

*Jenette*

Vol 338/484

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File No. 77-2157

ALLENS CREEK FARM SECTION III

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS |  
COUNTY OF AUSTIN |

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, BOB TESCH PROPERTIES, INC., hereinafter called the Declarant is the legal owner of that one (1) certain tract or parcel of land more particularly described on attached Exhibit "A" to which reference is here made for all purposes, said tract or parcel of land being further subdivided into twenty-one (21) "restricted lots" and two (2) "unrestricted reserve lots". Such "restricted lots" are numbered 1 through 21, and the unrestricted reserve lots are identified as "unrestricted reserve" on the plat attached hereto as Exhibit "B" and incorporated herein for all purposes, constituting the entire property described on attached Exhibit "A"; and

WHEREAS, the Declarant will convey the herein described property and premises subject to certain protective covenants, conditions, restrictions, liens, and charges (with the exception of the two (2) unrestricted reserve lots which will be conveyed with no covenants, conditions, restrictions or charges, under this instrument) as hereinafter set forth;

NOW THEREFORE, it is hereby declared that all of the property described on attached Exhibit "A" (with the exception of the two (2) unrestricted reserve lots) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding upon all parties having any right, title or interest in or to the herein described property or any part thereof, and their heirs, successors and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

1.01 Owner. Owner shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any lot or portion of a lot which there is or will be built a detached single family dwelling, as herein provided.

1.02 Properties. Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within these protective covenants and restrictions.

1.03 Lot. Lot shall mean and refer to that portion of any of the lots or parcels of land shown upon the plat attached hereto as Exhibit "B", incorporated herein, which plat shall, with these protective covenants and restrictions, be recorded in the Deed Records of Austin County, Texas. The term "lot" shall not include any common area or any area described as a street or right-of-way on the attached plat.

1.04 Declarant. Declarant shall refer to Bob Tesch Properties, Inc., its successors and assigns, if such successors or assigns shall acquire more than one (1) undeveloped lot from Declarant for the purpose of development.

## ARTICLE II

### Use Restrictions

2.01 Improvements. All tracts plated shall be known and described as rural residential tracts and no structure shall be erected, altered, placed or permitted to remain on any of such residential tracts other than a detached single family dwelling, not to exceed two (2) stories in height, not including a basement, and a private garage for not more than four (4) cars. Other out buildings incidental to residential uses of the lot shall be permitted, but only one (1) residence shall be constructed on each lot. This prohibition shall not restrict the construction of a residence on a portion of two (2) or more lots.

2.02 Residential Purposes. Residential purposes, as used herein, shall be held and construed to exclude hospitals, duplex houses and apartment houses, and to exclude commercial and professional uses, excepting therefrom any clean and inoffensive agricultural use.

2.03 Minimum Setbacks. No building shall be located closer than thirty-five (35) feet from the street on which any lot fronts nor closer than twenty-five (25) feet to a side street or property line. No building shall be located closer than thirty (30) feet from any other property line. Such restriction for building set backs shall refer to principal residential structures, porches, whether screened or unscreened, breeze-ways, attached garages, detached garages, porte cochers, steps and projections covered by roofs. Declarant shall reserve the right to alter the minimum set back restrictions herein provided, on a lot

by lot basis, when, in Declarant's sole discretion, it is deemed reasonable and advisable to alter such minimum set backs. Such right to alter such minimum set backs shall inure to the benefit of Declarant's successors, legal representatives, and assigns.

2.04 No garage or out building on any tract shall be used as a residence, nor shall the same be used as living quarters except by servants engaged on the premises or by some member of the immediate family of the owner.

2.05 No trailer, basement, tent, shack, lean-to, garage, barn, or other out building erected on any lot shall at any time be used as a residence, either temporarily or permanently, except as herein specifically provided. No structure of a temporary character shall be used as a residence. House trailers and motor homes will not on any lot at any time, regardless of whether such house trailer or motor home is left upon its running gear or is dismantled from its running gear and installed upon permanent footings or blocks, be permitted to be used for residential purposes.

2.06 The floor area of the main structure, exclusive of open porches, steps, screened porches, porte cochers, breeze-ways and other out buildings shall contain not less than twelve hundred (1200) square feet.

2.07 All residences shall be constructed of new materials, unless approved by developer.

2.08 No outdoor toilet or privy shall be erected or maintained on any lot.

2.09 No building materials of any kind or character shall be placed or stored on the street or between streets and the property lines. All building materials to be used in construction of any building on any lot shall be placed within the property line of the lot upon which construction is in progress.

2.10 No garbage, trash, ashes or other refuse may be thrown or dumped upon any lot. All refuse containers shall be maintained in a neat and sanitary manner in the rear of the residence or within or behind out buildings on each lot.

