

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
YAUPON CREEK ESTATES**

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This Declaration of Covenants, Conditions and Restrictions for Yaupon Creek Estates is made as of the _____ day of July, 2006, by YAUPON PROPERTY DEVELOPMENT LLC and DON McGUIRT (collectively, "**Declarant**").

WHEREAS, Declarant (collectively) owns that certain real property (the "**Property**") located in Colorado County, Texas, more particularly described on Annex A attached hereto and incorporated herein by this reference; and

WHEREAS, Declarant desires to subject the Property to the terms, conditions, covenants and restrictions hereinafter set forth in order to protect and enhance the value, attractiveness and desirability of the Property.

NOW, THEREFORE, Declarant hereby declares that all of the Property be subjected to this Declaration and that all of the Property shall be held transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions and restrictions contained herein which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property, and which shall be binding on all parties having any right, title or interest in the Property, or any portion thereof, and their respective heirs, devisees, executors, administrators, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

1.01 **Definitions.** When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "**Ancillary Building(s)**" shall mean and refer to buildings ancillary to the primary residential use on a Tract, such as, but not limited to, detached garages, barns, storage facilities and stable facilities.

(b) "**County**" shall mean Colorado County, Texas.

(c) "**Declarant**" shall mean and refer to Yaupon Property Development LLC (as to Section 1) and Don McGuirt (as to The Reserve).

- (d) “**Declaration**” shall mean this Declaration of Covenants, Conditions and Restrictions for Yaupon Creek Estates, as amended from time to time in compliance with the requirements for amendment contained in this Declaration.
- (e) “**Dwelling**” shall mean and refer to the improvements on a Tract intended for use as the primary single family dwelling.
- (f) “**Living Space**” shall mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, porches, terraces, balconies, decks, patios, courtyards, attics, basements and any areas not used for single family living purposes.
- (g) “**Main Driveway**” shall mean the driveway from the Main Road to the primary Dwelling on a Tract.
- (h) “**Main Road**” shall mean the main road running through Yaupon Creek Estates as shown on the Subdivision Plat which shall be known by the name Yaupon Creek road.
- (i) “**Owner**” shall mean and refer to one or more Persons who hold record title to any Tract but excluding, however, those Persons holding an interest merely as security for the performance of an obligation.
- (j) “**Person**” shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity.
- (k) “**Property**” shall mean and refer to those tracts or parcels of land described on Annex A attached hereto, together with all improvements thereon, including access and utility easements which are to be used as streets and roads, utility systems, drainage systems and other improvements serving the Tracts.
- (l) “**Required Majority of Owners**” shall mean and refer to those Owners who own in excess of 66-2/3% of the acreage contained within the Property at the time in question.
- (m) “**Reserve**” shall mean and refer to that portion of the Property so designated on attached Annex A and on the Subdivision Plat.
- (n) “**Section 1**” shall mean and refer to that portion of the Property designated as Section 1 on attached Annex A and as Lots 1-16 on the Subdivision Plat.
- (o) “**Subdivision Plat**” shall mean and refer to the plat of the Property recorded in the Real Property Records of the County.

(p) “Tract” shall mean and refer to: (i) any parcel of land within the Property shown on the Subdivision Plat as a subdivided lot in Section 1; (ii) the entire Reserve when owned by one Owner; and (iii) each separate parcel in the Reserve when owned by different parties.

ARTICLE II SECTION 1 LAND USE AND BUILDING TYPE

2.01 **Land Use.** The Tracts located in Section 1 shall be used only for single family residential purposes and for agricultural and wildlife preservation purposes subject to the limitations contained in this Declaration. No Tract located in Section 1 may be divided or re-subdivided. There shall be no more than one primary Dwelling and one guesthouse/secondary residence on any Tract in Section 1. Living quarters within a barn or other Ancillary Building shall be considered a guesthouse/secondary residence for the applicable Tract in Section 1.

2.02 **Design/Materials.** Primary Dwellings and guesthouse/secondary residences in Section 1 shall only be site-built homes constructed of new materials. The exterior of primary Dwellings and guesthouse/secondary residences in Section 1 must be of masonry, brick, stone, stucco, log, cedar or other wood siding or hardiplank (or hardiplank equivalent). No metal siding may be used on primary Dwellings and guesthouse/secondary residences in Section 1. High quality metal roofs may be used on primary Dwellings and guesthouse/secondary residences in Section 1. Primary Dwellings in Section 1 must have a minimum of: (i) 2,000 square feet of Living Space for a single story Dwelling; (ii) 2,200 square feet of Living Space for a one and one-half story Dwelling with at least 1,200 square feet of Living Space located on the first floor; and (iii) 2,400 square feet of Living Space for a two story Dwelling with at least 1,200 square feet of Living Space located on the first floor. A guesthouse/secondary residence in Section 1 must have a minimum of 800 square feet of Living Space. The exterior design, construction and overall appearance of a primary Dwelling and any guesthouse/secondary residence in Section 1 must be single family residential. Ancillary Buildings in Section 1 must be site-built structures (prefabricated structures are prohibited), constructed of new materials, which are architecturally and aesthetically compatible with the primary Dwelling on the applicable Tract in scale, design, color, appearance and materials. Metal siding may be used on non-residential Ancillary Buildings so long as it is compatible with the primary Dwelling.

