control Committee prior to commencement of construction. Only new construction materials shall be used (except for used brick if and as approved by the Architectural Control Committee on a case by case basis). No concrete blocks shall be used in construction unless the blocks are covered up by the final exterior finish material. All Dwelling Units shall be built on a slab, solid concrete beam foundation (provided no such slab shall be exposed above the ground level), or a pier and beam foundation approved by the Architectural Control Committee.

3.07 Walks. Walks to the Dwelling Unit shall have a minimum width of three (3) feet and shall be constructed entirely of concrete (except however, some other material may be used with the prior written consent of the Architectural Control Committee).

3.08 Prosecution of Construction. With reasonable diligence, and in all events within nine (9) months from the commencement of construction, unless completion is prevented by war, labor strike or an act of God, any Dwelling Unit or other structure commenced upon any Lot shall be completed as to its exterior, and all temporary structures shall be removed.

3.09 Water Wells. At no time shall the drilling, usage or operation of any water well be permitted on any Lot.

3.10 Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed or maintained on or in any Dwelling Unit.

3.11 Driveways and Curb Breaks. As to any portion of the Property, all driveways shall be entirely of concrete (except however, some other material may be used with the prior written consent of the Architectural Control Committee). The concrete finish and color on that portion of the driveway which is within five (5) feet of the back of the street curb, shall match the finish and color of the concrete streets. No driveway or other roadway may be constructed on any portion of the Property in such a manner as to furnish access to any other property without the prior written consent of the Architectural Control Committee. All curb breaks must be saw cut. There shall be no driveways on Winsford Drive.

3.12 Grasses. With respect to any portion of the Property having a common boundary with the golf course as shown on the Plat, no Owner shall grow or permit the growth of any variety of grass or other vegetation which is inimical or damaging to the grasses or other vegetation existing with respect to the golf course.

3.13 Utilities. Each and every Dwelling Unit shall be required to be connected to the water distribution system and sanitary sewer collection system in the Property as soon as such utilities are available in the easements adjacent to or within the respective Lot upon which the Dwelling Unit is located. Individual underground electrical service drops must be installed to each Dwelling Unit. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in applicable utility company rules, regulations and terms and conditions of service, as the same may be amended from time to time without notice.

3.14 Drying Yard. The drying of clothes in public view is prohibited.

3.15 Wiring of Each Dwelling Unit. All Dwelling Units shall be equipped with an electrical security system. The plans and specifications of each Dwelling Unit shall include the electrical wiring plans thereof so as to condition the Dwelling Unit for the installation of a central electrical security system. Although Declarant makes no, and hereby expressly disclaims any, representation regarding the installation of a central electrical security system within the Property, it is Declarant's intent that each Dwelling Unit be pre-wired for such a system in the event such an electrical security system is installed within the Property.

3.16 Mailboxes. Unless the Architectural Control Committee approves otherwise, the construction and installation of mail boxes shall A) be in accordance with specifications furnished by Declarant, and B) on Lots 21 through 43 of Block 1538-Y, (i) be in locations chosen by Declarant along common Lot lines or otherwise designated by Declarant, and (ii) serve two (2) residences.

3.17 Finished Floor Elevation. The Architectural Control Committee will establish a required finish floor elevation for each Dwelling Unit on Lots 21 through 51, Block 1538-Y. Without the express written consent of the Architectural Control Committee to the contrary, (a) each Dwelling Unit built on said Lots must be built at the required finish floor elevation and (b) on Lots 21 through 43, Block 1538-Y the entire side yard six (6) feet along the entire side property line (on the six (6) foot side setback side) for each Dwelling Unit built on said Lot must be graded to an elevation that is at least six (6) inches lower than the required finished floor elevation for the Dwelling Unit on the Lot, which adjoins said side yard.

3.18 Front Facade. The front of the Dwelling Unit built on Lot 2 and 51, Block 1538-Y must face Walden Drive.

3.19 Patios and Balconies. Without the approval of the Architectural Control Committee no patio or balcony may be nearer than six (6) feet from the property line and no balcony may open towards the side lot line in a way which, in the opinion of the Architectural Control Committee, will unfairly limit the privacy of an adjoining property owner.

3.20 Windows. Without the written consent of the Architectural Control Committee, no Dwelling Unit built on Lots 21 through 43, Block 1538-Y shall have a window facing its zero setback side and in the case of Lot 36 and Lot 37, Block 1538-Y there shall be no window facing the common boundary between said Lots.

3.21 Approval of Builder. Owner shall not permit any builder to commence construction of a Dwelling Unit on owner's Lot or Lots until and unless such builder (A) appears on Declarant's approved builders list, or (B) obtains the written consent of Declarant's Architectural Control Committee.

3.22 Roofs. Unless otherwise approved by the Architectural Control Committee in writing, and in order to preserve the view of the golf course for residents and guests as they travel east on Winsford Drive, the plans and specifications shall include no second story on any Dwelling Unit on Lots 20 or 21, of Block 1538-Y and shall include hips only and no gables (A) on the south side of any Dwelling Unit on Lot 21, of Block 1538-Y, or (B) on the north side of any Dwelling Unit on Lot 20, of Block 1538-Y. The plans and specifications for any Dwelling Unit built on Lots 29 through 42 Block 1538-Y shall include drainage structures including but not limited to gutters, downspouts and underground pipes, as shall be necessary to collect the rainfall from eighty percent (80%) of said Dwelling Units roof area and carry the water from the house, underground, to a location within one (1) foot of a street curb where the pipe will turn up, perpendicular to the ground so that the rain water will flow upwards and exit the end of the pipe and flow overland and into a street without draining across the property of any contiguous Lot owner.

3.23 Automated Meter Reader. Declarant reserves the right to install an Automated Meter Reader (AMR) in connection with any Lot, at Declarant's sole discretion. An AMR, as used herein, is equipment which enables gas, water and/or electric meters to be read electronically via telephone lines. In the event Declarant does install AMRs within the property, then the plans and specifications for each Dwelling Unit shall include the gas, water and electrical connections, conduits, wiring, equipment and all other appurtenances or accessories necessary to adapt the Dwelling Unit for use with an AMR. Furthermore, each owner shall allow the City of Tyler and or utility companies to maintain in good operating condition the AMR and any conduits, wiring, equipment or other accessories or appurtenance related to the AMR but in the event that the City of Tyler and or the utility companies do not perform said maintenance then said owner shall perform said maintenance.