2.11 No advertising signs, billboards or other advertising devices shall be installed upon or permitted to remain on any lot; except that any owner may place upon any lot notice that such property is listed for sale; provided that the area of any sign listing the property for sale shall contain not more than five (5) square feet and shall be erected at a height not to exceed four (4) feet from the surface of the ground.

2.12 No enclosure shall be maintained on any lot for the purpose of raising swine.

2.13 No obnoxious or offensive trade or activity shall be carried on upon any lot, nor shall any owner permit noxious odors to emanate from such owner's lot.

2.14 Grass and weeds on each lot will be mowed at regular intervals to maintain each lot in a neat and attractive manner. Until such time as a residence is constructed on each lot, Declarant or any of Declarant's successors or assigns shall have the right to enter upon such lot for the purpose of weed control, such weed control to be accomplished at such times and in such manner as, in the judgment of Declarant, is necessary to maintain a neat and attractive appearance. In the event Declarant is required to clear or mow any lot which has been sold to an owner, Declarant shall be authorized to charge such owner a reasonable price, at a rate then prevailing for similar work in Austin County, Texas and shall have the right to declare a lien against such lot for the purpose of maintaining such lot for and on behalf of owner.

2.15 No electric fences shall be constructed or remain on or within ten (10) feet of outside boundary lines of any tracts. All fencing erected upon any lot shall first be approved by Declarant, Declarant's successors, legal representatives or assigns. In the event the property owners form a civic association by and with the written consent and approval of the owners of not less than eleven (11) of the lots listed on attached Exhibit "B" such civic association shall be granted the right, by written instrument from Declarant, Declarant's successors, legal representatives or assigns, to approve any fencing erected on any lot.

2.16 No drilling or exploration activities for any oil, gas or other minerals shall be conducted upon any lot.

2.17 No firearms shall be discharged upon or across any lot.

2.18 An easement fifteen (15) feet in width, contiguous with the property lines of each of such lots and describing the perimeter of such lots shall be retained by Declarant, Declarant's successors, legal representatives or assigns for the purpose of constructing and maintaining utilities and drainage. No

representation is here made by Declarant that any of such easements shall, at any time, be used for the purpose of constructing and maintaining such utilities, nor does Declarant covenant to provide any such utilities to any lot.

2.19 Enforcement of the covenants herein contained may be instituted by Declarant, Declarant's successors, legal representatives or assigns by proceedings at law or in equity against any person violating or attempting to violate any of the covenants herein contained, and Declarant, Declarant's successors, legal representatives or assigns may undertake any such action to restrain the violation of any such covenant or to recover damages from any such person violating any such covenant. Such right to legal action to enforce compliance with the covenants, conditions and restrictions contained herein shall inure to the benefit of each owner of any lot made subject to this Agreement and any such owner may institute such action without the joinder of Declarant, Declarant's successors, legal representatives or assigns.

2.20 The rights of Declarant and owners, as herein provided, shall be subject to first lien in favor of Willie Jez and wife, Regina Jez of Austin County, Texas, further secured by Deed of Trust to Dan Hruska, Trustee, dated February 28, 1973 and filed for record in the Mortgage Records of Austin County, Texas, to which reference is here made for all purposes.

2.21 In the event any covenant or portion of a covenant herein contained should be invalid, unenforceable or illegal, such invalid, unenforceable, or illegal portion shall be considered deleted herefrom without in any manner affecting the validity, enforceability, or legality of the remaining covenants and restrictions.

### ARTICLE III

#### Duration and Modification

3.01 The restrictions, covenants and conditions herein set forth shall be binding upon and inure to the benefit of Declarant, Declarant's successors and assigns, and all owners of all lots subject to such restrictions and covenants for a period of twenty-five (25) years from the date hereof, unless sooner modified as herein provided. At the expiration of such twenty-five (25) year period, the restrictions and covenants herein set out shall automatically be extended for an additional ten (10) year period and for successive periods of

ten (10) years thereafter, unless same are nullified or revised as hereinafter provided.

3.02 After the expiration of twenty-five (25) years from the date of execution of this Agreement, the owners of more than fifty percent (50%) of the aggregate number of lots described on attached Exhibit "B" may execute and acknowledge an agreement in writing terminating or revising the restrictive covenants and file such agreement in the office of the County Clerk of Austin County, Texas or in such office as conveyances of real estate may be required to be filed at such time, thereupon declaring these restrictions and covenants to be null, void and of no further force an effect, or modified and revised as such instrument may direct.