2.03 **Garages.** A primary Dwelling in Section 1 shall have a minimum of a two car enclosed garage, either attached or detached. All garages in Section 1 must be side or rear entry. Carports in Section 1 are prohibited unless placed behind the primary Dwelling so that the carport cannot be seen from the Main Road. A porte cochere attached to the primary Dwelling is allowed so long as it is constructed of the same materials as such primary Dwelling and has a similar appearance to such primary Dwelling.

2.04 **Completion Requirement.** Construction of any primary Dwelling, any guesthouse/secondary residence and/or any Ancillary Buildings in Section 1 must be completed

within 365 calendar days after the date of the commencement of construction of the applicable improvement.

2.05 **Building Location.** All structures in Section 1 must be located behind all building setback lines for the applicable Tract shown on the Subdivision Plat. No building or structure on a Tract in Section 1 may be located nearer than 130 feet to the centerline of any public road or 100 feet from the boundary line of any adjoining Tract. Terraces, walls and fences shall not be considered structures for the purposes of this section.

2.06 **Fences.** All fences on Tracts in Section 1 shall be constructed of wood, brick, rock, stucco, wrought iron, new pipe or new t-posts, and wiring typically found in the area. No chain link fence will be permitted on the boundaries of any Tract in Section 1 nor any other location that is visible from any public road or adjoining Tract. No game proof high fence may be constructed on a Tract in Section 1.

2.07 **Underground Utilities.** Unless prohibited by telephone/communication provider(s) and/or electricity provider(s), all telephone/communication lines and/or electricity lines located within the building setback areas of any Tract in Section 1 shall be constructed/installed underground. Notwithstanding the foregoing, where telephone/communication lines and/or electricity lines are being constructed/installed through creeks or other natural barriers located within said building setback areas where such lines cannot be constructed/installed underground, such telephone/communication lines and/or electricity lines may be constructed/installed above ground only in such actual limited areas through such creeks or other natural barriers where such lines cannot be constructed/installed underground.

ARTICLE III RESERVE LAND USE AND BUILDING TYPE

3.01 **Land Use.** The portion of the Property located in the Reserve shall be used only for single family residential purposes and for agricultural and wildlife preservation purposes subject to the limitations contained in this Declaration. The ownership of the portion of the Property located in the Reserve may not be divided for a period of five years. It is expressly acknowledged that the ownership of the portion of the Property located in the Reserve may be divided after five years. As used in this Declaration, the term "Tract" means and includes the entire Reserve until ownership in the Reserve is divided and, after ownership in the Reserve is divided, the area contained in each separate ownership of land located in the Reserve. There shall be no more than one primary Dwelling and one guesthouse/secondary residence on any Tract in the Reserve. Living quarters within a barn or other Ancillary Building on a Tract within the Reserve shall be considered a guesthouse/secondary residence for the applicable Tract in the Reserve.

3.02 **Design/Materials.** Primary Dwellings and guesthouse/secondary residences in the Reserve shall only be site-built homes constructed of new materials. The exterior of primary

Dwellings and guesthouse/secondary residences in the Reserve must be of masonry, brick, stone, stucco, log, cedar or other wood siding or hardiplank (or hardiplank equivalent). No metal siding may be used on primary Dwellings and guesthouse/secondary residences in the Reserve. High quality metal roofs may be used on primary Dwellings and guesthouse/secondary residences in the Reserve. Primary Dwellings in the Reserve must have a minimum of 3,000 square feet of Living Space. A guesthouse/secondary residence in the Reserve must have a minimum of 800 square feet of Living Space. The exterior design, construction and overall appearance of a primary Dwelling and any guesthouse/secondary residence in the Reserve must be single family residential. Ancillary Buildings in the Reserve must be site-built structures (prefabricated structures are prohibited), constructed of new materials, which are architecturally and aesthetically compatible with the primary Dwelling on the applicable Tract in scale, design, color, appearance and materials. Metal siding may be used on non-residential Ancillary Buildings so long as it is compatible with the primary Dwelling.

3.03 **Garages.** A primary Dwelling in the Reserve shall have a minimum of a two car enclosed garage, either attached or detached. All garages in the Reserve must be side or rear entry. Carports in the Reserve are prohibited unless placed behind the primary Dwelling so that the carport cannot be seen from the Main Road. A porte cochere attached to the primary Dwelling in the Reserve is allowed so long as it is constructed of the same materials as such primary Dwelling and has a similar appearance to such primary Dwelling.

3.04 **Completion Requirement.** Construction of any primary Dwelling, any guesthouse/secondary residence and/or any Ancillary Buildings in the Reserve must be completed within 545 calendar days after the date of the commencement of construction of the applicable improvement.

3.05 **Building Location.** All structures in the Reserve must be located behind the building setback lines for the Reserve shown on the Subdivision Plat. No building or structure on a Tract in the Reserve may be located nearer than 130 feet to the centerline of any public road or 100 feet from the boundary line of any adjoining Tract located outside of the Reserve. Terraces, walls and fences shall not be considered structures for the purposes of this section.

3.06 **Fences.** All fences on Tracts in the Reserve shall be constructed of wood, brick, rock, stucco, wrought iron, new pipe or new t-posts, and wiring typically found in the area. No chain link fence will be permitted on the boundaries of any Tract in the Reserve nor any other location that is visible from any public road or adjoining Tract. A game-proof high fence (made of new materials) may be constructed on a Tract in the Reserve but no closer than 130 feet from the centerline of any public road.