3.24 Golf Course Lot Drainage. The plans and specifications for any Dwelling Unit built on Lots 13 through 28 Block 1538-Y shall include drainage structures including but not limited to gutters, downspouts and underground pipes as shall be necessary to collect the rainfall which may fall within the boundaries of said Lots, excluding only that portion of said rainfall which drains to the street, and carry said water underground, through Lot 52 Block 1538-Y and empty said water into the lake which is on said Lot 52 with no portion of said drainage structures constructed on Lot 52 being visible above ground or above water, with the location of all said structures on Lot 52 being subject to the approval of the Architectural Control Committee. Declarant hereby grants and conveys an easement to the owners of Lots 13 through 28 Block 1538-Y upon, over and across Lot 52 Block 1538-Y effective upon execution and recording of this Declaration permitting each Lot owner to construct drainage structures as described in this Article 3.24. Each Lot owner must return the surface of Lot 52 to the condition which existed prior to the construction of the drainage structure(s) and keep said drainage structure(s) in good working condition.

ARTICLE IV

SPECIAL RESTRICTIONS

4.01 Designation of Types of Lots. Lots 13 through 28, of Block 1538-Y, are hereby designated as "Golf Course Lots". All Lots not being designated as "Golf Course Lots" are hereinafter referred to as "Non-Golf Course Lots".

4.02 Determination of Designation. The Architectural Control Committee shall have the exclusive and final right and authority to classify or designate any Lot as being a Golf Course Lot or a Non-Golf Course Lot in the event of any reasonable doubt as to the classification of such Lot.

4.03 Golf Course Lots. In addition to the General Restrictions set forth in Article III the following restrictions shall apply to Golf Course Lots:

- (a) No wall, fence, planter, hedge or other screening device shall be constructed or permitted except as specified by the Declarant or the Architectural Control Committee.
- (b) No Owner of any Golf Course Lot shall grow or permit the growth of any variety of grass or other vegetation which is inimical or damaging to standard golf course grasses or vegetation.

ARTICLE V

IMPROPER MAINTENANCE BY OWNER

In the event any portion of the Property (other than Declarant Land) or any Dwelling Unit thereon is, in the judgment of the Declarant, so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to detract (including but not limited to detractions caused by debris and or weeds) from the appearance or quality of the surrounding Lots or other areas of the Property or any adjacent land owned by Declarant or its successors or assigns, not presently included in the Property but which is substantially affected thereby or related thereto, or (iii) as to not comply with these Covenants, the Declarant may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver notice thereof to the offending Owner that unless corrective action is taken within ten (10) days, the Declarant will cause such action to be taken at such Owner's cost. If after the expiration of said ten (10) day period of time the requisite

corrective action has not been taken, the Declarant shall be authorized and empowered to cause such action (including entering upon such portion of the Property without liability for any damage that may be caused in the absence of gross negligence or willful misconduct) to be taken and the costs thereof, including but not limited to the costs of collection, court costs and attorneys' fees (such costs being herein collectively called the "Maintenance Charge"), together with interest accruing thereon from the expiration of such ten (10) day period at the rate specified in Section 6.01 hereof, shall be assessed against the Lot of the offending Owner. The Maintenance Charge, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VII hereof. Written notice of such assessment shall be delivered to the offending Owner which notice shall specify the amount of such Maintenance Charge and shall demand payment thereof within thirty (30) days after the date of said notice.

ARTICLE VI

ASSESSMENTS

6.01 Annual Assessments. In order to provide funds for the purposes and uses specified in Article IX hereof, the Declarant in each year, commencing with the year in which these Declarations are recorded, shall assess against the Assessable Property an Annual Assessment, which commencing in 1996 shall be, (i) \$0.02 for each square foot of land comprising each Golf Course Lot and (ii) \$0.015 for each square foot of land comprising each Non-Golf Course Lot, such amount to be prorated by the Declarant if the first Assessment Period (hereinafter defined) is less than twelve (12) months. The final and conclusive determination as to the total number of square feet comprising each Lot shall be made by Declarant. The Annual Assessments may be increased by the Declarant following January 1 of each calendar year subsequent to the first Assessment Period by an amount not to exceed the lesser of (i) five percent (5%), (ii) the percentage change in the National Consumer Price Index for the United States, all Urban Consumers, all Components, or its equivalent index as published by the Bureau of Labor Statistics or such other governmental body as may issue such official index, or (iii) such lesser amount as Declarant may permit. The Declarant shall make the calculations required by this Section, and shall prepare and forward to the Homeowners' Association for collection a statement setting forth the amount of the Annual Assessment assessed against each Lot. The Homeowners' Association shall thereafter collect and pay to the Declarant the Annual Assessments, failing which Declarant shall have the right to collect the Annual Assessment pursuant to Section 7.02 hereof. All delinquent payments of Annual Assessments shall bear interest at the maximum rate of interest which may be charged under applicable law (including the laws of the United States of America) from such due date until paid (or at such a lesser rate as may be determined by Declarant in its sole discretion on a case by case basis from time to

time), and the Owner shall be deemed to have agreed in writing to the payment of such interest and all costs, including court costs and attorneys' fees which may be incurred by the Declarant in collecting same.

6.02 Assessment Period. The Declarant shall establish either a calendar or fiscal year (herein called the "Assessment Period") for which the Annual Assessment is to be levied. The Declarant in its sole discretion may from time to time change the Assessment Period.

6.03 Rules Regarding Billing and Collection Procedures. The Declarant shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the assessment provided herein and for the billing and collection of the Annual Assessments and the Maintenance Charges, provided that said procedures are not inconsistent with the provisions hereof.

ARTICLE VII

IMPOSITION OF LIEN; EXEMPTIONS; OWNERS' AGREEMENT

7.01 Imposition of Assessment Lien and Priority of the Lien. Except with respect to Exempt Property, each Lot shall be charged with and subject to a continuing servitude and lien from the date of recordation of this Declaration for the amount of the Annual Assessments assessed and levied against each such Lot, for Maintenance Charges, for any interest accrued on any Annual Assessments or Maintenance Charges provided for herein and for any and all costs, including court costs and attorneys' fees incurred by Declarant in collecting same. Except as provided in Section 8.03 hereof, the lien (herein called the "Assessment Lien") against each such Lot shall be superior to any and all other charges, liens, or encumbrances which hereafter in any manner may arise or be imposed upon each such Lot, except that such Assessment Lien shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. It is expressly intended that by acceptance of a Deed or other conveyance or muniment of title to a Lot, each Owner acknowledges that title is accepted subject to the Assessment Lien which shall, in addition to the subrogation rights described in Section 7.02 below, be deemed to be an express contractual lien and shall be superior to any defense of homestead or other exemption, the Assessment Lien having been created prior to the creation or attachment of any homestead right with respect to any Lot.

