

DECLARATION OF COVENANTS, RESTRICTIONS,  
 CONDITIONS, ASSESSMENTS, CHARGES,  
 SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR

**OAK HOLLOW**<sub>12</sub>  
 A MASTER PLANNED COMMUNITY

This **DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR THE PLAZA AT OAK HOLLOW**, hereinafter referred to as the "**Declaration**," is made on the 24th day of March, 2006 by S & T Development, Ltd., a Texas limited partnership, hereinafter referred to as "**Declarant**."

**WITNESSETH:**

**WHEREAS**, Declarant owns the 174.430 acres, more or less, of real property described on Exhibit "A" which is attached hereto and incorporated herein for all purposes, hereinafter referred to as the "**Oak Hollow Subdivision**," which is to be developed as a master planned commercial and residential community;

**WHEREAS**, in order to enable Declarant to implement a general plan of development and accomplish the development of the Property as part of a commercial and residential master planned community of high quality and standards in a consistent manner with continuity and to insure the creation of an architecturally harmonious development, Declarant desires to subject the Property 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 shall be held, sold and conveyed subject to the Covenants, which shall be deemed as covenants running with the land and imposed upon and intended to benefit and burden each Lot, hereinafter defined.

**ARTICLE I - DEFINITIONS**

"**Assessable Property**" shall mean all of the Property, as it now exists and as it may hereafter be subdivided and/or platted as shown on any Plat; provided, however, none of the Common Area Property shall be a part of the Assessable Property.

"**Assessment**" means any general or special assessment at any time imposed by the Association as provided in Article IX of the Declaration.

"**Assessment Lien**" shall mean the lien created and imposed against each Lot by Article VI of this Declaration.

"**Association**" means the Texas non-profit corporation, its successors and assigns, to be established for the purpose set forth herein.

**“Board”** means the Board of Directors of the Association.

**“Common Area Property”** shall mean that portion of the Property (i) that shall hereafter be owned in common by all of the Owners of the Property or (ii) that shall be owned by the Association for the benefit of all of the Owners of the Property, and shown or designated as Common Area or Greenbelt Property on any Plat.

**“Covenants”** shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

**“Declarant”** shall mean S & T Development, Ltd., a Texas limited liability company, and its successors or assigns of any or all rights and powers hereunder, but with respect to any such successor or assignee (i) such successor or assignee shall not be deemed to be a “Declarant” unless such successor or assignee is designated as such pursuant to a written instrument signed by Declarant, which written instrument shall be filed of record in the Official Public Records of Smith County, Texas, designating that part of the Property to which it relates, and (ii) such successor or assignee shall only have those rights and powers of Declarant that are specifically assigned to such successor or assignee pursuant to such written instrument.

**“Declaration”** shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements as amended or supplemented from time to time as herein provided.

**“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.

**“Lot”** shall mean each platted Lot that is a part of any part or parcel of the Property and that is shown on a Plat.

**“Member”** means every person or entity who holds membership in the Association.

**“Oak Hollow Subdivision”** means master planned commercial and residential community to be developed upon the Property.

**“Owner”** shall mean the person or persons, entity or entities, who, individually or jointly, own record title to a Lot. The term “Owner” shall exclude any person or persons, entity or entities, having an interest in a Lot or any such parcel merely as security for the performance of an obligation. The term “Owner” shall include Declarant if Declarant is a record title owner of a Lot.

**“Plat”** shall mean any Plat of the Property, or any part thereof, that has heretofore been filed or shall hereafter be filed in the Plat Records of Smith County, Texas.

**“Property”** shall mean all of the 174.430 acres, more or less, described on Exhibit “A” which is attached hereto and incorporated herein for all purposes.

## 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 the Declarant, each Owner, and the heirs, executors, administrators, personal representatives, successors and assigns of the Declarant and each Owner, whether or not so provided or otherwise mentioned in the Deed. Each Owner, 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.

2.03 General. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City of Tyler, Texas or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. **IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL.** All of the Property shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided.

### **ARTICLE III - IMPOSITION OF LIEN; OWNERS' AGREEMENT**

3.01 Imposition of Assessment Lien and Priority of the Lien. THE OBLIGATION TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN ARTICLE V, AND TO PAY ANY OTHER CHARGES, OR ASSESSMENTS AS PROVIDED IN THIS DECLARATION, TOGETHER WITH INTEREST, COLLECTION COSTS, COURT COSTS, AND REASONABLE ATTORNEY'S FEES RELATED THERETO, SHALL BE AND IS HEREBY EXPRESSLY SECURED BY A CONTINUING CONTRACTUAL LIEN (THE "ASSESSMENT LIEN") AND CHARGE ON THE LOT COVERED BY SUCH ASSESSMENTS OR OTHER CHARGES, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual Assessment Lien shall attach to the Lots as of the date of the recording of this Declaration in the Official Public Records of Smith County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in Section 4.03 of this Declaration. Either the Board or Association shall have the right to subordinate the aforesaid Assessment Lien to any other lien. The exercise of such right shall be entirely discretionary with the Board or the Association. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or in Section 4.03 hereof, all Lots are conveyed to, and accepted and held by, the Owner thereof subject to the Assessment Lien provided for in this Section 3.01. To evidence any unpaid Assessments, the Association may prepare a written notice of unpaid

Assessments (the “**Notice of Unpaid Assessments**”) setting forth the amount of the unpaid indebtedness, the name of the Owner of and describing the affected Lot. Such notice shall be signed by one (1) of the officers of the Association and may, at the Board’s sole and exclusive discretion, be recorded in the Official Public Records of Smith County, Texas. The Association shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid. **THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER’S LOT BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH OF THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME.** In addition, the Association may institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Association shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or nonjudicial, or in any suit or other action against, or pertaining to, the Owner, the Owner shall be required to pay all costs, expenses and reasonable attorneys’ fees incurred by the Association. The Association shall have the right and power to buy the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same, subject to any statutory right of redemption.

3.02 Owner’s Agreement. Each Owner, owning a portion of the Property or of any Lot, for said Owner, and the Owner’s heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:

- A. that the Owner acquires the Owner’s Lot subject to the Assessments, and the Assessment Lien; and
- B. that by accepting a Deed to the Owner’s Lot, the Owner is, shall be, and shall remain personally liable for any and all Assessments assessed against the said Owner’s Lot while the said Owner is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed; and
- C. that by accepting a Deed to the Owner’s Lot and to secure the Owner’s performance hereunder, the Owner conveys the Lot, and all portions thereof, to the Association, and its successors and assigns, in Trust, with a power of sale, and warrants and agrees to defend the title to the Lot, and all portions thereof. If the Owner pays all of the Assessments imposed against the Owner’s Lot as provided herein, this conveyance in trust shall have no further effect. If the Owner fails to pay any of the Assessments imposed against the Owner’s Lot, the Association in its capacity as trustee shall have the right to nonjudicially foreclose upon the Assessment Lien granted herein in accordance with and upon compliance with the provisions of the Texas Property Code, as the same may be amended or supplemented from time to time.

#### **ARTICLE IV - ENFORCEMENT OF DECLARATION AND OF ASSESSMENT LIEN**

4.01 Enforcement By Declarant or Association. The Declarant or the Association, acting either jointly or independently, shall each have the right, jointly or severally, but not the obligation, to enforce the provisions of this Declaration, including, but not limited to, enforcement of the Assessment Lien. Any Owner shall also have the right to enforce this Declaration at the said Owner’s sole cost and expense by any

appropriate action, whether at law or in equity. Neither the Declarant nor the Association shall have any liability to any Owner or any other person or entity for failing or refusing to enforce this Declaration.

4.02 Enforcement Remedies. If the Owner of any Lot fails to pay any Assessments assessed, or to pay any interest accrued on any Assessments, or any and all costs (including court costs and attorneys' fees) incurred by either the Declarant or the Association in collecting same, the Declarant and/or the Association, as applicable, shall have the right to enforce the payment of the Assessments, and all interest accrued thereon and costs incurred by either the Declarant or the Association 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 and the Association do not prejudice there exercise of any other remedy):

- A. bring an action at law and recover judgment against the Owner personally obligated to pay the Assessments; or
- B. enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in 51.002 of the Texas Property Code, 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.

4.03 Subordination of the Assessment Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any valid first mortgage lien (purchase money or improvement loan) 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 any such superior mortgage lien or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage lien foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all 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 lien 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 take the Lot or Property subject to all Maintenance Charges and Assessments, 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.

#### **ARTICLE V- THE ASSOCIATION**

5.01 Establishment. The Declarant shall have the right to form the Association by the filing of the Certificate of Formation of the Association with the Secretary of State of the State of Texas. The Association has not been established on the date of the filing of this Declaration. The Association may be formed by the Declarant after the date on which this Declaration is recorded.

5.02 By-Laws. By-Laws for the Association will be established and adopted by the Board of the Association.

5.03 Membership. The Declarant and each Owner of a Lot, including successive buyers, shall automatically and mandatorily become and be a Member of the Association. Membership shall be

appurtenant to and shall not be separated from ownership of any Lot. Every Member shall have a right at all reasonable times during regular business hours of the Association to inspect the books and records of the Association.