ARTICLE IV GENERAL PROVISIONS APPLICABLE TO SECTION 1 AND THE RESERVE

4.01 **Roofs.** Roofing materials for all primary Dwellings, guesthouses/secondary residences and Ancillary Buildings shall be new and designed and manufactured specifically for

4.11 **Composite Building Site.** Any Owner of one or more contiguous Tracts may consolidate such Tracts into one primary Dwelling building site with the privilege of constructing improvements on such composite building site, in which case setback lines shall be measured from the resulting combined Tract lines rather than from the setback lines of any of the single Tracts which comprise such composite building site. An Owner who has combined one or more contiguous Tracts into a composite building site may transfer one or more of the Tracts comprising such composite building site to another party only if no buildings have been constructed within the setback lines of the applicable Tracts prior to such Tracts having been combined into a composite building site.

4.12 **Sand and Gravel.** No sand or gravel may be mined on any Tract to be sold. Except as hereinafter provided, no sand or gravel may be used outside the boundaries of the Tract upon which such sand or gravel is located. Notwithstanding the foregoing, Owner(s) of Tract(s) may share (not sell) sand and gravel taken from one Tract for use on another Tract.

4.13 **Structure Orientation.** If any primary Dwelling, guesthouse/secondary residence or Ancillary Building is clearly visible from the Main Road, the applicable structure shall be oriented so that it is visibly appealing from the Main Road and so that entrances to any garage/carport are not visible from the Main Road.

ARTICLE V TEMPORARY STRUCTURES

5.01 **No Temporary Residence.** No structure of a temporary character, including, but not limited to, a tent, shack, garage, barn, house trailer, mobile home, motor home, recreational vehicle or other temporary facility, shall be used on any Tract as a residence, either temporarily or permanently.

5.02 **Construction – Housing.** Notwithstanding the provisions of Sections 4.07 or 5.01, only during the period that a primary Dwelling and/or a guesthouse/secondary residence is being constructed on a Tract, a motor home, travel trailer or camper may be used on the applicable Tract as temporary housing by an Owner or such Owner's authorized contractor. Any such motor home, travel trailer or camper must be a mobile vehicle (i.e., the wheels may not be removed). Any such motor home, travel trailer or camper must be, to the extent feasible, located so that the applicable vehicle is not visible from a public road or from another Tract. No more than a total of two motor homes, travel trailers or campers may be located on any Tract pursuant to this section. Except as expressly provided in Section 4.07, no motor home, travel trailer or camper may be located on any Tract for a consecutive period of more than 180 days in any calendar year or for a consecutive period of more than 360 days in consecutive calendar years.

ARTICLE VI BUSINESS ACTIVITIES

6.01 **Home Businesses.** The operation of home businesses within a Dwelling and/or a guesthouse/secondary residence located on a Tract is permitted subject to the requirements contained in Sections 6.02, 6.03 and 6.04. The operation of a home business in Ancillary Buildings, including, without limitation, in a barn containing a guesthouse/secondary residence as contemplated in Section 4.03, is strictly prohibited.

6.02 **Commercial Activity.** Except for a home business operated in compliance with the terms and conditions of this Declaration, no commercial activity shall be allowed on any Tract.

6.03 **Business Storage.** No business equipment, business vehicles or identifiable non-agricultural business inventory may be stored on the exterior of any Dwelling, guesthouse/secondary residence and/or Ancillary Buildings on a Tract.

6.04 **Signs.** Signs on a Tract are prohibited with the following exceptions: (i) signs advertising the construction companies involved in the construction of improvements on a Tract are allowed on that Tract while such improvements are under construction; (ii) signs advertising a Tract for lease or sale are permitted on that Tract; and (iii) signs advertising a home business operated in compliance with the terms and conditions of this Declaration which do not exceed three square feet. No sign may exceed six square feet or extend higher than five feet above grade level, and no sign shall be illuminated. No more than three signs shall be installed on any Tract at any time.

ARTICLE VII GARBAGE AND REFUSE

7.01 **Dumping Ground.** No Tract may be used or maintained as a dumping ground for rubbish or trash of any kind.

7.02 **Junk Storage.** No Tract may be used for the storage of abandoned or junk vehicles or junk of any kind.

7.03 **Waste Containers.** On each Tract, trash, garbage and other wastes shall be kept in sanitary containers and disposed of at least weekly.

7.04 **Waste Disposal.** Each Owner shall be responsible for disposing of all trash, garbage and rubbish on such Owner's Tract in a manner that complies with all applicable local, state and federal governmental rules and regulations.

7.05 **Noxious or Dangerous Activities.** Any activities on a Tract that may endanger the health of the Owner of another Tract or unreasonably disturb the peaceful enjoyment of the Owner of another Tract are prohibited.

ARTICLE VIII LIVESTOCK AND PETS

8.01 **No Commercial Operations.** Raising of livestock and poultry shall be permitted, but no commercial operations of any kind, such as kennels, livestock feedlot operations or poultry houses, may be maintained on any Tract.

8.02 **Permitted Animals.** Except as provided in Section 8.03, no more than one horse, one cow, one bull, one donkey, one mule or one goat for each three acres of land contained within any Tract may be kept or maintained on such Tract, provided that, notwithstanding the foregoing, an Owner may keep the number of the foregoing animals necessary to apply for an agricultural tax valuation for the applicable Tract. A maximum of four dogs, cats or other usual and common household pets in the aggregate (excluding in such maximum fish and birds) may be kept or maintained on a Tract. No swine shall be raised or maintained on any Tract except as non-commercial livestock described in Section 8.03.