7.02 Subrogation to Rights of Homeowners' Association. The Homeowners' Association shall include in its Bylaws an obligation running with the land obligating the Owner of each Lot to pay all Annual Assessments and Maintenance Charges (together with interest, costs and attorneys' fees as provided in Section 6.01) for which each Owner is obligated under this

Declaration. Each such document shall impose and acknowledge a lien and charge on the Lot, which shall be a continuing lien upon the Lot for the benefit of the Homeowners' Association against which each Annual Assessment or Maintenance Charge is made. In the event that the Homeowners Association shall fail to collect any Annual Assessment or Maintenance Charge, the Declarant may itself, at its election, but without any obligation to do so, collect such unpaid Annual Assessment or Maintenance Charge. Each Owner by acceptance of a Deed or other conveyance, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree with the Declarant to pay to the Declarant or cause to be paid to the Declarant by the Homeowners Association the Annual Assessments and Maintenance Charges assessed and/or levied against his Lot. The Declarant shall be subrogated to all charges, and liens against each Lot which may be in favor of the Homeowners Association, and the Declarant shall have the right to enforce such liens for the collection of the Annual Assessments or Maintenance Charges.

7.03 Owners' Promises. Each Owner owning a portion of the Assessable Property, for himself, his heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees:

- (a) That he will pay to the Homeowners Association when due the Annual Assessments assessed by the Declarant in each year against his Lot, together with any Maintenance Charges imposed;
- (b) That he acquires his Lot subject to the Annual Assessments and Maintenance Charges and the Assessment Lien, as they may exist from time to time; and
- (c) That by accepting a Deed to his Lot, he shall be, and remain, personally liable for any and all Annual Assessments and Maintenance Charges assessed against his Lot while he is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether he signed the Deed.

ARTICLE VIII

ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS
AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

8.01 Declarant as Enforcing Body. Except as otherwise provided herein, the Declarant shall have the exclusive right to enforce the provisions of this Declaration. However, if the Declarant shall fail or refuse to enforce this Declaration for an unreasonable period of time, after written request from an Owner to do so, then any Owner may enforce this Declaration at his sole cost and expense by any appropriate action, whether at law or in equity.

8.02 Declarant's Enforcement Remedies. If the Owner of any Lot constituting a portion of the Assessable Property fails to pay any of the Annual Assessments or installments when due, or to pay Maintenance Charges assessed, or to pay any interest accrued or any Annual Assessments or Maintenance Charges, and any and all costs (including court costs and attorneys' fees) incurred by Declarant in collecting same; the Declarant may enforce the payment of the Annual Assessments, Maintenance Charges, and all interest accrued thereon and costs incurred by Declarant in collecting same, and/or enforce the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Declarant does not prejudice its exercise of any other remedy):

- (a) Bring an action at law and recover judgment against the Owner personally obligated to pay the Annual Assessments or the Maintenance Charges;
- (b) Enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a non-judicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in Article 3810 of the Revised Civil Statutes of Texas, as the same may be amended or supplemented from time to time. The Declarant or any other Owner may be the purchaser at any such foreclosure sale.

8.03 Subordination of the Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United States or any state within the United States. Sale or transfer of any Lot shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of such a mortgage or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking any deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual

Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens, or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall (i) take subject to all Annual Assessments, Maintenance Charges, and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure and (ii) be and remain personally liable for all assessments (together with interest, costs and attorneys' fees as provided in Section 6.01 hereof) which fall due while he is an Owner.

8.04 Costs to be Borne by Owner in connection with Enforcement. In any action taken pursuant to Section 8.02 of this Article, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments and Maintenance Charges together with interest and the Declarant's costs and attorneys' fees.

ARTICLE IX

USE OF FUNDS

9.01 Purposes For Which Declarants Funds May Be Used. The Declarant shall apply all funds collected and received by it through its imposition of the Annual Assessments for the benefit of the Reserved Areas (including the Amenities), the Owners, and residents of the Property by devoting said funds, among other things, to the acquisition, construction, alteration, maintenance, provision, and operation of the Amenities (including without limitation the golf course, clubhouse, tennis courts and swimming pool) and the landscaping and maintenance of the Reserved Areas. The use and application of all funds collected and received by Declarant through its imposition of the Annual Assessments shall in no manner be limited or restricted by reason of other sources of funds available to Declarant, including those available through initiation, admission and other fees, dues or assessments charged by Declarant in connection with the use of any or all of the Declarant Land, including specifically but not by way of limitation the Amenities and Reserved Areas. Declarant shall have no duty to utilize any other funds otherwise available to Declarant from other sources prior to applying funds collected and received by it through its imposition of the Annual Assessments for the purposes herein stated. The Declarant shall not have the obligation to account to any Owner for the collection or use of any funds collected and received by Declarant through its imposition of the Annual Assessments.

9.02 Declarant's Rights in Spending Funds from Year to Year. The Declarant shall not be obligated to spend in any year all the sums received by it in such year, and may carry forward as surplus any balance remaining. Nor shall the Declarant be obligated to, apply any such surpluses to the reduction of the amount of the Annual Assessment in the succeeding year, but may carry forward from year to year such surplus as the Declarant in its discretion may determine to be desirable for the effectuation of the purposes set forth in this Article.

ARTICLE X

RIGHTS AND POWERS.

10.01 Enforcement. The Declarant shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements provided for in any contract, deed declaration, or other instrument affecting all or any part or parts of the Property. Any such instrument shall have been executed pursuant to, or subject to, the provisions of this Declaration, or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Declarant; provided, however, that any such instrument that is recorded subsequent to recordation of this Declaration shall at all times be subordinate and inferior to this Declaration whether or not so provided in such instrument.

10.02 Right to Inspect. The Declarant shall have the right to enter all Dwelling units, during the course of construction thereof, for the purpose of inspecting whether or not the Owner thereof is in compliance with the Covenants. If during the course of construction of a Dwelling Unit, Declarant determines in its sole discretion that there is a violation of the Covenants, the Declarant may order a discontinuance of the construction of the Dwelling Unit until such time as corrective measures have been taken to assure full compliance with the Covenants, and an Owner's failure to immediately discontinue or cause the discontinuance of construction of the Dwelling Unit, upon demand by Declarant, shall constitute a further violation of this Declaration by that Owner.

10.03 Delegation and Assignment of Rights and Powers. With respect to the Property, or any part thereof, and without assigning or transferring any portion of the Property, or any interest therein, the Declarant may, and hereby reserves the right to, delegate all rights and powers contained in this Declaration to (i) a committee appointed, empowered and constituted by Declarant whose members shall serve and may be replaced at the pleasure of Declarant or (ii) a corporation or association, profit or nonprofit, whose directors and officers may be elected and designated by Declarant. Any such delegation shall be made by written instrument filed of record in the Real Property Records of Smith County, Texas, and may be

rescinded at any time by Declarant by filing an instrument so stating such act of rescission in such Real Property Records. As long as any such delegation is in effect, any person or entity owning any interest in the Property, or any part thereof shall be required to deal with such committee, corporation or association and not Declarant, and Declarant shall have no responsibility or liability for the actions of such committee, corporation or association as the case may be. In addition to the power to delegate set forth hereinabove, and as a separate right and power reserved unto Declarant, Declarant may, in conjunction with any conveyance of any interest in the Declarant Land, or any part thereof, to any other person or entity ("Assignee"), assign any and all of Declarant's powers and rights contained in the Declaration to the Assignee, following which Declarant shall have no further liability or responsibility with regard to any of the powers and/or rights assigned to the Assignee. Each such assignment must be expressed, in writing, and recorded in the Real Property Records of Smith County, Texas, and state to what portion of the Property such assignment applies. No such assignment shall be deemed to arise by implication.