5.04 Voting Rights. The Association shall have two (2) classes of membership to be designated as Class A and Class B.

- A. Class A Members shall be all Owners with the exception of the Declarant. A Class A Member shall be not entitled to vote until (i) the Declarant initially sells all of the Property, or (ii) the Declarant files a statement with the Association that the Declarant will allow the Class A Members to vote. Once the Declarant files the statement with the Association allowing Class A Members to vote, the statement may not be revoked by the Declarant. Each Class A Member shall, once the Class A Members are entitled to vote, be entitled to one (1) vote for each individual Lot owned. When more than one person owns an interest in an individual Lot, all such persons shall be members of the Association, however, the one (1) vote voting right for such Lot shall be exercised collectively as the owners of the particular Lot shall between or among themselves determine.
- B. The Declarant shall be the Class B Member for so long as it owns any of the Property which has not previously been conveyed by the Declarant to an Owner. When any Lot is initially sold by the Declarant, the Class B membership with respect to such Lot shall cease and automatically become and be a Class A membership. Unless the Declarant files the statement with the Association referred to in Section 5.04(A), above, allowing Class A Members to vote, for so long as the Declarant, owns any Class B membership, the Declarant shall be the only Member of the Association entitled to vote.
- C. Once the Class A Members are entitled to vote, whether by sale by the Declarant of all of the Declarant's Lots or by the Declarant's filing the statement with the Association allowing the Class A Members to vote, the Class B Member shall no longer be entitled to vote as a Member of the Association.

5.05 Board of Directors. The Board shall be elected by the Members as provided in the By-Laws. The Board shall conduct the business of the Association, except when a membership vote is required by this Declaration, the Certificate of Formation, or the By-Laws.

5.06 Assessments. Each Lot is hereby subject to a annual and special Common Area Property charges and assessments for the purpose of creating a fund to be used for the development, maintenance and care of the Common Area Property. The amount of such annual and special Common Area Property charges shall be determined by the Board, and such annual and special Common Area Property charges and assessments shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. The annual Common Area Property charges and assessments shall be used for development, upkeep, repair and maintenance of the Common Area Property. The special charges and assessments shall be used only for the purposes for which they are assessed by the Board which must be related to the development and maintenance of the Common Area Property. If an Owner shall own more than one Lot, the Owner shall be responsible for paying the full annual Common Area Property charge and the full special assessment for each Lot owned by the Owner. Notwithstanding anything contained in this Declaration or elsewhere, the Declarant shall not at any time be required to pay nor otherwise be responsible for payment of any annual or special Common Area Property charge or assessment.

5.07 Conflicts. The Association may make whatever rules, regulations and By-Laws it deems necessary or desirable to govern the Association and its Members; provided, however, that any conflict between the Association's rules, regulations and By-Laws and the provisions of this Declaration shall be controlled by and resolved in favor of this Declaration.

#### ARTICLE VI - TERMS; AMENDMENTS; TERMINATIONS

6.01 Term; Method of Termination. This Declaration and the Covenants shall be effective upon the date of recordation hereof and, as may be amended from time to time, shall continue in full force and effect to and including December 31, 2036. From and after December 31, 2036, this Declaration, as it may have been amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by at least a simple majority of the Owners (there being only one vote per Lot which shall be exercised collectively by any multiple Owners of interests in any one Lot as they may among themselves determine) casting their votes for termination at a meeting of the Owners held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

6.02 Amendments. Until the later of (i) the date on which the Declarant shall have initially sold all of the Property, such sales being evidenced by the recording of a Deed from the Declarant to the initial buyer of a Lot or other portion or parcel of the Property, or (ii) December 31, 2010, the Declarant shall have the right to unilaterally change or amend this Declaration at any time, in any manner, and for any reason or purpose as determined at the sole discretion of the Declarant. After all of the Property have been initially sold by Declarant, this Declaration may be amended or changed in whole or in part at any time only by the affirmative vote of the then Owners of at least fifty-one percent (51.0%) of the Lots (each Owner having one vote per Lot owned which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes to amend or change this Declaration at a special meeting of the Owners called pursuant to Section 6.03.

6.03 Election Procedures. The affirmative votes required under Sections 6.01 and 6.02 hereof shall be obtained and evidenced by the requisite vote of the Owners present at a meeting of Owners duly called by at least twenty-five percent (25.0%) of the 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 vote to so amend or terminate this Declaration. No proxy votes shall be allowed or valid. The notice of the meeting must set forth the proposal as to amendment of this Declaration 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, as long as the Declarant owns a Lot, a copy of the minutes shall be delivered to the Declarant prior to any amendment or change becoming effective.

6.04 Recording Amendments. Upon the amendment or change of this Declaration (and/or the Covenants contained herein) as herein provided, and upon the other conditions set forth in Section 6.01 and Section 6.03 of this Article XI having been satisfied, then each amendment shall be executed by the (i) the Declarant, its successors or assigns, or (ii) the Owners who voted in favor of the amendment or change, as applicable, placed in recordable form, and filed of record in the Official Public Records of Smith County, Texas, accompanied by a statement that either (i) the Declarant, or (ii) the requisite percentage of Owners, have voted to make such amendment to this Declaration.

6.05 Effect. Upon the filing of an amendment or change in accordance with Section 6.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

6.06 Other Right of Amendment. Anything in this Article to the contrary notwithstanding, Declarant, its successors and assigns, reserves the right at any time prior to the initial sale of all of the Lots to amend all or any part of this Declaration to such an extent and with such language as may be required by any federal, state, or local agency which requires 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 thereon. Any such amendment shall be effected by the recordation, by Declarant, its successors or assigns, of a Certificate of Amendment signed by Declarant, its successors or assigns, with proper signature acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requiring the amendment and setting forth the amendatory language required by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's requirement for such an amendment, and such Certificate, when recorded, shall be binding upon the Property, or the affected portion thereof, and all persons or Owners having an interest in the same. Except as provided in Section 6.02 and Section 6.06 of this Declaration, Declarant shall not have any right to unilaterally amend this Declaration.

#### **ARTICLE VII -RESERVATION OF RIGHT TO RESUBDIVIDE**

Subject to the approval of any and all appropriate governmental agencies having jurisdiction over the Oak Hollow Subdivision or any Lot, 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 Property then owned by Declarant without the consent of any Owner.

#### **ARTICLE VIII-MISCELLANEOUS**

8.01 Interpretation of the Covenants. Except for judicial construction, until the Association is incorporated, the Declarant shall have the sole and exclusive right and power to construe and interpret the provisions of this Declaration. Once the Association is formed, the Board shall have the exclusive right and power 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 or the Board's construction or interpretation of the provisions hereof, as applicable, shall be final, conclusive, and binding as to all persons and property benefitted or bound by this Declaration and the provisions hereof.

8.02 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, remaining provisions hereof, which remaining provisions shall be and remain in full force and effect.

8.03 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 Steven F. Thornton who are living at the time the period of perpetuities starts to run on the challenged interest.

8.04 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.

8.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant, or the Board, as applicable, shall have the



right to adopt rules and regulations with respect to all other aspects of the rights, activities and duties of the Declarant, or the Board, as applicable, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

8.06 Disclaimer of Representation. 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 Official Public Records of Smith County, Texas, the Declarant makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out.

8.07 Limitation of Liability. In the absence of willful and intentional misconduct attributable to (i) Declarant, its successors or assigns, or (ii) the Board (and any and all members thereof) neither the Declarant, nor its successors or assigns nor the Board (nor any member thereof) shall have any liability of any nature whatsoever arising out of or in any manner related to the performance or nonperformance of any of the rights and powers reserved unto Declarant, the Board, or their respective heirs, executors, administrators, personal representatives, legal representatives, successors or assigns, pursuant to this Declaration.

8.08 Successors and Assigns. Any reference in this Declaration to Declarant shall include Declarant's successors and assigns.

8.09 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.

8.10 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.

8.11 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, return receipt requested, addressed to each such person or entity at the address given by such person or entity to the party sending the notice or to the address of the Dwelling Unit or the office of such person or entity if no address has been given. Such address may be changed from time to time by notice in writing.

8.12 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property.

8.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions of this Declaration, 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.

8.14 Non-Waiver. Any failure or delay on the part of either the Declarant, the Board, the Association, and/or any Owner (i) to exercise any right, remedy or duty under this Declaration, or (ii) to take any action to enforce the Covenants or the Declaration, with regard to anyone matter or situation or group of matters or situations in any manner covered by or arising out of the Covenants or Declaration shall not in any manner be deemed or construed to be a waiver of the same or any subsequent matter or situation or group of matters or situation arising hereunder. No forbearance of any type for any period of time by either the Declarant, the Board, the Association, and/or any Owner shall be in any manner deemed or construed to be a waiver of any right, remedy or duty hereunder, but all such rights, remedies and duties shall continue in full force and effect as if no forbearance had occurred. All Owners by accepting a Deed to a Lot hereby expressly covenant, stipulate, acknowledge and agree that (i) he, she or it expressly waives the affirmative defense of waiver with respect to any violation of this Declaration, or any part hereof or covenant herein, and (ii) the affirmative defense of waiver as recognized under the laws of the State of Texas shall not be available to any Owner as a defense to the violation of this Declaration, or any part hereof or covenant herein.

8.15 Liberal Interpretation. This Declaration, and all of the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements, shall be liberally construed to effectuate the purposes of this Declaration.

IN WITNESS WHEREOF, this Declaration has been signed on the 24<sup>th</sup> day of March, 2006.

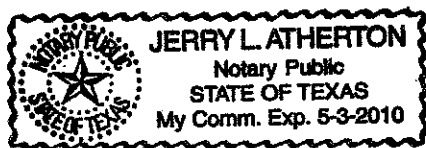
**S & T DEVELOPMENT, LTD.**  
A Texas Limited Partnership

BY: W & S Development Company, General Partner  
A Texas Corporation

BY:   
STEVEN F. THORNTON, President

STATE OF TEXAS §  
COUNTY OF SMITH §

This instrument was acknowledged before me on March 24<sup>th</sup>, 2006 by Steven F. Thornton, President of W & S Development Company, a Texas corporation, the general partner of S & T Development, Ltd., a Texas limited partnership, on behalf of said limited partnership.