8.03 **Non-Commercial Livestock and Poultry.** Rabbits, poultry, swine and other livestock raised for non-commercial purposes, including 4-H, FFA and vocational agricultural projects and for personal use, shall be allowed only if maintained at least 50 feet behind the back wall of the primary Dwelling in a fenced or penned area located no nearer than 100 feet from the boundary line of any Tract. No more than two swine per Tract may be maintained on any Tract pursuant to this section.

8.04 **Dog Containment.** An Owner's dog(s) shall be contained within the Tract owned by such Owner and shall not be allowed to roam free within the Property.

8.05 **Crops.** Raising of crops is permitted.

ARTICLE IX DRAINAGE/SEPTIC SYSTEMS/WATER WELLS

9.01 **No Obstructions.** Catch basins and drainage areas are for the purpose of natural flow of water only, and no obstructions or debris shall be placed in these basins/areas. No Owner may obstruct or re-channel drainage flows after location/installation of drainage swales, storm sewers or storm drains. Construction of ponds, driveways and buildings shall be done in such a manner that water shall not be caused to pool on any other Tract. Notwithstanding the foregoing portion of this section, since the Reserve will be downstream of any other acreage within the Property, this section shall in no way limit any Owner within the Reserve from building or constructing ponds, tanks or lakes on or within the Reserve so long as water is not

backed up past the boundary lines of the Reserve upstream and so long as no flooding or drainage problems outside of or upstream from the boundary lines of the Reserve are created.

9.02 **Septic Systems.** Prior to occupancy of a primary Dwelling or guesthouse/secondary residence on any Tract, the applicable Tract Owner shall construct, install and maintain a septic tank and soil absorption system in accordance with the specifications for the same required under the laws of the State of Texas and the rules and regulations of the County. If such septic system complies with such requirements/specifications but still emits foul or noxious odors or unsafe liquid onto roads, ditches or adjoining Tracts, such system shall be modified so as to eliminate such foul or noxious odors or unsafe liquid. Drainage from septic systems shall not be allowed to spill onto roads, ditches, creeks, lakes or other similar areas or onto adjoining Tracts, either directly or indirectly. No septic system will be allowed within 100 feet from the boundary line of any Tract.

9.03 **Water Wells.** All water wells located on any Tract must be installed and maintained in accordance with the laws of the State of Texas and the rules and regulations of the County. No water well will be allowed within 100 feet from the boundary line of any Tract.

ARTICLE X **MAINTENANCE**

10.01 **Responsibility.** All maintenance and repair of Tracts, primary Dwellings, guesthouse/secondary residences and Ancillary Buildings, together with all other improvements thereon or therein, and all lawns, landscaping and grounds on and within a Tract shall be the sole responsibility of the Owner of such Tract.

10.02 **Standard.** Each Owner of a Tract shall be responsible for maintaining such Tract, primary Dwelling, guesthouse/secondary residence and Ancillary Buildings, together with all other improvements located thereon or therein, in a neat, clean and sanitary condition. Each Owner shall be responsible for the regular mowing, to the extent feasible and expressly excluding areas blocked by trees or other natural barriers, of the portion of such Owner's Tract within 200 feet from any public road.

10.03 **Entrance Walls/Signage Maintenance.** The Owner(s) from time to time of the Tracts upon which the subdivision entrance walls and signage located along State Highway 71 shall be responsible for maintaining such entrance walls and signage in good condition.

ARTICLE XI **ENFORCEMENT**

11.01 **Compliance.** Each Owner shall comply strictly with this Declaration and with all covenants, conditions and restrictions set forth herein applicable to such Owner's Tract.

11.02 **Enforcement.** Upon the violation of this Declaration by an Owner, any other Owner shall have the right to institute an action for injunctive relief to restrain or remove such violation. If an Owner prevails in any action filed by an Owner to enforce this Declaration, all costs incurred in such enforcement by such Owner, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner.

11.03 **No Waiver.** No delay, failure or omission on the part of any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior to or subsequent thereto, and shall not bar or affect its enforcement.

ARTICLE XII

GENERAL PROVISIONS

12.01 **Amendment.** So long as Declarant owns any Tract, this Declaration may be amended only by a written amendment executed by a Required Majority of Owners and all Owner(s) of the Reserve or Tracts in the Reserve. When Declarant no longer owns any Tract, this Declaration may be amended only by a written amendment executed by a Required Majority of Owners. No amendment shall be effective until such amendment is recorded in the Real Property Records of the County.

12.02 **Duration.** The covenants and restrictions contained in this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by each Owner and such Owner's heirs, devisees, executors, administrators, personal representatives, successors and assigns for a period of 30 years from the date this Declaration is recorded in the Real Property Records of the County, after which such covenants and restrictions automatically shall be extended for successive ten year periods unless an instrument in writing executed by a Required Majority of Owners has been recorded within the year preceding each successive ten year period, agreeing to change said covenants and restrictions, in whole or in part, or to terminate same.

12.03 **Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

12.04 **Interpretation.** The provisions contained herein shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Real Property Records of Colorado County, Texas. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience of reference and are in no way to be

construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Texas.