ARTICLE XI

EASEMENTS AND RIGHTS OF ENJOYMENT IN RESERVED AREAS; RESERVATIONS OF DECLARANT

11.01 Rights of Enjoyment in Reserved Areas. No Owner, by reason of ownership of any interest in the Property, shall have a right or easement of enjoyment in and to any Reserved Areas, including the Amenities.

11.02 Rules Regulating Use of Reserved Areas. All rights, easements and privileges, if any to enter upon or use any part of the Reserved Areas, including the Amenities, granted from time to time by Declarant, shall be subject to the exclusive right of the Declarant to adopt from time to time reasonable rules and regulations pertaining to the use thereof, the use of which may include persons or entities other than Owners.

11.03 Fees Chargeable to Users of Reserved Areas. All rights, easements and privileges to enter upon or use any part of the Reserved Areas, including the Amenities, which may be granted and conferred by the Declarant shall be subject to the exclusive right of the Declarant to charge Owners and others initiation, admission, and other fees, dues or assessments in connection with the use of any or all of the Reserved Areas.

11.04 Reservations of Declarant. The following reservations are hereby made by Declarant:

- (a) The utility easements shown on any Plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the benefit of Declarant to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, television cable lines, security, gas, water, sanitary sewers, storm sewers and any other utility or service which Declarant may find necessary or proper.
- (b) Declarant reserves the right from time to time to make changes in the location, shape, and size of, and additions to, the easements described in Section 11.04(a) for the purpose of more efficiently or desirably installing utilities therein and thereon.
- (c) The title conveyed to any part of the Property shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewer or sanitary sewer lines, poles, pipes, conduits, cable television lines or other appurtenances or facilities constructed by Declarant or public utility companies upon, under, along, across or through such utility easements; and the right (but no obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to Declarant, its successors and assigns.
- (d) The right to sell or lease the lines, utilities, appurtenances and other facilities described in Section 11.04(c) to any municipality, governmental agency (including any water control or utility district created under Article XV, Section 59 of the Texas Constitution covering the Property as well as other lands), public service corporation or other party is hereby expressly reserved to Declarant.
- (e) Neither Declarant nor its successors or assigns shall be liable for any damage done by any of such parties or any of their agents or employees to shrubbery, trees, flowers or other property of an Owner situated on the Property covered by the above described utility easements.
- (f) The right to enter upon any portion of the Property during installation of streets for the purpose of performing street excavation, construction, and paving is hereby reserved to Declarant, its successors and assigns, and neither Declarant nor its successors or assigns shall be liable for any damage done by any such parties or any of their agents or employees to shrubbery, trees, flowers or other property of the Owner which is necessitated by such street construction.

ARTICLE XII

FURTHER CONVEYANCES OF AND
MODIFICATIONS TO DECLARANT LAND

The Declarant shall have the absolute, exclusive and unrestricted right, exercisable in its sole discretion, without consent from any Owner, to (i) sell, transfer, convey, lease, dedicate, encumber or in any manner alienate to any public or private entity the Declarant Land or any part thereof or otherwise deal with the Declarant Land, or any part thereof, including the Amenities, the Reserved Areas and any Permanent Improvements situated thereon, on such terms and in such manner as Declarant in its sole discretion may determine, or (ii) modify the nature, scope, location, configuration, construction, design or other characteristics of the Declarant Land, or any part thereof, including the Amenities, Reserved Areas and any Permanent Improvements situated thereon.

ARTICLE XIII

ARCHITECTURAL CONTROL

13.01 Prior Approval. No building, fence, wall, sign, exterior light, or other structure or apparatus, either permanent or temporary, shall be commenced, erected, placed, or maintained upon any portion of the Property, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, roadways, and walkways, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted to and approved in writing by Declarant or by an Architectural Control Committee composed of three (3) or more representatives appointed by Declarant as to (i) compliance with the Covenants herein contained and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not by way of limitation, as to architectural designs, setbacks, landscaping, color schemes and construction materials. In the event Declarant, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article XIII will be deemed to have been fully complied with. Non-exercise of the powers hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to Declarant or the Architectural Control Committee appointed by Declarant, neither Declarant nor such Architectural Control Committee shall be liable for the improper enforcement or failure to exercise any of the powers reserved unto Declarant pursuant to this Article. In no event shall any approval obtained from Declarant or the Architectural

Control Committee pursuant to the terms of this Article, be deemed to be a representation of any nature regarding the structural safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations; nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval.

13.02 Reservation of Architectural Control. Nothing contained in Section 13.01 above shall in any manner restrict or limit the rights and powers reserved unto Declarant as set forth in the Reservation of Architectural Control, including the right to delegate the powers hereby and thereby reserved to (i) a committee appointed, empowered and constituted by Declarant, whose members shall serve and be replaced at the pleasure of Declarant, or (ii) a corporation or association, profit or non-profit, whose directors and officers may be elected and designated by Declarant, all as more fully set forth in the Reservation of Architectural Control.

ARTICLE XIV

MAINTENANCE

14.01 Declarant Land. The Declarant or its duly delegated representative, shall maintain and otherwise manage all Declarant Land (including the Reserved Areas and Amenities), including, but not limited to, the landscaping, walkways, riding paths, parking areas, drives, streets, and recreational facilities, roofs, interiors and exteriors of the buildings and structures located upon said properties. The Declarant shall use a reasonable standard of care in providing for the repair, management, and maintenance of the Declarant Land.

14.02 Assessment of Costs of Maintenance and Repair of Utilities or Declarant Lands. In the event that the need for maintenance or repair of Declarant Land or utilities within the Property is caused by any Owner, his agents, tenants, family, guests or invitees, the cost of such maintenance or repairs at Declarant's option shall be added to and become a part of the Maintenance Charge to which such Owner's Lot is subject, payable and subject to interest as set forth in Article V hereof, and shall be secured by the Assessment Lien.