  
NOTARY PUBLIC, STATE OF TEXAS

## EXHIBIT "A"

All that certain lot, tract or parcel of land, part of the Thomas Price Survey, Abstract No. 794, Smith County, Texas, being part of that certain called 129.3 acre Tract One and 50.61 acre Tract Two described in a deed to Judy S. Tate and Louise S. Griffith Trust and recorded in Volume 6949, Page 105 of the Official Public Records of Smith County, Texas and being more completely described as follows, to-wit:

BEGINNING at a ½" iron rod (found) for the Southeast corner of the above mentioned 50.61 acre tract, an inner corner of the Paul Harman Phillips et al 276.088 acre tract described in Volume 4692, Page 56, in the southerly East line of said Price Survey;

THENCE North 89 deg. 27 min. 34 sec. West with the South line of said 50.61 acre tract, the westerly North line of said 276.088 acre tract, a distance of 2960.48 ft. to a ½" iron rod (set) for corner in the new East right-of-way of F. M. Highway No. 2493 (Old Jacksonville Highway);

THENCE Northerly with new East right-of-way of F. M Highway No. 2493 (Old Jacksonville Highway), as follows: North 19 deg. 16 min. 18 sec. East - 213.58 ft., North 19 deg. 40 min. 13 sec. East - 398.34 ft., North 51 deg. 19 min. 04 sec. East - 29.15 ft., North 20 deg. 18 min. 07 sec. East - 75.00 ft., North 11 deg. 49 min. 26 sec. East - 101.15 ft., North 22 deg. 57 min. 23 sec. East - 600.59 ft., North 23 deg. 25 min. 53 sec. East - 50.08 ft., North 03 deg. 39 min. 01 sec. East - 52.19 ft. and North 19 deg. 09 min. 13 sec. East - 237.97 ft. to a Type II right-of-way monument (found) for corner, North 20 deg. 31 min. 59 sec. East - 357.77 ft., North 24 deg. 01 min. 10 sec. East - 613.42 ft., North 41 deg. 59 min. 56 sec. East - 95.34 ft., North 29 deg. 48 min. 08 sec. East - 91.35 ft., North 19 deg. 22 min. 07 sec. East - 142.73 ft. and North 28 deg. 19 min. 08 sec. East - 778.76 ft. to a ½" iron rod (found) for the Northwest corner of the above mentioned 129.3 acre tract, the Southwest corner of the Pat Hairston 1.22 acre tract described in Volume 388, Page 497;

THENCE South 61 deg. 20 min. 17 sec. East with the North line of said 129.3 acre tract, the South line of said 1.22 acre tract, a distance of 1773.49 ft. to a ½" iron rod (set) for the Southeast corner of same, the Northeast corner of said 129.3 acre tract, in the West line of Holly Park, Unit 8 as shown by plat of same recorded in Cabinet D, Slide 125-D, a ½" iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 34.02 ft. and a ½" iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 91.63 ft;

THENCE South 00 deg. 32 min. 10 sec. West with the northerly East line of said 129.3 acre tract, the West line of said Holly Park Unit 8, the West line of Holly Heights Unit 1 as shown by plat of same recorded in Cabinet D, Slide 159-B, at 1054.71 ft. pass a ½" iron rod (found) for the Southwest corner of Lot 9, N.C.B. 1606-A and continue for a total distance of 1714.91 ft. to a ½" iron rod (found) for the easterly Southeast corner of said 129.3 acre tract, in the easterly South line of said Price Survey, the easterly North line of said 276.088 acre tract;

THENCE North 89 deg. 42 min. 24 sec. West with the easterly South line of said Price Survey and 129.3 acre tract, the easterly North line of said 276.088 acre tract, a distance of 78.33 ft. to a 1/2" iron rod (found) for the easterly Northwest corner of same, an inner corner of said Price Survey and 129.3 acre tract;

THENCE South 00 deg. 43 min. 25 sec. West with the southerly East line of said Price Survey and 129.3 acre tract, the East line of said 50.61 acre tract and the northerly West line of said 276.088 acre tract, a distance of 968.74 ft. to the place of beginning, containing 174.430 acres of land.

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



MAR 24 2006

*Judy Carnes*

JUDY CARNES  
COUNTY CLERK, Smith County, Texas

Return To:

St T. Development, LTD  
4560 Kinsey Drive, Suite #1

Jyler, TX

75703

Filed for Record in:  
SMITH COUNTY, TEXAS  
JUDY CARNES, COUNTY CLERK  
On Mar 24 2006  
At 3:32pm  
Receipt #: 380893  
Recording: 60.00  
Doc/Num : 2006-00014063  
Doc/Type : REC  
Deputy -Deana Miller

Smith County  
Judy Carnes  
County Clerk  
Tyler Tx 75702



70 2006 00028123

Instrument Number: 2006-R00028123

As

Recorded On: June 09, 2006

Recordings - Land

Parties: S & T DEVELOPMENT LTD

Billable Pages: 31

To PUBLIC

Number of Pages: 32

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Recordings - Land	136.00
<b>Total Recording:</b>	<b>136.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2006-R00028123  
Receipt Number: 390073  
Recorded Date/Time: June 09, 2006 01:23:34P

**Record and Return To:**

MR STEVEN F THORNTON  
4560 KINSEY DR  
TYLER TX 75702

User / Station: C Aparicio - Cash Station 2



I hereby certify that this instrument was filed and duly recorded in the Official Records of Smith County, Texas

*Judy Carnes*  
County Clerk  
Smith County, Texas

# ***WATERS EDGE AT OAK HOLLOW***

*A RESIDENTIAL SUBDIVISION*

## **DECLARATION OF COVENANTS, RESTRICTIONS, 21 CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS**

This **DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS**, hereinafter referred to as the "**Declaration**," is made on the 6<sup>th</sup> day of June, 2006 by S & T Development, Ltd., a Texas limited partnership, hereinafter referred to as "**Declarant**."

### **WITNESSETH:**

**WHEREAS**, Declarant owns Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of N.C.B. 1570-H and Lots 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 322, N. C. B. 1570-J of the *Waters Edge At Oak Hollow Subdivision*, a residential subdivision in Tyler, Smith County, Texas, according to the Plat thereof recorded in Cabinet D, Slide 332-A of the Plat Records of Smith County, Texas;

**WHEREAS**, in order to enable Declarant to implement a general plan of development and accomplish the development of the Property as a residential development of high quality and standards in a consistent manner with continuity and to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property 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 shall be held, sold and conveyed subject to the Covenants, which shall be deemed as covenants running with the land and imposed upon and intended to benefit and burden each Lot, hereinafter defined.

### **ARTICLE I - DEFINITIONS**

1.01. **Definitions.** The definitions of certain words, phrases or terms used in this Declaration are set forth on Exhibit "A," which is attached hereto and incorporated herein for all purposes.

### **ARTICLE II - COVENANTS BINDING ON PROPERTY AND OWNERS**

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

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 the Declarant, each Owner, and the heirs, executors, administrators, personal representatives, successors and assigns of the Declarant and each Owner, whether or not so provided or otherwise mentioned in the Deed. Each Owner, 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.

2.03 General. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City of Tyler, Texas or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. **IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL.** All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided.

### ARTICLE III - ARCHITECTURAL CONTROL

3.01 Reservation and Assignment of Architectural Control. The Declarant, desiring (i) to provide for the preservation of the values and amenities in and upon the Property and each Lot and (ii) to subject the Property and each Lot to the reservation of architectural control hereinafter expressed for the purpose of implementing a general plan of development for the Property to insure the creation of a high quality, architecturally harmonious subdivision, which general plan of development and reservation of architectural control is for the benefit of the Property and each Lot,

or any part thereof, and each Owner, as well as for the benefit of the Declarant as developer of the Property, hereby reserves the right and all rights to approve or disapprove as to:

- A. compliance with any specific restrictions imposed by Declarant, the Architectural Control Committee, or anyone acting on behalf of either the Declarant or the Architectural Control Committee, with respect to a Lot, the Lots, and the Property and/or any part thereof;
- B. without limitation, harmony of external design, adequacy of structural design, location of improvements, allowing and location of exterior lighting, building and landscaping setbacks from property lines, playground equipment, recreational equipment, athletic equipment, basketball goals, swimming pools, spas, hot tubs, square footage of improvements, driveways, fences, walls, retaining walls and landscaping in relation to surrounding structures and topography which are now or hereafter may be existing or proposed, including, but not by way of limitation, architectural designs, setbacks, landscaping, color schemes, types and quality of construction materials, quality of workmanship, any and all subdivisions, resubdivisions (where permitted), exterior additions to, changes in, construction, paving, alteration or excavation of the Property or of any Lot or any part thereof (including, but not limited to the trees now located or to be located thereon) and any and all Dwellings, structures and other improvements located thereon, either permanent or temporary, including without limitation, additions to, changes in, or alterations of grade, landscaping, roadways, walkways, signs, exterior lights, walls, fences, buildings, or other structures or improvements of any type or nature located thereon which any person or entity, including without limitation, governmental and quasi-governmental subdivisions or agencies, seeks to commence, erect, construct, place or maintain upon any Lot, or any part thereof.