12.05 **Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to non-individual entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

12.06 **Severability.** Invalidation of any one of the covenants or restrictions contained in this Declaration by judgment, court order or otherwise shall in no way affect any other provisions which shall remain in full force and effect.

12.07 **Rights of Third Parties.** This Declaration shall be recorded for the benefit of Declarant and the Owners as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or in the enforcement of any of the provisions hereof, and the Owners have the right to extend, modify, amend or otherwise change the provisions of this Declaration in accordance with the provisions contained in this Declaration without the consent, permission or approval of any adjoining owner or third party.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day, month and year first above written.

DECLARANT:

YAUPON PROPERTY DEVELOPMENT LLC,
a Texas limited liability company

By

Hunter McGuirt
President

DON McGUIRT

THE STATE OF TEXAS §
 §
COUNTY OF COLORADO §

This instrument was acknowledged before me on July ____, 2006, by Hunter McGuirt, President of Yaupon Property Development LLC, a Texas limited liability company, on behalf of such limited liability company.

Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF COLORADO §

This instrument was acknowledged before me on July ____, 2006, by Don McGuirt.

Notary Public in and for the State of Texas

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ANNEX A

Legal Descriptions of Section 1 and the Reserve

SECTION 1

FIELD NOTES of a survey of a 330.12 acre tract of land out of the Peyton R. Splane Survey, Abstract No. 41, and the William R. Hunt Survey, Abstract No. 29, Colorado County, Texas. Said 330.12 acre tract being a part of that called 299.28 acre tract of land described in a deed to Don W. McGuirt, recorded in Volume 486, Page 274, Colorado County Official Records, being also a part of that called 273.62 acre tract of land described in a deed to Don E. McGuirt, recorded in Volume 511, Page 698, Colorado County Official Records, and being also all of that called 0.0138 acre tract of land described in a deed to Don E. McGuirt, recorded in Volume 516, Page 515, Colorado County Official Records for which reference is made and the said 330.12 acre tract being described by metes and bounds as follows, TO-WIT:

BEGINNING at a 1/2 inch iron rod found (called for in record deed) for the most Southwesterly corner of the herein described 330.12 acre tract in the Northeast line of State Highway No. 71, said corner being also the Southeast corner of a called 22 acre tract described in a deed to Minnie Werland, Volume 195, Page 293, Colorado County Deed Records, said corner being also the Southwest corner of the said 273.62 acre tract;

THENCE N 24° 52' 43" E a distance of 110.54 feet with the Southeast line of the said Werland 22 acre tract, same being the Northwest line of the said 273.62 acre tract to a post oak tree found for corner;

THENCE N 03° 24' 09" E a distance of 225.56 feet and with the East line of the said Werland 22 acre tract, same being the West line of the said 273.62 acre tract and with the present fence line to a post oak tree found for corner;

THENCE N 01° 35' 08" W a distance of 1239.54 feet (called N 01° 59' E – 1240.63') continuing with the East line of the said Werland 22 acre tract, the West line of the said 273.62 acre tract to a concrete marker found (called for in record deed) for corner, said corner being also a Southwest corner of the said 299.28 acre tract;

THENCE N 03° 13' 03" W a distance of 538.91 feet with an interior West line of the said 299.28 acre tract, same being the East line of the said Werland 22 acre tract to a 1/2 inch iron rod found (previously set) for a West corner of Tract D – 17.27 acres as previously surveyed by Frank Surveying Co., Inc. on December 2, 2005;

THENCE with the Southwest and South line of the said Tract D, the following:

- N 72° 34' 57" E a distance of 26.43 feet to a 1/2 inch iron rod found (previously set);
- S 47° 52' 45" E a distance of 309.25 feet to a 1/2 inch iron rod found (previously set);
- S 50° 53' 18" E a distance of 491.55 feet to a 1/2 inch iron rod found (previously set) in the North line of the said 273.62 acre tract;
- N 87° 18' 31" E a distance of 447.38 feet to a concrete marker found (called for in record deed) for the Southeast corner of said Tract D, same being an interior corner of the said 273.62 acre tract;

THENCE with the East line of Tract D, the following:

- N 03° 33' 17" W a distance of 582.66 feet to a 1/2 inch iron rod found (previously set);
- N 57° 39' 40" W a distance of 71.91 feet to a 1/2 inch iron rod found (previously set);
- N 10° 36' 59" W a distance of 306.68 feet to a 1/2 inch iron rod found (previously set) for the Northeast corner of Tract D;

THENCE S 72° 47' 40" W a distance of 94.09 feet with the Northwest line of Tract D to a 1/2 inch iron rod found (previously set) for the Southeast corner of Tract C – 15.66 acres as also previously surveyed by Frank Surveying Co., Inc. on December 2, 2005;

THENCE with the East line of Tract C, the following:

- N 16° 34' 58" W a distance of 497.52 feet to a 1/2 inch iron rod found (previously set) for corner;

- with said curve to the left and having a radius of 195.00 feet, a delta angle of 04° 05' 12", an arc length of 13.91 feet, and a chord of S 27° 14' 12" E a distance of 13.91 feet to a 5/8 inch iron rod set (capped Frank Surveying) for the point of tangency of said curve;
- S 29° 16' 48" E a distance of 187.48 feet to a 5/8 inch iron rod set (capped Frank Surveying) for the point of curvature of a curve to the right;
- with said curve to the right and having a radius of 255.00 feet, a delta angle of 67° 09' 44", an arc length of 298.91 feet, and a chord of S 04° 18' 04" W a distance of 282.09 feet to a 5/8 inch iron rod set (capped Frank Surveying) for corner (said corner not being the point of tangency of said curve);