ARTICLE XV

USE RESTRICTIONS

15.05 All Properties. Except with respect to Exempt Property, including the Declarant Land, all Lots within the Property are hereby restricted as follows:

- (a) Antennas. No exterior television, radio, or other antenna of any type shall be placed, allowed, or maintained without prior written approval and authorization of the Declarant.
- (b) On Street Parking. On street parking is restricted to approved deliveries, pick-up or short-time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Declarant.
- (c) Storage. No exterior storage of any items of any kind shall be permitted, except with prior written approval and authorization of the Declarant. Any such storage as is approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring property, dwelling units, pathways, and streets. This provision shall apply, without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, mobile homes, and pick-up camper units. Also, without limitation, no automobile, truck, or other vehicle, regardless of ownership, age, condition, or appearance, shall remain on any portion of the Property in any manner which could be construed as being stored, neglected, abandoned, or otherwise not in frequent use, except pursuant to written approval and authorization of the Declarant.
- (d) Garages. The Architectural Control Committee shall have the right to specifically approve the direction to which any garage may open. No garage shall be constructed;
 - a) on Lots 13 through 20, Block 1538-Y or Lots 21 through 28, Block 1538-Y which opens to the golf course, or
 - b) on Lots 2 through 20, Block 1538-Y or Lots 1 through 9, Block 1538-X which open to a front or side street.

Each garage shall (i) be equipped with an automatic garage door opener, (ii) be attached to the main residence and (iii) have the capacity to shelter at least two (2) automobiles. Doors must remain closed except for ingress and egress.

- (e) Garbage. No garbage or trash shall be placed at the exterior of any building, except in containers meeting the specifications of the Declarant and the placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the Declarant. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

- (f) Outside Lighting. No outside lighting, other than indirect lighting, shall be placed, allowed or maintained without prior written approval and authorization of the Declarant.
- (g) Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept in, on or about any portion of the Property, except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Declarant, provided, however, that dogs, cats, birds, or fish may be kept as household pets so long as, in the sole discretion of the Declarant, such pet is not, or does not become, a nuisance, threat, or otherwise objectionable to other Owners.
- (h) Re-subdivision. No portion of the Property shall be further subdivided and no portion less than all of any such portion of the Property, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant.
- (i) Diseases and Insects. No Owner shall permit any thing or condition to exist in, on or about any portion of the Property which shall induce, breed or harbor plant disease or noxious insects.
- (j) Sidewalk Encroachments. No tree, shrub, or plant of any kind on or about any portion of the Property shall be allowed to overhang or otherwise encroach upon any sidewalk or any other pedestrian way from ground level to a height of seven (7) feet without the prior written approval and authorization of the Declarant.
- (k) Machinery, Fixtures, and Equipment. No machinery, fixtures, or equipment of any type, including without limitation, air conditioning or refrigeration equipment and clothes lines, shall be placed, allowed, or maintained in, on or about any portion of the Property, except with prior written approval and authorization of the Declarant in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view of neighboring property, dwelling units, pathways, and streets; and no such machinery, fixtures, or equipment shall be placed, allowed, or maintained anywhere other than on the ground (such as on the roof) except if screened or concealed (subject to all required approvals as to architectural control) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery, fixtures, or equipment.
- (l) Burning and Incinerators. No open fires shall be permitted in, on or about any portion of the Property at any time and no incinerators or like equipment shall be placed, allowed, or maintained in, on or about any portion of the Property. The

foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

- (m) Signs. No exterior signs or advertisements of any kind may be placed, allowed, or maintained in, on or about any portion of the Property without prior approval and authorization of the Declarant, except that mailboxes, residential nameplates, "for sale" and "for rent" signs may be placed and maintained in conformity with such common specifications, including without limitation, reasonable restrictions as to size, as may be adopted by the Declarant.
- (n) Repairs. No repairs of any detached machinery, equipment, or fixtures, including without limitation motor vehicles, shall be made within view of neighboring property, dwelling units, pathways, and streets, without prior written approval and authorization of the Declarant.
- (o) Utility and Service Lines. No gas, electric, power, telephone, sewer, cable television, or other utility or service lines of any nature or kind shall be placed, allowed, or maintained upon or above the ground on any portion of the property, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.
- (p) Oil, Gas, and Mineral Activity. With respect only to the Property as defined herein (and excluding any additional land added pursuant to Article XVIII), it is expressly provided that no oil or gas exploration, drilling, development, or refining operations and no quarrying or mining operations of any kind, including oil wells, surface tanks, tunnels or mineral excavations or shafts shall be permitted or pursued by any Owner other than Declarant; and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted; provided, however, that with respect to any outstanding mineral interest owned by any person or entity as of the date hereof other than Declarant, Declarant shall cause such restrictions on exploration, drilling, development, refining, mining and quarrying to be placed on such part of the Property as Declarant in good faith can negotiate (with no monetary obligation required on the part of Declarant to be paid for such purpose). With respect to additional land which may be added pursuant to Article XVIII, such land shall be subject to the restrictions set forth in this Section 15.01(p) unless Declarant at the time of such addition does not own all of the mineral rights therein. If Declarant does not own all of the mineral rights, Declarant shall cause such restrictions on exploration, drilling, development, refining, mining and quarrying to be placed on such part of said additional land as Declarant in good faith can negotiate (with no monetary obligation required on the part of Declarant to be paid for such purpose), and such land shall be subject to the foregoing

provisions of this Section 15.01(p) except to the extent of any conflict herein with the rights of the owners of such mineral rights. Notwithstanding anything to the contrary stated herein, however, as to any mineral interest which Declarant owns with respect to the Property or any such additional land which may be added pursuant to Article XVIII, Declarant reserves the right to explore, drill, develop, refine, mine and quarry any minerals in, on or under the Property or such additional land; provided, however, any such activities shall be subject to (i) Declarant's obtaining whatever permits or licenses are required from the City of Tyler, Texas, and (ii) Declarant's pursuing such activities in such a manner so as to not disrupt the surface rights of any Owner.

- (q) Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed unless previously approved in writing by all governmental authorities having jurisdiction with respect thereto, and by the Declarant. No outside toilets of any kind are permitted, and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source.
- (r) Firearms and Weapons. No portion of the Property shall be used or permitted to be used for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow or any other device capable of killing or injuring.
- (s) Motor Vehicles. The operation of any and all motorized vehicles within the Property shall be subject to such rules and regulations as shall from time to time be established by Declarant.
- (t) Water Wells. At no time shall the drilling, usage or operation of any water well be permitted on any portion of the Property.
- (u) Trees. Without the express written consent of Declarant no tree shall be removed from any portion of the Property located within the greenbelt on Lots 5, 47 and 48 of Block 1538-Y as shown on the Plat as Recorded in Cabinet C, Slide 146-D, of the Map and Plat Records of Smith County.
- (v) Change in Intended Use. No portion of the Property may be developed or redeveloped otherwise than in accordance with its original intended use as described in Section 3.01 without the prior written authorization of the Declarant. In connection with Declarant's authorization to allow any Owner to develop or redevelop any portion of the Property otherwise than in accordance with its original intended use, Declarant shall have the right to further subject the Property to additional and/or different covenants, conditions, assessments, charges, servitudes, liens, reservations and easements, either by amending this Declaration or by filing a Subsidiary Declaration, and in either event all of the

Owners of any portion of the Property shall join in the execution and filing of any such amendment or Subsidiary Declaration.