3.02 Appointment. Until the right to appoint the members of the Architectural Control Committee and the right to change the number of members comprising the Architectural Control Committee is assigned by the Declarant to the Association, the Declarant shall have the sole and exclusive right to (i) appoint, remove and replace the members of the Architectural Control Committee and (ii) change the number of members comprising the Architectural Control Committee. The Declarant shall appoint the members of the Architectural Control Committee by filing a Designation of Appointment in the Official Public Records of Smith County, Texas. The initial number of members comprising the Architectural Control Committee shall be two (2) and shall be Steven F. Thornton and J. P. Davis. The persons constituting the members of the Architectural Control Committee and the number of members constituting the Architectural Control Committee may be changed or modified by the Declarant at any time by the filing of a supplemental Designation of Appointment in the Official Public Records of Smith County, Texas. Upon the assignment of right to appoint the members of the Architectural Control Committee and the right to change the number of members comprising the Architectural Control Committee by the Declarant to the Association, the Association shall then have the sole and exclusive right to (i) appoint the members



of the Architectural Control Committee and (ii) change the number of members comprising the Architectural Control Committee.

3.03 Construction Requests. All requests for approval of any of the items set forth in this Article III shall be submitted in writing to the Architectural Control Committee at 4560 Kinsey Drive, Tyler, Texas 75703, or at such other address as may from time to time be designated by the Architectural Control Committee, and such request for approval shall be accompanied by complete and specific plans and specifications showing the nature, kind, shape, elevations, height, materials, color, location, landscaping, and other material attributes of the Dwelling Unit and other Permanent Improvements, additions, changes, alterations or excavation of a Lot or any part thereof. The Architectural Control Committee shall have no duty to exercise the power of approval or disapproval hereby reserved. The Architectural Control Committee is hereby granted and shall hereafter have the power and authority to charge an application fee to be submitted with all requests for approval of items as required in this Article III in such amount as shall be determined by the Architectural Control Committee..

3.04 Designation of Power of Approval. With respect to each Lot, or any part thereof, the Declarant does herein and hereby delegate the power of approval and disapproval, reserved in this Declaration to the Architectural Control Committee. This delegation of the power of approval and disapproval may be rescinded at any time by the Declarant by the filing of an instrument so stating such act of rescission in the Official Public Records of Smith County, Texas. As long as this delegation of the power of approval and disapproval is in effect, any person or entity owning any interest in any Lot, or any part thereof (where permitted), shall be required to deal with the Architectural Control Committee, and not the Declarant, and the Declarant shall have no responsibility or liability of any nature whatsoever for the actions of the Architectural Control Committee.

3.05 Prior Approval. No dwelling, building, garage, storage building, fence, wall, sign, exterior lighting, pole, antenna, television or satellite disc or dish, driveway, sidewalk, other walkway, mailbox, dog kennel, dog run, any facility for housing, boarding or containing pets, athletic equipment, recreational equipment, playground equipment, basketball goals, swimming pool, spa, hot tub, other structure, equipment or apparatus or any nature whatsoever, either permanent or temporary, or landscaping shall be commenced, erected, constructed, placed or maintained upon any Lot, 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 in writing to and approved in writing by the Architectural Control Committee, in its sole and exclusive discretion, 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 limited to, architectural designs, setbacks, landscaping, color schemes and construction materials. The Architectural Control Committee shall have the right to promulgate a form for submission of such items to the Architectural Control

Committee, and upon such promulgation, all Owners shall be required to use the form for all such submissions. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been properly submitted to the Architectural Control Committee, approval will not be required, and the requirements for approval set forth in this Article shall be deemed to have been fully met and performed. 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 any other or different instances. Likewise, approval of anyone 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 the Architectural Control Committee, the Architectural Control Committee and the individual members of the Architectural Control Committee shall not be liable for the improper enforcement or failure to exercise any of the powers reserved and delegated unto said Architectural Control Committee pursuant to this Declaration. The fact that some type of structure or improvement may be mentioned in this Declaration is not in any manner to be construed as a statement that such type of structure or improvement will be allowed on any Lot in the Subdivision, as the final approval or disapproval for any type of structure or improvement on any Lot shall be expressly vested solely in the Architectural Control Committee to be exercised at its sole discretion.

3.06 No Liability. In no event shall any approval obtained from the Architectural Control Committee pursuant to the terms of this Declaration be in any manner deemed to be a representation of any nature regarding the structural integrity or 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. No member of the Architectural Control Committee shall at any time have any liability to any Owner, Member or other person or entity for any decision(s) that are made by the Architectural Control Committee, or any individual member of the Architectural Control Committee, as long as such decision(s) are made by the decision maker without willful and intentional misconduct. Any and all errors or omissions from the plans submitted to the Architectural Control Committee shall be the sole responsibility of the Owner of the Lot to which the plans and improvements relate, and the Architectural Control Committee, and each member thereof, shall have no obligation to check the plans for errors or omissions or to check such plans for compliance with this Declaration, zoning ordinances, laws, building lines, easements or rights-of-way, or any other issue.

3.07 Consent or Approval Requirement. Whenever the consent or approval of the Declarant, the Architectural Control Committee, the Board or the Association is required or permitted under the terms of this Declaration, the Declarant, the Architectural Control Committee, the Board and the Association, as applicable, shall have the right to withhold such consent or approval for any reason or for no reason, unless expressly provided otherwise in this Declaration.

3.08 Restriction on Commencement of Construction. No construction nor pre-construction (site clearing, tree cutting or trimming, dirt removal, etc.) work of any type, kind or nature may be

commenced on any Lot unless and until the Owner has received the written approval of the Architectural Control Committee as required by this Declaration.

3.09 Finality of Determinations. The authority granted by the Declarant to the Architectural Control Committee in this Declaration has intentionally been very broad and all encompassing. Therefore, no decision of the Architectural Control Committee may in any manner be avoided, challenged, reversed, rendered, modified, changed or nullified in any manner by any person, tribunal, court or other entity, except by the Architectural Control Committee itself, as long as the decision of the Architectural Control Committee was made without willful and intentional misconduct on the part of any member of the Architectural Control Committee, even if the decision of the Architectural Control Committee may seem to some as arbitrary.

#### ARTICLE IV - GENERAL RESTRICTIONS

4.01 Single-Family Residential Purposes - No Commercial Use. All Lots and all Permanent Improvements thereon shall be used for single-family residential purposes only and for no other purposes. No Lot in the Subdivision shall ever be used, even temporarily, for any commercial, business or professional purposes, as such use shall be determined solely by the Architectural Control Committee and whose determination shall not be subject to challenge, review or appeal, judicially or otherwise. Each Owner by accepting a Deed to a Lot hereby waives any and all rights to challenge, review or appeal the determination by the Architectural Control Committee of whether or not a use is for commercial, business or professional purposes.

4.02 Types of Structures. Unless otherwise approved by the Architectural Control Committee, no Permanent Improvements shall be erected, constructed, altered or permitted to remain on any Lot other than one (1) detached single-family, residential dwelling. Each Dwelling Unit shall have a private garage as provided in Section 4.03, below. No used or previously constructed building or other structure shall be moved onto any Lot at any time. No structure of any kind of a temporary character nor any trailer, mobile home, manufactured home, trailer home, recreational vehicle, travel trailer, tent, shack, garage, or other outbuilding of any type or nature shall be used on any Lot at any time as a residence, either permanently or temporarily.

4.03 Garage Construction. Plans and specifications for all garages to be constructed on any Lot shall be approved in writing by the Architectural Control Committee prior to the commencement of construction of the Dwelling Unit on such Lot. Garages may not at any time be closed in and occupied or used as part of a Dwelling Unit. Garages may not be used for other than storage and parking vehicles, boats, boat trailers and all terrain vehicles without the prior express written consent of the Architectural Control Committee. Any garage that faces or fronts any street in the Subdivision shall be located and constructed at least fifteen (15) feet further back from the street on which it faces or fronts than the front setback line for the Lot as provided in Section 4.04, below; provided, however, the Architectural Control Committee in its sole and exclusive discretion shall have the right and authority to require any garage to be located a distance of more or less than fifteen (15) feet from the street in a proper circumstance. If an Owner's garage faces or fronts any

street in the Subdivision, the garage door in such case may not have a width greater than ten (10) feet without the prior written approval of the Architectural Control Committee.

4.04 Setbacks. No Dwelling Unit or other Permanent Improvement shall be located on any Lot nearer any Lot boundary line than shown on the Plat of the Subdivision. For purposes of this Section 4.04, roof overhangs, eaves, gutters, and open porches shall be considered as a part of the Dwelling Unit. The Architectural Control Committee may, unilaterally without amendment to this Declaration, permit a change in any direction of the setback line on any Lot when in the sole opinion of the Architectural Control Committee it is determined to be advisable to permit such change; provided, however, that no such change shall be in any manner deemed to be a waiver of any of the Covenants nor shall any change in any manner be deemed or construed as a statement of precedent for the consideration of any other setback change.

4.05 Retaining Walls, Fences, Hedges and Other Screening Material. No retaining wall, fence, planter, hedge or other screening material may be erected or maintained on any Lot without the prior written consent of the Architectural Control Committee. No crossties, landscape timbers or keystone blocks or stone (or similar types of materials) may be used on any Lot for any purpose without the prior written consent of the Architectural Control Committee.

- A. All fences facing the street located at the front of any residence constructed on any Lot shall be constructed of brick or brick and wrought iron, unless the Owner obtains the prior written consent of the Architectural Control Committee to use other materials for such fence.
- B. No fence or similar structure may be constructed at any point North of the South boundary line of the easement shown running along the North boundary line of Lots 5, 6, 7, 8, 9, 1, 11 and 12, N.C.B. 1570-H of the Subdivision. The Owners of Lots 5, 6, 7, 8, 9, 1, 11 and 12, N.C.B. 1570-H of the Subdivision may use the easement area so shown in conjunction with the owner of such easement as long as the Owner's use of such easement does not conflict with the use of the owner of the easement; provided, however, the Owners may not store any materials or items in the easement area at any time. The easement is to be used for ingress and egress only. Each Owner shall be responsible for the reasonable care, maintenance and mowing of that portion of said easement that is located on the Owner's respective Lot.