THENCE departing said proposed road with the following:

- S 60° 34' 21" E a distance of 126.80 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- S 39° 32' 24" E a distance of 560.85 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- S 35° 53' 33" E a distance of 424.03 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- S 42° 57' 00" E a distance of 717.55 feet to a 5/8 inch iron rod set (capped Frank Surveying) for a Southeast corner of the herein described 330.12 acre tract, said corner being also in the South line of the said 273.62 acre tract, said corner being also in the North line of a called 69.71 acre tract described in a deed to Columbus Physical Therapy and Rehabilitation Services, Inc., Volume 13, Page 18, Colorado County Official Records;

THENCE with the South line of the said 273.62 acre tract, same being the North line of the said 69.71 acre tract the following:

- S 84° 36' 09" W a distance of 110.01 feet to a fence corner post for corner;
- N 79° 12' 39" W a distance of 202.82 feet to a fence corner post for corner;
- S 83° 53' 01" W a distance of 248.84 feet to a 1/2 inch iron rod found (previously set);
- S 84° 44' 52" W a distance of 393.85 feet to a 1/2 inch iron rod found (previously set);
- S 88° 38' 21" W a distance of 817.93 feet to a 1/2 inch iron pipe found for the Northwest corner of the said 69.71 acre tract, same being the Northeast corner of a called 16.43 acre tract described in a deed to Ricky Meyer, et al, Volume 106, Page 344, Colorado County Official Records;

THENCE with the South line of the said 273.62 acre tract, same being the North line of the said 16.43 acre tract the following:

- S 88° 51' 13" W a distance of 73.60 feet to a 3/8 inch iron rod found for corner;
- S 88° 18' 37" W a distance of 1381.38 feet to a 3/8 inch iron rod found for corner, said corner being an interior corner of the said 273.62 acre tract;

THENCE S 42° 46' 14" W a distance of 17.64 feet with the Northwest line of the said 16.43 acre tract to a 1/2 inch iron rod found (previously set) for the Northeast corner of the said 0.0138 acre tract;

THENCE S 24° 02' 29" W a distance of 62.19 feet with the Southeast line of the said 0.0138 acre tract to a 1/2 inch iron rod found (previously set) for the Southeast corner of the said 0.0138 acre tract in the Northeast line of State Highway No. 71, from said a 3/8 inch iron rod found for the Southwest corner of the said Meyer tract bears S 50° 22' 16" E a distance of 882.75 feet;

THENCE N 50° 32' 34" W a distance of 120.91 feet with the Northeast line of State Highway No. 71, same being the Southwest line of the 0.0138 acre tract, and the Southwest line of the said 273.62 acre tract to the **PLACE OF BEGINNING**, containing 330.12 acres of land.

- N 42° 57' 00" W a distance of 717.55 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- N 35° 53' 33" W a distance of 424.03 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- N 39° 32' 24" W a distance of 560.85 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- N 60° 34' 21" W a distance of 126.80 feet to a 5/8 inch iron rod set (capped Frank Surveying) for a West corner of the herein described tract and being in the Southeast line of a proposed 60 foot road (said road does not exist as of this date), said corner being also in a curve to the left;

THENCE with said curve to the left and being the Northwest line of the herein described tract and the Southeast line of the said proposed road and having a radius of 255.00 feet, a delta angle of 67° 09' 44", an arc length of 298.91 feet, and a chord of N 04° 18' 04" E a distance 282.09 feet to a 5/8 inch iron rod set (capped Frank Surveying) for the point of tangency of said curve;

THENCE N 29° 16' 48" W a distance of 187.48 feet with the Northeast line of said proposed 60 foot county road to a 5/8 inch iron rod set (capped Frank Surveying) for the point of curvature of a curve to the right;

THENCE with said curve to the right and being the Northeast line of said proposed 60 foot road and having a radius of 195.00 feet, a delta angle of 04° 05' 12", an arc length of 13.91 feet and a chord of N 27° 14' 12" W a distance of 13.91 feet to a 5/8 inch iron rod set (capped Frank Surveying) for the point of tangency of said curve;

THENCE N 25° 11' 36" W a distance of 84.33 feet continuing with the Northeast line of said proposed 60 foot road to a 5/8 inch iron rod set (capped Frank Surveying) for the most Northwesterly corner of the herein described 132.42 acre tract;

THENCE continuing with the severance of the parent tract and creating the North line of the herein described 132.42 acre tract the following:

- N 81° 46' 05" E a distance of 431.38 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- S 47° 16' 38" E a distance of 159.65 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- S 56° 54' 15" E a distance of 203.40 feet to a 5/8 inch iron rod set (capped Frank Surveying);
- S 87° 23' 50" E a distance of 676.66 feet to the **PLACE OF BEGINNING**, containing 132.42 acres of land.