- (w) Misuse and Mismanagement. No portion of the Property shall be maintained or utilized in such manner as to present an unsightly appearance (including but not limited to clothes drying within public view) or as to unreasonably offend the morals of or as to constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, other Owners or residents of the Property; and no noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted thereon.
- (x) Violation of Statutes, Ordinances, and Regulations. No portion of the Property shall be maintained or utilized in such manner as to violate any applicable statute, ordinance, or regulation of the United States of America, the State of Texas, the County of Smith, the City of Tyler, or any other governmental agency or subdivision having jurisdiction over the Property.
- (y) Violation of Rules or of Covenants, Conditions or Restrictions. No portion of the Property shall be maintained or utilized in violation of this Declaration or of the rules and regulations of the Declarant or of any covenants, conditions, or restrictions applicable to and binding upon said portion of the Property.

ARTICLE XVI

TERM; AMENDMENTS; TERMINATIONS

16.01 Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect to and including June 30, 2025. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by (i) the Declarant and (ii) the then Owners casting seventy-five percent (75 %) of the total votes (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned), cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

16.02. Amendment to Declaration. This Declaration may be amended or changed, in whole or in part, at any time by the written approval of Declarant, and pursuant to special meeting of the Owners, called pursuant to Section 16.03, at which the amendment is approved by not less than sixty-seven percent (67%) of the Owners (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned) and by fifty-one percent (51%) of the First Mortgagees (as hereinafter defined). Such amendment shall be evidenced by a

written instrument executed and acknowledged by such consenting Owners and First Mortgagees and filed of record in the county in which the Project is located. Any such amendment so effected shall be binding upon all of the Owners; provided, however, that no such amendment shall cause the alteration or destruction of a Dwelling Unit or of a Limited Common Element unless such amendment has been consented to by the Owner and the First Mortgagee of the Dwelling Unit which is to be altered or destroyed. The Homeowners' Association shall give each First Mortgagee written notice of any proposed action or amendment which pursuant to the provisions hereof require the approval of First Mortgagees. For purposes hereof, the term 'First Mortgagees' shall mean and include, collectively, any bank, insurance company, agency or instrumentality of the United States government, or other institutional holder of any indebtedness secured by a first and prior lien or encumbrance upon a Dwelling Unit.

16.03 Election Procedures for Amendments and Termination. The affirmative votes required under Section 16.01 or 16.02 shall be obtained and evidenced by the requisite vote by the Owners (including Declarant) present at a meeting of Owners duly called by at least ten (10) Owners or by the Declarant pursuant to notice to all of the Owners on or prior to ten (10) days before the date of the meeting at which meeting the requisite percentage of Owners, in person or by proxy, vote to so amend or terminate this Declaration (and the Covenants herein). The notice of the meeting must set forth the proposal as to amendment of this Declaration (and/or the Covenants contained herein) and such affirmative vote of the requisite percentage of Owners must be evidenced by minutes of the meeting duly certified by the Owners who called the meeting or the Declarant. In any event, a copy of the minutes must be delivered to the Declarant. There shall be no quorum requirements for any meetings held pursuant to this Section.

16.04 Recording of Amendments. Upon the requisite percentage of Owners duly voting to amend this Declaration (and/or the Covenants contained herein) and upon the other conditions set forth in Section 16.01 or 16.02 (as the case may be) and Section 16.03 of this Article being satisfied, then each amendment shall be executed by the Declarant, placed in recordable form, and filed of record in the Real Property Records of Smith County, Texas, accompanied by a statement that the requisite percentage of Owners have voted to make such amendment to this Declaration.

16.05 Effect. Upon the filing of an amendment in accordance with Section 16.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

16.06 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending/Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by any federal, state, or local agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of the Property or any portion thereof. Any such amendment shall be effected by the recordation, by Declarant, of a Certificate of Amendment signed by a duly authorized agent of Declarant, with his signature acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language

requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon the Property and all persons having an interest in the Property. Except as provided in this Section 16.06, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 16.02 hereof.

ARTICLE XVII

RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT RESERVED AREA AND LOTS

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time while it is the owner thereof to subdivide or resubdivide, as the case may be, and/or plat or replat, as the case may be, all or any portion of the Reserved Area and any portion of the Property without the consent of any Owner.

ARTICLE XVIII

SUBJECTING ADDITIONAL LANDS TO THE DECLARATION

From time to time the size of the Property may be increased, in the manner provided in this Article, by recording in the Real Property Records of Smith County, Texas, a supplement to this Declaration (hereinafter called "Supplemental Declaration"). The Supplemental Declaration shall be signed and acknowledged by or on behalf of the Declarant and by the owner of record of the additional land to be included within the Property and subjected to the Covenants set forth in this Declaration. Each such Supplemental Declaration shall:

- (a) describe the land to be included as a part of the Property; and
- (b) state that such land and the Permanent Improvements thereon are expressly subjected to all of the Covenants set forth in this Declaration.

ARTICLE XIX

OWNERSHIP OF UTILITIES, AMENITIES AND RESERVED AREAS

All of the Amenities and all Reserved Areas and the Permanent Improvements located thereon and all utilities, if any, constructed by Declarant (including without limitation all such water, gas,

electricity, telephone television, storm sewer or sanitary sewer lines, security systems, poles, pipes, conduits or other appurtenances or facilities) shall be owned by Declarant and, as to all or any part thereof, may be sold, transferred, conveyed, leased, dedicated, encumbered or in any manner alienated by Declarant at any time to any private or public entity on such terms and in such manner as Declarant in its sole discretion may determine. Declarant shall have the absolute right to charge fees, dues, assessments or other charges of any nature whatsoever for the use of any and all of the Amenities, Reserved Areas and/or the Permanent Improvements located thereon and any and all of such utilities, it being understood that no Owner shall have any right to the use of same merely by reason of his or its ownership of any portion of the Property.

ARTICLE XX

MISCELLANEOUS

20.01 Interpretation of the Covenants. Except for judicial construction, the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

20.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

20.03 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be

- (a) those which would be used in determining the validity of the challenged interest, plus
- (b) if applicable, those of the issue of the partners constituting the Declarant who are living at the time the period of perpetuities starts to run on the challenged interest.