4.06 Construction Materials. All materials used in the construction of any Dwelling Unit or other Permanent Improvement must be approved in writing by the Architectural Control Committee before commencement of construction. Only new construction materials shall be used (except for brick if and as approved in advance by the Architectural Control Committee on a case by case basis).

4.07 Drilling Activity. At no time shall the drilling, usage or operation of any water well or any well or excavation for any oil, gas or other minerals be permitted on any Lot.

4.08 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 or elsewhere on any Lot. All approved air conditioning and heating units shall be screened as determined and required by the Architectural Control Committee.

4.09 Utilities. Each Dwelling Unit shall be required to be connected to the water distribution system and sanitary sewer collection system in the Subdivision 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. No gas, electric, power, telephone, water, 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 Lot, 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.

4.10 On Street Parking. On street parking on the streets in the Subdivision shall be and is hereby restricted to only reasonable and normal deliveries, pick-ups, or short-time guests and invitees. Additionally, at no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling Unit, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked any type of motor home, recreational vehicle, bus, tractor, trailer, travel trailer, all terrain vehicle, bob-tail truck, or other vehicle of any kind for any reason on the public streets in the Subdivision.

4.11 Off Street Parking. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling Unit, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked for any reason on any Lot in the Subdivision any (i) boat, boat trailer, motor home, recreational vehicle, bus, tractor, trailer, travel trailer, all terrain vehicle, or bob-tail truck, or similar item, nor (ii) van in excess of three-quarters ( $\frac{3}{4}$ ) of a ton, or truck of any type in excess of three-quarters ( $\frac{3}{4}$ ) of a ton, unless parked completely inside the garage of a Dwelling Unit such that the door on the garage can be completely closed and such that such boat, boat trailer, motor home, recreational vehicle, bus, tractor, trailer, travel trailer, all terrain vehicle, bob-tail truck, van or other type of truck is completely concealed from being visible from all points outside the Dwelling Unit.

4.12 Storage. No exterior storage of any items of any kind shall be permitted, except with prior written approval and authorization of the Architectural Control Committee. This provision shall apply, without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, boat trailers, recreational vehicles, motorcycles, all terrain vehicles and unmounted pick-up camper units. Additionally, and without limitation, no boat, boat trailer, recreational vehicle, motorcycle, all terrain

vehicle, trailer, automobile, truck, or other vehicle or any type whatsoever, regardless of ownership, age, condition, type or appearance, shall remain on any Lot in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use, except pursuant to written approval of the Architectural Control Committee. Additionally, and notwithstanding the foregoing covenants in this Section 4.12, no boat nor any boat trailer may be kept, stored, or otherwise allowed to remain anywhere on any Lot if such boat or boat trailer is visible from any Lot or street in the Subdivision or from any Common Area or Greenbelt Area that is shown on any plat of any part of the Oak Hollow Subdivision that has been or shall be hereafter recorded in the Official Public Records of Smith County, Texas.

4.13 Garbage. No rubbish, garbage, or trash shall be placed or be allowed to remain at the exterior of any Dwelling Unit or other structure on any Lot, except in containers meeting the specifications of the Declarant or the Architectural Control Committee. The placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the Architectural Control Committee. The placement of all such containers shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring property, Lots, Dwelling Units, pathways, and streets. Each Owner is responsible to provide that all rubbish, garbage, and trash shall be regularly removed from said Owner's Lot and rubbish, garbage, and trash shall not be allowed to accumulate

4.14 Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any Lot except with the prior written consent of and in accordance with rules and regulations promulgated by the Architectural Control Committee or the Association; provided, however, that dogs, cats, birds, or fish may be kept thereon as household pets so long as, in the sole discretion of the Architectural Control Committee, such pet is not, or does not become, a nuisance, threat, or otherwise objectionable to other Owners. If, in the sole discretion of either the Architectural Control Committee, an Owner's pet or pets do become a nuisance or threat to any Owner or otherwise becomes objectionable to any Owner, the Architectural Control Committee shall give notice to the Owner of the pet or pets of such nuisance, threat or objection, and the Owner shall thereafter not be allowed to keep such pet or pets on the Owner's Lot or anywhere else upon the Property.

4.15 Re-subdivision. No Lot shall be further subdivided and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant, its successors or assigns, which approval may be withheld for any reason or for no reason.

4.16 Burning and Incinerators. No open fires shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues, grills or chimaneas.

4.17 Signs. No exterior signs or advertisements of any kind may be placed, allowed or maintained on any Lot without prior approval and authorization of the Architectural Control

Committee, except that mailboxes, residential nameplates, "For Sale" signs not to exceed five (5) square feet in size, and signs designating the contractor of the Dwelling Unit upon such Lot may be placed and maintained in conformity with such common specifications, including without limitation, reasonable restrictions as to size, as may be adopted from time to time by the Architectural Control Committee.

4.18 Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed on any Lot unless previously approved in writing by all governmental authorities having jurisdiction with respect thereto and by the Architectural Control Committee. No outside toilets of any kind are permitted, except during the period of construction of a Dwelling Unit during which time chemically treated outside toilets shall be maintained in a manner subject to approval of the Architectural Control Committee. 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 or onto any Lot.

4.19 Firearms and Weapons. No Lot or any other portion of the Property shall be used or permitted 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.

4.20 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall in the sole opinion of the Architectural Control Committee induce, breed or harbor plant disease or noxious insects.

4.21 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 upon the ground on any Lot, except with prior written approval of the Architectural Control Committee (subject to all required approvals as to architectural control), and no such machinery, fixtures or equipment shall be placed, allowed, or maintained anywhere other than the ground (such as on the roof) except with prior written approval of the Architectural Control Committee.

4.22 Motor Vehicles. The operation of any and all motorized vehicles within or upon the Property or any part thereof shall be subject to such rules and regulations as shall from time to time be established by the Architectural Control Committee, the Association or the Declarant.

4.23 Misuse and Mismanagement. No Lot shall be maintained or utilized in such manner as to (i) present an unsightly appearance, (ii) unreasonably offend the sensitivity of a reasonable person, or (iii) constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, any Owners or residents of the Subdivision, as determined in the sole opinion of the Architectural Control Committee. No noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted anywhere on the Property as determined in the sole opinion of the Architectural Control Committee.

4.24 Violation of Statutes, Ordinances, and Regulations. No Lot 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 or quasi-governmental agency or subdivision having jurisdiction over the Property.

4.25 Violation of Rules or of Covenants. No Lot shall be maintained or utilized in violation of (i) this Declaration, or (ii) the rules and regulations of the Declarant, the Architectural Control Committee, the Board or the Association, or (iii) any of the Covenants.

4.26 Renting Restricted. No part of any Dwelling Unit, guest quarters, garage or other structure of any type whatsoever on any Lot may be rented by any Owner or by any other person or entity at any time without the prior written consent of the Architectural Control Committee. In the event that there is a guest quarters on a Lot that is separate from the Dwelling Unit and that has been approved by the Architectural Control Committee, no person or persons may occupy such guest quarters for a period of more than seven (7) continuous days without the written consent of the Architectural Control Committee. In consenting to rental or to occupancy of a guest quarters for a period in excess of seven (7) continuous days, the Architectural Control Committee shall have the right to place such rules, regulations and restrictions on such rental or occupancy as the Architectural Control Committee shall in its sole discretion determine, which rules, regulations and restrictions may vary from situation to situation. No "For Rent" sign or "For Lease" sign or any other similar sign or signs of any nature whatsoever may be placed, allowed or permitted at any time on any Lot.

4.27 No Commercial Activity or Use. No Lot or improvements on any Lot shall ever be used for any business, professional, commercial or industrial purposes of any kind whatsoever. No activity or use, whether or not for profit, shall be conducted on any Lot or in any improvements on any Lot which is not related to single family residential purposes. Nothing in this Declaration shall prohibit the Declarant from using a Dwelling Unit as a temporary sales office until the Declarant's last Lot in the Subdivision shall be sold and closed and all Dwelling Units being constructed by Declarant, or any of the Declarant's owners, have sold all Dwelling Units constructed or under construction owned by them. No business or commercial deliveries may be made to or taken from any Dwelling Unit at any time.

4.28 Vehicle Parking. Any and all vehicles to be parked overnight on any Lot shall be parked in the garage on the Lot to the extent that the garage is fully utilized (e. g. if a garage is a two car garage, there must be two motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage; if a garage is a three car garage, there must be three motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage, etc.). If, and only if, the garage is fully utilized by parking vehicles inside the garage, then an Owner may allow a vehicle to be parked overnight on the paved driveway of an Owner's Lot outside of the garage. The Architectural Control Committee or the Association shall have the right adopt parking rules or regulations that are more restrictive than the restrictions set forth in this Section 4.28 at the sole discretion of the Architectural Control Committee or the Association, and the more restrictive measure shall control in the event of any conflict between this



Section 4.28 and any rule or regulation adopted by the Architectural Control Committee or the Association. Notwithstanding anything to the contrary contained in this Declaration, in no event shall any Owner be allowed to park any vehicle on any street in the Subdivision overnight.