- N 09° 43' 44" W a distance of 297.63 feet to a 1/2 inch iron rod found (previously set) for the Northeast corner of said Tract C, said corner being also in the North line of the said 299.28 acre tract and corner being also in the South line of a subdivision of 37.47 acres as described in the Lester Richter Partition, Volume 72, Page 204, Colorado County Official Records;

THENCE N 87° 33' 40" E a distance of 791.28 feet with the North line of the said 299.28 acre tract, same being the South line of the said Richter Partition to a concrete marker found for the Southwest corner of a called 31.13 acre tract described in a deed to B. Richter, Volume 591, Page 40, Colorado County Deed Records;

THENCE N 88° 02' 36" E a distance of 874.75 feet and continuing with the North line of the said 299.28 acre tract, same being the South line of the said 31.13 acre tract to a concrete marker found (called for in record deed) for the Southeast corner of the said 31.13 acre tract, said corner being also an interior corner of the said 299.28 acre tract;

THENCE N 01° 23' 08" W a distance of 1093.43 feet (called N 01° 15' 19" W – 1093.71') with the East line of the said 31.13 acre tract, same being a West line of the said 299.28 acre tract to a concrete marker found (called for in record deed) for a Northeast corner of the said 31.13 acre tract and corner being also an interior corner of the said 299.28 acre tract;

THENCE S 88° 24' 13" W a distance of 345.44 feet (called S 88° 23' 58" W – 345.17') with a North line of the said 31.13 acre tract to a concrete marker found (called for in record deed) for an interior corner of the said 31.13 acre tract;

THENCE N 01° 02' 11" W a distance of 745.26 feet (called N 00° 55' 21" W – 745.96') with a East line of the said 31.13 acre tract, same being the West line of the said 299.28 acre tract to a 1/2 inch iron rod found (called for in record deed) for corner, said corner being also the Southeast corner of a called 37.61 acre tract described in a deed to Edward Richter, Volume 27, Page 55, Colorado County Official Records;

THENCE N 01° 24' 28" W a distance of 2794.87 feet (called N 01° 17' 15" W – 2794.81') with the East line of the said 37.61 acre tract, same being the West line of the said 299.28 acre tract to a concrete marker found (called for in record deed) for the Northwest corner of the said 299.28 acre tract, same being the Northeast corner of the said 37.61 acre tract and corner being also in the Southwest line of a called 1506.95 acre tract described in a deed to Brushy Road, L.P., Volume 421, Page 910, Colorado County Official Records;

THENCE S 75° 47' 42" E a distance of 1525.63 feet (called S 75° 39' 01" E – 1524.59') with the Northeast line of the said 299.28 acre tract, same being the Southwest line of the said 1506.95 acre tract to a 1/2 inch iron rod found (called for in record deed) for the Northeast corner of the said 299.28 acre tract, corner being also in the West line of a tract of land being the residue of 1708.465 acres described in a deed to C.G. Johnson, Volume 239, Page 462, Colorado County Official Records;

THENCE S 00° 52' 43" E a distance of 4948.36 feet (called S 00° 46' 05" E – 4948.98') with the East line of the said 299.28 acre tract and not with the present high fence to a concrete marker found (called for in record deed) for the Southeast corner of the said 299.28 acre tract, said corner being also the Northeast corner of the said 273.62 acre tract;

THENCE S 01° 02' 52" E a distance of 843.75 feet with a East line of the said 273.62 acre tract to a 1/2 inch iron rod found (called for in record deed) for an interior corner of said 273.62 acre tract, said corner being also the Southeast corner of the herein described 330.12 acre tract;

THENCE severing the said 273.62 acre tract and creating a South line of the herein described 330.12 acre tract, the following:

- N 87° 23' 50" W a distance of 676.66 feet to a 5/8 inch iron rod set (capped Frank Surveying) for corner;
- N 56° 54' 15" W a distance of 203.40 feet to a 5/8 inch iron rod set (capped Frank Surveying) for corner;
- N 47° 16' 38" W a distance of 159.65 feet to a 5/8 inch iron rod set (capped Frank Surveying) for corner;
- S 81° 46' 05" W a distance of 431.38 feet to a 5/8 inch iron rod set (capped Frank Surveying) for corner in the Northeast line of a proposed sixty foot road;

THENCE with the Northeast line of the said proposed sixty foot road, the following:

- S 25° 11' 36" E a distance of 84.33 feet to a 5/8 inch iron rod set (capped Frank Surveying) for the point of curvature of a curve to the left;

THE RESERVE

FIELD NOTES of a survey of 132.42 total acre tract out of the Peyton R. Splane Survey, Abstract No. 41, and the James Cummins Survey, Abstract No. 13, Colorado County, Texas. Said 132.42 acre tract being a part or portion of that called 273.62 acre tract of land described in a deed to Don E. McGuirt, recorded in Volume 511, Page 698, of the Official Records of Colorado County, Texas for which reference is made and the said 132.42 acre tract being described by metes and bounds as follows, TO-WIT:

COMMENCING at a concrete marker found (called for in record deed) for the upper Northeast corner of the said parent 273.62 acre tract, same being a Southeast corner of the residue of 299.28 acres described in a deed to Don E. McGuirt, Volume 486, Page 274, Colorado County Official Records, said corner being also in the West line of the residue tract of 1708.465 acres as described in a deed to C.J. Johnson, Volume 239, Page 462, Colorado County Official Records;

THENCE S 01° 02' 52" E a distance of 843.75 feet with a East line of the said parent 273.62 acre tract and the West line of the said Johnson residue tract to a 1/2 inch iron rod found (called for in record deed) in the North line of the herein described tract for the Southwest corner of the said Johnson residue tract and the **POINT OF BEGINNING** thereof;