20.04 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

20.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant shall have the right to adopt rules and regulations with respect to all other aspects of the Declarant's rights, activities, and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

20.06 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the Real Property Records of Smith County, Texas, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Declarant Land, including the Property, can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

20.07 Limitation of Liability. In the absence of gross negligence or willful misconduct attributable to Declarant or its successors or assigns, neither Declarant nor its successors or assigns shall have any liability arising out of the performance or nonperformance of any of the rights and powers reserved unto Declarant, its successors or assigns pursuant to this Declaration.

20.08 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of any of Declarant's rights and powers hereunder.

20.09 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

20.10 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

20.11 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail postage prepaid, registered or certified mail, addressed to each such person at the address given by such person to the party sending the notice or to the address of the Dwelling Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing.

20.12 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property, including without limitation, the Reservation of Architectural Control as defined in Article I hereof.

20.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions hereof, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.

20.14 Suspension of the Covenants. The Declarant shall have the right, during the period of construction, development, and sale, to grant reasonable and specifically limited exemptions from the Covenants to Declarant and any other developer or contractor. Any such exemptions shall be granted only upon specific written request, itemizing the exemption requested, the location thereof, the need therefor, and the anticipated duration thereof; and any authorization and approval thereof shall be similarly itemized. No such exemption shall be broader in terms of activity, location, or time than is reasonably required.

20.15 Approval of Subsidiary Declaration. No Subsidiary Declaration (including any condominium declaration) shall be entered into or made effective with respect to the Property unless same has been previously approved by Declarant in writing.

IN WITNESS WHEREOF, HOLLYTREE, LTD., a Texas limited partnership, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

HOLLYTREE, LTD., a Texas limited partnership
BY: HOLLYTREE MANAGEMENT, INC.
A Texas corporation and General Partner

BY: 
THOMAS E. BARBER
President

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the 20th day of Feb., 1996
by THOMAS E. BARBER, President of HOLLYTREE MANAGEMENT, INC. a Texas
corporation and General Partner of and on behalf of Hollytree, Ltd., a Texas limited partnership.

Jane Stegall
Notary Public

My Commission Expires:

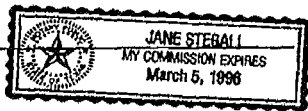


EXHIBIT "A"TRACT ONE:

All that certain lot, tract or parcel of land, part of the Thomas Price Survey, Abstract No. 794, Smith County, Texas that certain called 27.135 acre tract conveyed to John R. Johnston on July 27, 1949, recorded under Cause No. 16846-A in the District Court Minutes of Smith County, Texas, and part of that certain called 58.8 acre tract Block No. 2 awarded to John Johnston on March 23, 1928, recorded under Cause No. 1360-A in the District Court Minutes of Smith County, Texas, and being more completely described as follows, to wit:

BEGINNING at a 1/2" Iron Rod for the Northwest corner of the above mentioned 58.8 acre tract, the Easterly Southwest corner of the above mentioned 27.135 acre tract; said point also being in the West right-of-way of a Road;

THENCE North 00 deg. 10 min. 47 sec. West, with the Southerly West line of said 27.135 acre tract and with the West right-of-way of said Road, a distance of 280.54 ft. to a 1/2" Iron Rod for the southwest corner of a 7.933 acre tract currently owned by Hollytree, Ltd.;

THENCE South 89 deg. 52 min. 17 sec. East, with the South line of said 7.933 acre tract currently owned by Hollytree, Ltd., a distance of 851.63 ft. to a 1/2" Iron Rod for the Northwest corner of a 6.98 acre tract;

THENCE South 00 deg. 06 min. 58 sec. East, with the West line of said 6.89 acre tract currently owned by Hollytree, Ltd., a distance of 725.82 ft. to a 1/2" Iron Rod for the Southwest corner of said 6.98 acre tract currently owned by Hollytree, Ltd.; in the South line of the said 58.5 acre tract, and in the Westerly North line of a 432.634 acre tract conveyed to Hollytree, Ltd., recorded in Volume 1921, Page 443, Deed Records of Smith County, Texas;

THENCE South 89 deg. 45 min. 32 sec. West, with the south line of said 58.5 acre tract, and with the Westerly North line of said 432.634 acre tract, a distance of 294.91 ft. to a 1/2" Iron Rod for corner;

THENCE North 00 deg. 10 min. 47 sec. West, a distance of 450.78 ft. to a 1/2" Iron Rod from corner, in the North line of said 58.8 acre tract, the Easterly South line of said 27.135 acre tract;

THENCE South 89 deg. 45 min. 32 sec. West, with the North line of said 58.5 acre tract and with the Easterly South line of said 27.135 acre tract, at 525.90 ft. pass the East right-of-way of said Road and continue for a total distance of 555.90 ft. to the place of beginning, containing 8.4844 acres of land, of which 0.1931 of an acre lies within the right-of-way of said Road.

An undivided one-half (1/2) interest in and to the following described tract or parcel of land, to-wit:

TRACT TWO:

All that certain lot, tract or parcel of land, part of the Marshall University Survey, Abstract No. 624, Smith County, Texas, being part of that certain called 27.135 acre tract conveyed to John R. Johnston on July 27, 1949, recorded under Cause No. 16846-A in the District Court Minutes of Smith County, Texas, and being more completely described as follows, to-wit:

BEGINNING at a 1/2" Iron Rod for the Westerly Southwest corner of the above mentioned 27.135 acre tract, in the East right-of-way of the Old Jacksonville Highway, and in the South line of the Marshall University Survey, Abstract No. 624;

THENCE North 26 deg. 08 min. 16 sec. East, with the middle West line of said 27.135 acre tract, the East right-of-way of said Old Jacksonville Highway, a distance of 33.66 ft. to a 1/2" Iron Rod for the Westerly Northwest corner of said 27.135 acre tract;

THENCE North 89 deg. 52 min. 35 sec. East, with the Westerly North line of said 27.135 acre tract, a distance of 1083.74 ft. to a 1/2" Iron Rod for corner;

THENCE South 00 deg. 10 min. 45 sec. East, a distance of 30.88 ft. to a 1/2" Iron Rod for an inner corner of said 27.135 acre tract, in the South line of said Marshall University Survey;

THENCE South 89 deg. 54 min. 50 sec. West, with the Westerly South line of said 27.135 acre tract and with the South line of said Marshall University Survey, a distance of 1068.74 ft. to the place of beginning, containing 0.7439 of an acre of land.

TRACT THREE
FIELD NOTES FOR

432.634 Acres
John Hope Survey Abstract No. 443
Thomas Price Survey Abstract No. 794
Smith County, Texas

BEING a 432.634 acre tract of land out of the John Hope Survey Abstract No. 443 and the Thomas Price Survey Abstract No. 794, Smith County, Texas, said 432.634 acre tract is more particularly described as follows:

BEGINNING at a 1/2" Iron Rod for corner in County Road No. 161, said point being the Northwest corner of the John Hope Survey Abstract No. 443 and the Northwest corner of said 432.634 acre tract.