4.29 Lot Exterior Lighting. Upon being given notice by the Architectural Control Committee that any exterior lighting is objectionable, as determined by the Architectural Control Committee in its sole and exclusive discretion, the Owner of the Lot on which said exterior lighting is located shall immediately remove any such lighting or shield or redirect the exterior lighting in such a way that it is no longer objectionable to the Architectural Control Committee.

4.30 Minimum Floor Space. Each Dwelling Unit shall contain a minimum of two thousand (2,000) square feet of air-conditioned floor area, exclusive of all porches, garages, patios or breezeways.

4.31 Building Materials. The exterior walls (excluding doors and windows) of each Dwelling Unit constructed or placed on a Lot shall consist of at least seventy-five percent (75%) brick or brick veneer, or stone or stone veneer, or other material that is approved by the Architectural Control Committee. The exterior portion of any fireplace chimney shall be one hundred percent (100%) brick, brick veneer, stone, stone veneer, stucco, hardboard, wood siding or other material that is approved by the Architectural Control Committee. No material on the exterior of any Dwelling Unit or other Permanent Improvement except wood, hardboard or stucco, shall be stained or painted without the prior written approval of the Architectural Control Committee.

4.32 Fencing Along Common Areas or Greenbelt Areas. The Owner of each Lot that shares a common boundary line with any "Common Area" or "Greenbelt Area" that is shown on any plat of any part of the Oak Hollow Subdivision that has been or shall be hereafter recorded in the Official Public Records of Smith County, Texas shall construct and thereafter maintain in a good, workmanlike and attractive condition (all as determined by the Architectural Control Committee) a fence which shall be:

- A. subject to the prior written approval of the Architectural Control Committee; and
- B. consistent and architecturally harmonious with all other fences of the other Owners whose Lots have a common boundary line with the same Common Area or Greenbelt Area as to (i) height, (ii) type of construction materials, and (iii) design, all as determined by the Architectural Control Committee in its sole and exclusive discretion.

4.33 Landscaping Requirements. The Architectural Control Committee shall have the right and power to require an Owner to install and properly maintain specific types of landscaping (trees, shrubs, plants, grass, flower bed and garden borders, etc.) as a condition to any approvals or consents required to be obtained by and Owner from the Architectural Control Committee pursuant

to this Declaration. Failure of any Owner to properly install or maintain any landscaping required by the Architectural Control Committee shall be a violation of this Declaration.

4.34 Drainage.

- A. All Lots shall be graded (i) so that no storm water drainage shall flow onto other Lots except that storm water drainage may flow to a neutral swale at the side property line at the side of the adjacent Lot provided that the swale shall drain to the street or back property line, or (ii) pursuant to a drainage plan that shall be by the Owner submitted to and approved by the Architectural Control Committee. With the prior written consent of the Architectural Control Committee, an Owner may install french drains and/or sump pumps to direct storm water drainage to the storm sewer utility lines or pipes located in the Subdivision.
- B. Neither the Declarant, the Architectural Control Committee, the Board nor the Association, nor any of their respective successors or assigns, shall ever be liable for any loss of, or damage done to, any Dwelling Unit, Permanent Improvements, shrubbery, grass, flowers, improvements, fences, sidewalks, driveways or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, drainage waters or other water or storm damage, each Owner by accepting a Deed to a Lot thereby releasing the Declarant and the Architectural Control Committee, the Board and the Association from any and all such loss or damage.

4.35 Antennas, Aerials and Satellite Dishes.

- A. Any antenna or satellite dish less than one meter in diameter shall be installed so as to not be visible from any street and shall be integrated and architecturally and aesthetically compatible with the Dwelling Unit and the surrounding landscape.
- B. All broadcast television antennas and all other antennas and aerials shall be located inside the attic of the residence constructed on the Lot.
- C. One (1) satellite dish over one meter in diameter may be permitted on a Lot only if it is not visible from any street or the ground level of an adjoining Lot and does not extend above the height of the fence.
- D. With respect to any antenna or satellite dish covered by Section 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time, the provisions of Section 4.35(A) and (B) shall be applicable only to the extent that the requirements hereof do not (i) preclude reception of an acceptable quality signal, (ii) unreasonably delay or prevent installation, maintenance and use of the antenna or satellite dish, or

(iii) unreasonably increase the cost of installation, maintenance and use of the antenna or satellite dish.

#### **ARTICLE V - IMPROPER MAINTENANCE BY OWNER**

In the event any portion of any Lot, any Dwelling Unit, or any Permanent Improvement is in the reasonable judgment of either the Architectural Control Committee or the Board so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property or anywhere within the Oak Hollow Subdivision, or (iii) as to in any manner fail to comply with any of these Covenants, the Architectural Control Committee or the Board, as applicable, may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver written notice thereof to the offending Owner that unless corrective action, such corrective action to be stated in the written notice to the Owner, is taken within ten (10) days from the date of such written notice to remedy the situation, the Architectural Control Committee or the Board, as applicable, will cause such action to be taken at such Owner's cost and expense to remedy the situation, including entry upon the Owner's Lot, if necessary. Any entry upon a Lot by the Architectural Control Committee or the Board, or anyone at the direction of the Architectural Control Committee or the Board, shall not be deemed a trespass or other violation of any law, ordinance or statute. Each Owner grants to the Architectural Control Committee and the Board the right to enter upon the Owner's Lot at all reasonable times to fulfill the obligations under this Article V, and neither the Architectural Control Committee nor the Board nor anyone else entering upon any Lot at their direction shall be subject to any liability therefor. If after the expiration of said ten (10) day period the requisite corrective action has not been completed to the reasonable satisfaction of the Architectural Control Committee or the Board, as applicable, the Architectural Control Committee or the Board shall be and is hereby authorized and empowered by the violating Owner to cause such remedial action to be taken on the Owner's behalf, and all costs and expenses thereof and associated therewith, including but not limited to the costs of collection, court costs and reasonable attorneys' fees, such costs and expenses being herein collectively called the "**Maintenance Charges**," together with interest accruing thereon from the date or dates of the remedial action of such costs at the rate of (i) ten percent (10.0%) per annum or (ii) the highest rate allowed by law if the highest legal rate is less than ten percent (10.0%) per annum, from such date until paid, shall be charged and assessed against the offending Owner and the offending Owner's Lot. The Maintenance Charges, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VI hereof. Written notice of such assessment shall be delivered to the offending Owner by the Architectural Control Committee or the Board which notice shall specify the amount of such Maintenance Charges and shall demand payment thereof within thirty (30) days after the date of said notice. By acceptance of a Deed to a Lot, every Owner agrees to and shall pay all Maintenance Charges that shall be charged or assessed against an Owner's Lot.

**ARTICLE VI - IMPOSITION OF LIEN; OWNERS' AGREEMENT**

6.01 Imposition of Assessment Lien and Priority of the Lien. THE OBLIGATION TO PAY MAINTENANCE CHARGES IN THE MANNER PROVIDED FOR IN ARTICLE V, TO PAY FINES IN THE MANNER PROVIDED FOR IN ARTICLE VIII, TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN ARTICLE IX, AND TO PAY ANY OTHER CHARGES, OR ASSESSMENTS AS PROVIDED IN THIS DECLARATION, TOGETHER WITH INTEREST, COLLECTION COSTS, COURT COSTS, AND REASONABLE ATTORNEY'S FEES RELATED THERETO, SHALL BE AND IS HEREBY EXPRESSLY MADE SUBJECT TO AND SECURED BY A CONTINUING CONTRACTUAL LIEN AND CHARGE (THE "ASSESSMENT LIEN") ON THE LOT COVERED BY SUCH MAINTENANCE CHARGES, FINES, ASSESSMENTS OR OTHER CHARGES, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual Assessment Lien shall attach to the Lots as of the date of the recording of this Declaration in the Official Public Records of Smith County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in Section 7.03 of this Declaration. Either the Declarant or the Association shall have the right to subordinate the aforesaid Assessment Lien to any other lien. The exercise of such right shall be entirely discretionary with the Declarant or the Association. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or in Section 7.03 hereof, all Lots are conveyed to, and accepted and held by, the Owner thereof subject to the Assessment Lien provided for in this Section 6.01. To evidence any unpaid Assessments, the Declarant or the Association may prepare a written notice of unpaid Assessments (the "Notice of Unpaid Assessments") setting forth the amount of the unpaid indebtedness, the name of the Owner of and describing the affected Lot. Such notice shall be signed by the Declarant or one (1) of the officers of the Association and may, at the Declarant's or the Association's sole and exclusive discretion, be recorded in the Official Public Records of Smith County, Texas. The Declarant or the Association, as appropriate, shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT BY THE DECLARANT OR THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH OF THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME. In addition, the Declarant or the Association any institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Declarant or the Association shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or nonjudicial, or in any suit or other action against, or pertaining to, the Owner, the Owner shall be required to pay all costs, expenses and reasonable attorneys' fees incurred by the Declarant or the Association. The Declarant and Association shall have the right and power to buy the Lot at

foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same, subject to any statutory right of redemption.

6.02 Owner's Agreement. Each Owner, owning a portion of the Property or of any Lot, for said Owner, and the Owner's heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:

- A. that the Owner acquires the Owner's Lot subject to the Maintenance Charges, Fines, Assessments, and the Assessment Lien; and
- B. that by accepting a Deed to the Owner's Lot, the Owner is, shall be, and shall remain personally liable for any and all Fines, Maintenance Charges and Assessments assessed against the said Owner's Lot while the said Owner is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed; and
- C. that by accepting a Deed to the Owner's Lot and to secure the Owner's performance hereunder, the Owner conveys the Lot, and all portions thereof, to the Declarant, and its successors and assigns, in Trust, with a power of sale, and warrants and agrees to defend the title to the Lot, and all portions thereof. If the Owner pays all of the Fines, Maintenance Charges and Assessments imposed against the Owner's Lot as provided herein, this conveyance in trust shall have no further effect. If the Owner fails to pay any of the Fines, Maintenance Charges or Assessments imposed against the Owner's Lot, the Association in its capacity as trustee shall have the right to nonjudicially foreclose upon the Assessment Lien granted herein in accordance with and upon compliance with the provisions of the Texas Property Code, as the same may be amended or supplemented from time to time.