3.03 At any time from and after the date hereof and before the expiration of twenty-five (25) years from the date of execution of this Agreement, these covenants, conditions and restrictions may be terminated or modified only upon execution of an instrument declaring such covenants and restrictions to be null, void and of no further force and effect or modified and revised as such instrument may direct by the owners of each of the lots on attached Exhibit "B". Declarant may execute such instrument only with respect to those lots which have not been conveyed.

3.04 The restrictions, conditions and use limitations imposed upon the herein described properties, shall constitute covenants running with the land, and shall be binding upon and inure to the benefit of Declarant, its successors and assigns and upon all persons acquiring any of the lots herein described, whether by purchase, descent, devise, gift or otherwise, and each person, by the acceptance of title to any lot, shall agree and covenant to abide by and perform the terms, conditions, restrictions and covenants set forth herein. Such restrictions, conditions and use limitations shall be made a part of each contract and deed executed by, or on behalf of Declarant, conveying any portion of such development, by reference to the place of record of this instrument and by acceptance thereof, the Grantee, and all persons claiming under such Grantee, shall be subject to and bound thereby, and each contract and/or deed shall be conclusively held to have been executed, delivered and accepted subject to all of the terms, conditions and restrictions set out in this instru-

ment. In the event, however, of the failure of any contract and/or deed to any lot indicated on attached Exhibit "B" to refer to this instrument, this instrument shall nevertheless be considered a part thereof, and any conveyance of such lots shall be construed to be subject to the terms of this instrument.

ARTICLE IV

Consent of Lien Holders

4.01 The lien holders join herein for the limited purpose of acknowledging the covenants, conditions and restrictions herein declared and agree and consent that, in the event of foreclosure of any of the liens in favor of such lien holders, such foreclosure shall, in no manner, affect the validity and continuing enforceability of the covenants, conditions and restrictions herein provided.

EXECUTED by Declarant this the 17th day of June, 1977.

BOB TESCH PROPERTIES, INC.

By Robert E. Tesch, President

EXECUTED by lien holders this the 17th day of June, 1977.

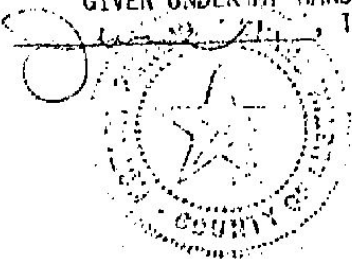
Willie Jez  
WILLIE JEZ

Regina Jez  
REGINA JEZ

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT E. TESCH, President of Bob Tesch Properties, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17th day of June, 1977.



Glenda Hill Walcott  
Notary Public in and for  
Harris County, Texas

Austin  
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THE STATE OF TEXAS |

COUNTY OF Quinn

BEFORE ME, the undersigned authority, on this day personally appeared WILLIE JEZ and wife, REGINA JEZ, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17th day of June, 1977.



Glenda Hillbrett  
Notary Public in and for  
Quinn County, T e x a s

EXHIBIT "A"

55.26 ACRES

Being all that certain tract or parcel of land lying and situated in Austin County, Texas, out of the John P. Borden Headright, Abstract 125. Being a part or portion of that original 55.5 acre tract described in a deed from Fabian Ondruch et al to Willie Jez dated February 20, 1958, and recorded in Volume 236 Pages 461-465 of the Deed Records of Austin County, Texas, to which reference is hereby made for all purposes and the said tract or parcel of 55.26 acres being described by metes and bounds as follows, TO-WIT:

Beginning at an iron pin set for Northeast corner of said 55.26 acre tract, said corner being also Northeast corner of original 55.5 acre tract.

THENCE S 13° 34' 10" E a distance of 2939.45 feet with East boundary line of said 55.26 acre tract to a chain link fence corner post, said corner being also Northeast corner of Marek's 0.5 acre tract.

THENCE S 81° 38' 30" W a distance of 124.82 feet with present chain link fence to a chain link fence corner post.

THENCE S 13° 22' 20" E a distance of 173.72 feet with present chain link fence to a chain link fence corner post set in the North right of way line of Mixville Road.

THENCE S 82° 25' 30" W a distance of 672.60 feet with North right of way line of said Mixville Road to a stake set for Southwest corner, said corner being also Southeast corner of Pavlicek's 49.62 acre tract.

THENCE N 13° 26' 10" W a distance of 3027.13 feet with West line of said 55.26 acre tract and East line of said Pavlicek's 49.62 acre tract to a stake set for Northwest corner of said 55.26 acre tract and Northeast corner of said 49.62 acre tract.

THENCE N 76° 10' 50" E a distance of 787.25 feet with North boundary line to the place of beginning containing 55.26 acres of land.