THENCE South 89 degrees 26 minutes 00 seconds East along the North line of the John Hope Survey passing a 2 1/2 " steel pipe found at a distance of 2806.07 feet, then continuing along the same line for a total distance of 5189.67 feet to a 1/2" Iron Rod for corner, said point being in a creek and also being the Northeast corner of said 432.634 acre tract.

THENCE along the meanderings of said creek according to the following calls:

South 15 degrees 28 minutes 59 seconds East a distance of 43.02 feet
 South 74 degrees 48 minutes 49 seconds West a distance of 59.62 feet
 South 05 degrees 55 minutes 26 seconds East a distance of 45.50 feet
 South 80 degrees 54 minutes 02 seconds East a distance of 56.18 feet
 South 21 degrees 05 minutes 13 seconds East a distance of 36.92 feet
 South 51 degrees 25 minutes 13 seconds West a distance of 46.85 feet
 North 65 degrees 29 minutes 01 seconds West a distance of 68.00 feet
 South 26 degrees 47 minutes 27 seconds West a distance of 40.76 feet
 South 45 degrees 05 minutes 35 seconds East a distance of 28.61 feet
 South 79 degrees 52 minutes 06 seconds East a distance of 71.75 feet
 South 34 degrees 34 minutes 34 seconds East a distance of 83.88 feet
 South 33 degrees 04 minutes 08 seconds West a distance of 47.68 feet
 North 87 degrees 33 minutes 30 seconds West a distance of 49.09 feet
 South 09 degrees 17 minutes 45 seconds West a distance of 51.86 feet
 South 43 degrees 52 minutes 21 seconds West a distance of 39.37 feet
 South 33 degrees 21 minutes 33 seconds East a distance of 52.19 feet
 South 28 degrees 46 minutes 40 seconds West a distance of 57.40 feet
 South 78 degrees 10 minutes 13 seconds East a distance of 58.40 feet
 South 49 degrees 37 minutes 01 seconds West a distance of 76.25 feet
 South 24 degrees 23 minutes 12 seconds West a distance of 97.05 feet

South 54 degrees 11 minutes 33 seconds West a distance of 48.51 feet
South 13 degrees 44 minutes 09 seconds West a distance of 62.10 feet
South 47 degrees 20 minutes 33 seconds East a distance of 101.72 feet
South 79 degrees 55 minutes 21 seconds West a distance of 75.18 feet
South 06 degrees 13 minutes 27 seconds East a distance of 28.87 feet
South 49 degrees 24 minutes 31 seconds East a distance of 80.52 feet
North 85 degrees 08 minutes 18 seconds West a distance of 65.74 feet
South 38 degrees 02 minutes 42 seconds West a distance of 72.66 feet
South 15 degrees 46 minutes 20 seconds West a distance of 57.71 feet
North 79 degrees 35 minutes 53 seconds West a distance of 26.37 feet
North 11 degrees 27 minutes 14 seconds West a distance of 65.33 feet
South 71 degrees 47 minutes 30 seconds West a distance of 44.32 feet
South 36 degrees 26 minutes 15 seconds West a distance of 54.93 feet

THENCE South 14 degrees 24 minutes 04 seconds West a distance of 180.99 feet to a 1/2 inch Iron Rod for corner;

THENCE South 51 degrees 46 minutes 16 seconds West a distance of 247.88 feet to a 1/2 inch Iron Rod for corner;

THENCE South 34 degrees 08 minutes 15 seconds West a distance of 211.79 feet to a 1/2 inch Iron Rod for corner;

THENCE South 10 degrees 58 minutes 54 seconds West a distance of 91.64 feet to a 1/2 inch Iron Rod for corner;

THENCE South 03 degrees 22 minutes 15 seconds East a distance of 190.05 feet to a 1/2 inch Iron Rod for corner;

THENCE South 04 degrees 49 minutes 21 seconds East a distance of 282.54 feet to a 1/2 inch Iron Rod for corner;

THENCE South 20 degrees 14 minutes 11 seconds East a distance of 88.19 feet to a 1/2 inch Iron Rod for corner;

THENCE South 06 degrees 09 minutes 27 seconds East a distance of 118.48 feet to a 1/2 inch Iron Rod for corner;

THENCE South 22 degrees 17 minutes 59 seconds West a distance of 129.78 feet to a 1/2 inch Iron Rod for corner;

THENCE South 03 degrees 10 minutes 14 seconds West a distance of 130.07 feet to a 1/2 inch Iron Rod for corner;

THENCE South 11 degrees 41 minutes 32 seconds West a distance of 186.93 feet to a 1/2 inch Iron Rod for corner;

THENCE South 25 degrees 03 minutes 17 seconds West a distance of 191.37 feet to a 1 1/2 inch crimped steel pipe found for corner;

THENCE South 06 degrees 17 minutes 29 seconds West a distance of 411.97 feet to a 1/2 inch Iron Rod for corner, from which a 26" Sweetgum marked with old "X" two hacks above and two hacks below bears;

THENCE South 29 degrees 46 minutes 01 seconds West a distance of 37.52 feet to a 1/2 inch Iron Rod for corner;

THENCE South 36 degrees 26 minutes 05 seconds West a distance of 560.97 feet to a 1/2 inch Iron Rod for corner, said point being the Southeast corner of said 432.634 acre tract;

THENCE South 89 degrees 51 minutes 28 seconds West a distance of 5,312.91 feet to a 1/2 inch Iron Rod for corner, said point being the Southwest corner of said 432.634 acre tract;

THENCE North 00 degrees 01 minutes 26 seconds West a distance of 448.88 feet to a 1/2 inch Iron Rod found for corner;

THENCE North 89 degrees 55 minutes 44 seconds East a distance of 851.42 feet to a 1/2 inch Iron Rod found for corner;

THENCE North 00 degrees 01 minutes 21 seconds West a distance of 726.27 feet to a 1/2 inch Iron Rod found for corner;

THENCE North 89 degrees 43 minutes 42 seconds West a distance of 851.46 feet to a 1/2 inch Iron Rod found for corner;

THENCE North 00 degrees 08 minutes 16 seconds East a distance of 260.22 feet to a 1/2 inch Iron Rod found for corner;

THENCE South 89 degrees 45 minutes 05 seconds East a distance of 1,327.27 feet to a 1/2 inch Iron Rod found for corner;

THENCE North 00 degrees 05 minutes 00 seconds West a distance of 2,389.61 feet to the place of beginning containing 432.634 acres of land.

STATE OF TEXAS, COUNTY OF SMITH
I hereby certify that this instrument was filed
on the date and time shown hereon by me and
was duly recorded in the Official Public records
of Smith County, Texas.

5



FEB 21 1996

MARY MORRIS
COUNTY CLERK, Smith County, Texas
By *[Signature]* Deputy