## **ARTICLE VII - ENFORCEMENT OF DECLARATION AND OF ASSESSMENT LIEN**

7.01 Enforcement By Declarant, Architectural Control Committee or Association. The Declarant, the Architectural Control Committee, or the Association, acting either jointly or independently, shall each have the right, jointly or severally, but not the obligation, to enforce the provisions of this Declaration, including, but not limited to, enforcement of the Assessment Lien. Any Owner shall also have the right to enforce this Declaration at the said Owner's sole cost and expense by any appropriate action, whether at law or in equity. Neither the Declarant, nor the Architectural Control Committee nor the Association shall have any liability to any Owner or any other person or entity for failing or refusing to enforce this Declaration or any part hereof.

7.02 Enforcement Remedies. If the Owner of any Lot fails to pay any Fines, Maintenance Charges or Assessments assessed, or to pay any interest accrued on any Fines, Maintenance Charges or Assessments, or any and all costs (including court costs and attorneys' fees) incurred by either the Declarant, the Architectural Control Committee, or the Association, or any one of them, in collecting

same, the Declarant, the Architectural Control Committee and/or the Association, as applicable, shall have the right to enforce the payment of the Fines, Maintenance Charges and Assessments, and all interest accrued thereon and costs incurred by either the Declarant, the Architectural Control Committee or the Association, or any one of them, 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, the Architectural Control Committee and the Association do not prejudice there exercise of any other remedy):

- A. bring an action at law and recover judgment against the Owner personally obligated to pay the Fines, Maintenance Charges or Assessments; or
- B. enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in 51.002 of the Texas Property Code, 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.

7.03 Subordination of the Assessment Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any valid first mortgage lien (purchase money or improvement loan) 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 any such superior mortgage lien or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage lien foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all 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 lien 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 take the Lot or Property subject to all Maintenance Charges and Assessments, 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.

## ARTICLE VIII -RIGHTS AND POWERS

8.01 Right to Inspect. The Declarant, the Architectural Control Committee and the Association, jointly or severally, shall have the right to enter upon all Lots for the purpose of inspecting whether or not the Owner thereof is in compliance with the Declaration and Covenants, and each Owner grants the Declarant, the Architectural Control Committee and the Association the right to enter upon the Owner's Lot for such inspection purposes. If during the course of construction of a Dwelling Unit upon a Lot, the Declarant, the Architectural Control Committee or

the Association, jointly or severally, determines in its/their sole discretion that there is a violation of the Covenants, the Declarant, the Architectural Control Committee or the Association, as appropriate, 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, the Architectural Control Committee or the Association, shall constitute a further violation of this Declaration by that Owner.

8.02 Fines. The Declarant, the Architectural Control Committee, the Association and/or the Board shall have the right to levy reasonable fines against any Owner who (i) violates any of the Covenants, (ii) violates any other covenant, restriction, reservation, charge, servitude, assessment or conditions set forth in this Declaration, or (iii) violates any rule, condition or regulation enacted, passed or otherwise required or approved by the Declarant, the Architectural Control Committee, the Board or the Association. Such fines against any Owner shall be an Assessment, as herein defined.

- A. When the Declarant, the Architectural Control Committee, the Association or the Board shall levy a reasonable fine against any Owner or Owners, the Association or the Board, as applicable, shall give written notice of such fine to the affected Owner or Owners at such Owner's or Owners' most recent address according to the records of the Declarant, or its successors and assigns, by United States mail, certified mail, return receipt requested, with proper postage affixed thereon. Upon receipt of such written notice, the Owner or Owners shall have ten (10) days to request in writing a private meeting with the Declarant, the Architectural Control Committee, the Association, or Board, as applicable, to discuss the nature of the violation giving rise to the fine.
- B. (i) At the conclusion of the private meeting provided for in Section 8.02(A), above, or (ii) if no private meeting is requested by the Owner or Owners, the Declarant, the Architectural Control Committee, the Association or the Board, as applicable, shall advise the Owner or Owners in writing of its final decision with respect to the violation. If the final decision results in a fine being levied against the Owner or Owners, the Owner or Owners shall pay such fine within ten (10) days of such final decision. If such fine is not fully paid within such ten-day period, the Declarant, the Architectural Control Committee, the Association or the Board, as applicable, may to enforce such Assessment as provided in this Declaration.

#### **ARTICLE IX- THE ASSOCIATION**

9.01 Establishment. The Declarant shall have the right to form the Association by the filing of the Certificate of Formation of the Association with the Secretary of State of the State of Texas. The Association has not been established on the date of the filing of this Declaration. The Association may be formed after the date on which this Declaration is recorded.

9.02 By-Laws. By-Laws for the Association will be established and adopted by the Board of the Association.

9.03 Membership. The Declarant and each Owner of a Lot, including successive buyers, shall automatically and mandatorily become and be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every Member shall have a right at all reasonable times during regular business hours of the Association to inspect the books and records of the Association.

9.04 Voting Rights. The Association shall have two (2) classes of membership to be designated as Class A and Class B.

- A. Class A Members shall be all Owners with the exception of the Declarant. A Class A Member shall be not entitled to vote until (i) the Declarant initially sells all of the Lots owned by the Declarant, or (ii) the Declarant files a statement with the Association that the Declarant will allow the Class A Members to vote. Once the Declarant files the statement with the Association allowing Class A Members to vote, the statement may not be revoked by the Declarant. Each Class A Member shall, once the Class A Members are entitled to vote, be entitled to one (1) vote for each individual Lot owned. When more than one person owns an interest in an individual Lot, all such persons shall be members of the Association, however, the one (1) vote voting right for such Lot shall be exercised collectively as the owners of the particular Lot shall between or among themselves determine.
- B. The Declarant shall be the Class B Member for so long as it owns any Lot in the Subdivision which has not previously been conveyed by the Declarant to an Owner. When any Lot is initially sold by the Declarant, the Class B membership with respect to such Lot shall cease and automatically become and be a Class A membership. Unless the Declarant files the statement with the Association referred to in Section 9.04(A), above, allowing Class A Members to vote, for so long as the Declarant, owns any Class B membership, the Declarant shall be the only Member of the Association entitled to vote.
- C. Once the Class A Members are entitled to vote, whether by sale by the Declarant of all of the Declarant's Lots or by the Declarant's filing the statement with the Association allowing the Class A Members to vote, the Class B Member shall no longer be entitled to vote as a Class B Member.

9.05 Board of Directors. The Board shall be elected by the Members as provided in the By-Laws. The Board shall conduct the business of the Association, except when a membership vote is required by this Declaration, the Articles of Incorporation or the By-Laws.



9.06 Assessments. Each Lot is hereby subject to an annual maintenance charge and assessment for the purpose of creating a fund to be used for the mutual benefit of all Owners and the Subdivision. The amount of such annual maintenance charge shall be determined by the Board, and, except as is provided in Subsections 9.06(A) and 9.06(B), below, such annual maintenance charge shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. The annual maintenance charge may be used for, among other purposes, upkeep, repair and maintenance of the Subdivision. The Board shall also have the right to levy and charge to the Owners special assessments for such purposes that shall benefit the Subdivision as the Board, in its sole discretion, shall determine. Except as is provided in Subsections 9.06(A) and 9.06(B), below, the special assessments shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. If an Owner shall own more than one Lot, the Owner shall be responsible for paying the full annual maintenance charge and the full special assessment for each Lot owned by the Owner.

- A. Notwithstanding anything contained in this Declaration or elsewhere, the Declarant shall not at any time be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment.
- B. Notwithstanding anything contained in this Declaration or elsewhere, a homebuilder who purchases a Lot directly from the Declarant shall not be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment for a period of one (1) year from the date that such homebuilder purchases a Lot from the Declarant, such purchase date being the date that the Deed is signed by the Declarant conveying the Lot to the homebuilder. If, prior to the expiration of the one-year exemption period, the homebuilder sells the Lot to any other person or entity, the exemption shall automatically and without notice lapse, and the new Owner shall then be fully responsible for all annual maintenance charges and special assessments from and after the date of such sale as evidenced by the date of the Deed from the homebuilder to the Owner.

9.08 Conflicts. The Association may make whatever rules, regulations and By-Laws it deems necessary or desirable to govern the Association and its Members; provided, however, that any conflict between the Association's rules, regulations and By-Laws and the provisions of this Declaration shall be controlled by and resolved in favor of this Declaration.

#### **ARTICLE X - RESERVATIONS OF DECLARANT**

10.01 Reservations. 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 liens, television cable lines, security, gas, water, sanitary sewers, storm and 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 10.01(A) , above, for the purpose of more efficiently or desirably installing utilities therein and thereon, and this right to make such changes is herein and hereby expressly transferred and assigned to Declarant.
- C. The title conveyed to any Lot or any part of the Property shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewers or sanitary sewers 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 not the 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, dedicate or lease the liens, utilities, appurtenances and other facilities described in Section 10.01(C), above, to any municipality, governmental agency (including any water control or utility district created under Article XVI, 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. The Declarant, and its successors or assigns, shall not be liable for any damage caused or done by the Declarant, nor any of its agents or employees, to any Lot, any Permanent Improvements, or to any shrubbery, trees, flowers or other property of any Owner situated on any Lot.
- F. The right to enter upon any Lot or Lots during installation of streets for the purpose of performing street excavation, construction, and paving is hereby reserved to Declarant, its successors and assigns. The Declarant, and its successors or assigns, shall not be liable for any damage done by The Declarant nor any of its agents or employees to shrubbery, trees, flowers or other property of the Owner which is necessitated by such street construction.