THENCE N 88° 29' 56" E a distance of 2763.98 feet (same call in record deed) with the North line of the said parent 273.62 acre tract, the South line of the said Johnson residue tract and the North line of the herein described 132.42 acre tract to a 1/2 inch iron rod found (called for in record deed) for the Northeast corner of the herein described tract, said corner being also the Northwest corner of a tract comprised of various tracts and as described in a deed to Marjorie S. Brune Revocable Living Trust, Volume 504, Page 131, Colorado County Official Records;

THENCE S 00° 51' 25" E a distance of 963.84 feet (same call in record deed) with the East line of the herein described tract, same being the West line of the said Brune Revocable Living Trust tract to a post oak tree found (called for in record deed) for corner;

THENCE S 06° 12' 39" E a distance of 570.75 feet (same call in record deed) and continuing with the East line of the herein described tract, same being the West line of the said Brune Revocable Living Trust to a fence corner post (called for in record deed) for the Southeast corner of the herein described 132.42 acre tract, said corner being also the Northeast corner of a called 160.396 acre tract described in a deed to Manly Leyendecker, et ux, Volume 396, Page 190, Colorado County Deed Records;

THENCE S 89° 27' 38" W a distance of 784.53 feet (same call in record deed) with the South line of the herein described tract, same being the North line of the said Leyendecker tract to a 1/2 inch iron rod found (previously set on 11/29/05) for corner;

THENCE S 88° 48' 52" W a distance of 1341.88 feet (same call in record deed) and continuing with the South line of the herein described tract, same being the North line of the said Leyendecker tract to a tree stump found (called for in record deed) for an interior corner of the herein described tract;

THENCE S 72° 16' 33" W a distance of 639.53 feet with the Southeast deed line of the herein described tract, same being the Northwest deed line of the said Leyendecker tract and not with the present fence (see fence line note at bottom) to a 1/2 inch iron rod found (previously set on 11/29/05) for corner;

THENCE S 82° 43' 09" W a distance of 103.67 feet with the Southeast deed line of the herein described tract, same being the Northwest deed line of the said Leyendecker tract and not with the present fence line (see fence line note at bottom) to a 1/2 inch iron pipe found (called for in adjoining deed) for the Northwest corner of the said Leyendecker 160.396 acre tract, said corner being also the Northeast corner of a called 69.71 acre tract described in a deed to Columbus Physical Therapy and Rehabilitation Services, Inc., Volume 13, Page 18, Colorado County Official Records;

THENCE S 84° 36' 09" W a distance of 74.22 feet with the South line of the herein described tract, same being the North line of the said 69.71 acre tract to a 5/8 inch iron rod set (capped Frank Surveying) for the Southwest corner of the herein described 132.42 acre tract;

THENCE severing the said parent 273.62 acre tract and creating the Southwest line of the herein described 132.42 acre tract the following:

3.03 **Garages.** A primary Dwelling in the Reserve shall have a minimum of a two car enclosed garage, either attached or detached. All garages in the Reserve must be side or rear entry. Carports in the Reserve are prohibited unless placed behind the primary Dwelling so that the carport cannot be seen from the Main Road. A porte cochere attached to the primary Dwelling in the Reserve is allowed so long as it is constructed of the same materials as such primary Dwelling and has a similar appearance to such primary Dwelling.

3.04 **Completion Requirement.** Construction of any primary Dwelling, any guesthouse/secondary residence and/or any Ancillary Buildings in the Reserve must be completed within 545 calendar days after the date of the commencement of construction of the applicable improvement.

3.05 **Building Location.** All structures in the Reserve must be located behind the building setback lines for the Reserve shown on the Subdivision Plat. No building or structure on a Tract in the Reserve may be located nearer than 130 feet to the centerline of any public road or 100 feet from the boundary line of any adjoining Tract located outside of the Reserve. Terraces, walls and fences shall not be considered structures for the purposes of this section.

3.06 **Fences.** All fences on Tracts in the Reserve shall be constructed of wood, brick, rock, stucco, wrought iron, new pipe or new t-posts, and wiring typically found in the area. No chain link fence will be permitted on the boundaries of any Tract in the Reserve nor any other location that is visible from any public road or adjoining Tract. A game-proof high fence (made of new materials) may be constructed on a Tract in the Reserve but no closer than 130 feet from the centerline of any public road.

ARTICLE IV GENERAL PROVISIONS APPLICABLE TO SECTION 1 AND THE RESERVE

4.01 **Roofs.** Roofing materials for all primary Dwellings, guesthouses/secondary residences and Ancillary Buildings shall be new and designed and manufactured specifically for roofs. Metal roofs not treated to prevent rust are prohibited on all buildings. The roof pitch of the primary Dwelling, guesthouse/secondary residence and any garage must be 6:12 or greater.

4.02 **Ancillary Buildings.** All Ancillary Buildings shall be located at least 50 feet behind the rear wall of the primary Dwelling. Notwithstanding the foregoing, in the Reserve only, Ancillary Buildings may be placed at any location which is not visible from the Main Road or from the primary Dwelling located on any Tract outside of the Reserve. All Ancillary Buildings shall be sided in materials that are earth tone in color such that they will blend with the natural flora, including such colors as dark green, dark red, brown, tan or gray. No Ancillary Building shall be sided in unpainted metal siding or sided in bright colors such as bright green, bright red, blue, yellow, pink or purple.