#### **ARTICLE XI - TERMS; AMENDMENTS; TERMINATIONS**

11.01 Term; Method of Termination. This Declaration and the Covenants shall be effective upon the date of recordation hereof and, as may be amended from time to time, shall continue in full force and effect to and including December 31, 2035. From and after December 31, 2035, this Declaration, as it may have been amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then

Owners of at least fifty-one percent (51.0%) of the Lots (there being only one vote per Lot which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes for termination at a meeting of the Owners held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

11.02 Amendments. Until the Declarant has initially sold all of the Lots, such sales being evidenced by the recording of a Deed from the Declarant to the initial buyer of a Lot, the Declarant shall have the sole and unilateral right to change or amend this Declaration, or any part of this Declaration, at any time, in any manner, and for any reason or purpose as determined at the sole discretion of the Declarant. After all of the Lots have been initially sold by Declarant, this Declaration may be amended or changed in whole or in part at any time only by the affirmative vote of the then Owners of at least fifty-one percent (51.0%) of the Lots (each Owner having one vote per Lot owned which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes to amend or change this Declaration at a special meeting of the Owners called pursuant to Section 11.03.

11.03 Election Procedures. The affirmative votes required under Sections 11.01 and 11.02 hereof shall be obtained and evidenced by the requisite vote of the Owners present at a meeting of Owners duly called by at least twenty-five percent (25.0%) of the 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 vote to so amend or terminate this Declaration. No proxy votes shall be allowed or valid. The notice of the meeting must set forth the proposal as to amendment of this Declaration 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, as long as the Declarant owns a Lot in the Subdivision, a copy of the minutes shall be delivered to the Declarant prior to any amendment or change becoming effective.

11.04 Recording Amendments. Upon the amendment or change of this Declaration (and/or the Covenants contained herein) as herein provided, and upon the other conditions set forth in Sections 11.01, 11.02 and 11.03 of this Article being satisfied, then each amendment shall be executed by the (i) the Declarant, its successors or assigns, or (ii) the Owners who voted in favor of the amendment or change, as applicable, placed in recordable form, and filed of record in the Official Public Records of Smith County, Texas, accompanied by a statement that either (i) the Declarant, or (ii) the requisite percentage of Owners, have voted to make such amendment to this Declaration.

11.05 Effect. Upon the filing of an amendment or change in accordance with Section 11.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

11.06 Other Right of Amendment. Anything in this Article to the contrary notwithstanding, the Declarant, its successors and assigns, reserves the right at any time prior to the initial sale of all of the Lots to amend all or any part of this Declaration to such an extent and with such language as may be required by any federal, state, or local agency which requires 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 thereon. Any such amendment shall be effected by the recordation, by Declarant, its successors or assigns, of a Certificate of Amendment signed by Declarant, its successors or assigns, with proper signature acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requiring the amendment and setting forth the amendatory language required by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's requirement for such an amendment, and such Certificate, when recorded, shall be binding upon the Property, or the affected portion thereof, and all persons or Owners having an interest in the same. Except as provided in Section 11.02 and Section 11.06 of this Declaration, Declarant shall not have any right to unilaterally amend this Declaration.

## ARTICLE XII -RESERVATION OF RIGHT TO RESUBDIVIDE

Subject to the approval of any and all appropriate governmental agencies having jurisdiction over the Subdivision or any Lot, 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 Subdivision or of any Lot or Lots then owned by Declarant without the consent of any Owner.

## ARTICLE XII-MISCELLANEOUS

13.01 Interpretation of the Covenants. Except for judicial construction, until the Association is incorporated, the Declarant shall have the exclusive right and power to construe and interpret the provisions of this Declaration. Once the Association is formed, the Board shall have the exclusive right and power 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 or the Board's construction or interpretation of the provisions hereof, as applicable, shall be final, conclusive, and binding as to all persons and property benefitted or bound by this Declaration and the provisions hereof.

13.02 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, remaining provisions hereof, which remaining provisions shall be and remain in full force and effect.

13.03 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

Steven F. Thornton who are living at the time the period of perpetuities starts to run on the challenged interest.

13.04 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.

13.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant, the Board or the Architectural Control Committee, as applicable, shall have the right to adopt rules and regulations with respect to all other aspects of the rights, activities and duties of the Declarant, the Board or the Architectural Control Committee, as applicable, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

13.06 Disclaimer of Representation. 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 Official Public Records of Smith County, Texas, neither the Declarant nor the Architectural Control Committee makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out.

13.07 Limitation of Liability. In the absence of willful and intentional misconduct attributable to (i) Declarant, its successors or assigns, (ii) the Architectural Control Committee (and any and all members thereof), or (iii) the Board (and any and all members thereof) neither the Declarant, nor its successors or assigns, nor the Architectural Control Committee (nor any member thereof), nor the Board (nor any member thereof) shall have any liability of any nature whatsoever arising out of or in any manner related to the performance or nonperformance of any of the rights and powers reserved unto Declarant, the Architectural Control Committee, the Board, or their respective heirs, executors, administrators, personal representatives, legal representatives, successors or assigns, pursuant to this Declaration.

13.08 Successors and Assigns. Any reference in this Declaration to Declarant shall include Declarant's successors and assigns.

13.09 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.

13.10 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.

13.11 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, return receipt requested, addressed to each such person or entity at the address given by such person or entity to the party sending the notice or to the address of the Dwelling Unit or the office of such person or entity if no address has been given. Such address may be changed from time to time by notice in writing.

13.12 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property.

13.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions of this Declaration, 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.

13.14 Suspension of the Covenants. The Declarant and the Architectural Control Committee shall and do have the right during the period of construction, development, and sale of the Lots in the Subdivision, to grant reasonable and specifically limited exemptions and waivers from the Covenants to Declarant and any other developer or contractor. Any such exemptions or waivers shall be granted only upon specific written request, itemizing the exemption or waiver 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 or waiver shall be broader in terms of activity, location, or time than is reasonably required.

13.15 Non-Waiver. Any failure or delay on the part of either the Declarant, the Architectural Control Committee, the Board, the Association, and/or any Owner (i) to exercise any right, remedy or duty under this Declaration, or (ii) to take any action to enforce the Covenants or the Declaration, with regard to anyone matter or situation or group of matters or situations in any manner covered by or arising out of the Covenants or Declaration shall not in any manner be deemed or construed to be a waiver of the same or any subsequent matter or situation or group of matters or situation arising hereunder. No forbearance of any type for any period of time by either the Declarant, the Architectural Control Committee, the Board, the Association, and/or any Owner shall be in any manner deemed or construed to be a waiver of any right, remedy or duty hereunder, but all such rights, remedies and duties shall continue in full force and effect as if no forbearance had occurred. All Owners by accepting a Deed to a Lot hereby expressly covenant, stipulate, acknowledge and agree that (i) he, she or it expressly waives the affirmative defense of waiver with respect to any violation of this Declaration, or any part hereof or covenant herein, and (ii) the

affirmative defense of waiver as recognized under the laws of the State of Texas shall not be available to any Owner as a defense to the violation of this Declaration, or any part hereof or covenant herein.

13.16 Liberal Interpretation. This Declaration, and all of the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements, shall be liberally construed to effectuate the purposes of this Declaration.

**IN WITNESS WHEREOF**, this Declaration has been signed on the 6<sup>th</sup> day of June, 2006.

**S & T DEVELOPMENT, LTD.**

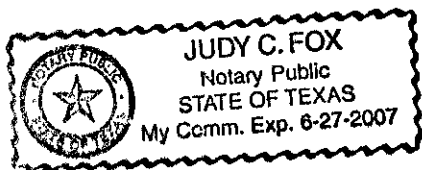
A Texas Limited Partnership

BY: W & S Development Company, General Partner  
A Texas Corporation

BY:   
STEVEN F. THORNTON, President

STATE OF TEXAS §  
COUNTY OF SMITH §

This instrument was acknowledged before me on June 6, 2006 by Steven F. Thornton, President of W & S Development Company, a Texas corporation, the general partner of S & T Development, Ltd., a Texas limited partnership, on behalf of said limited partnership.



  
NOTARY PUBLIC, STATE OF TEXAS

**WHEN RECORDED RETURN TO:**

Mr. Steven F. Thornton  
S & T Development, Ltd.  
4560 Kinsey Drive  
Tyler TX 75703

## EXHIBIT "A"

### DEFINITIONS

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

- A. **"Architectural Control Committee"** shall mean the Declarant or such other person, persons or entity who shall be named or appointed to serve by the Declarant in conjunction with or as the successor to Declarant, provided, however, that such change shall not be effective for purposes of these Covenants until a statement of such change has been duly recorded by the Declarant, or Declarant's successors or assigns, in the Official Public Records of Smith County, Texas. The Declarant, or Declarant's successors or assigns, shall have the right at any time to change the number of members comprising the Architectural Control Committee and the persons comprising the membership of the Architectural Control Committee at the sole discretion of said Declarant, or Declarant's successors or assigns, by the filing for record in the Official Public Records of Smith County, Texas of a statement to such effect as provided herein.
- B. **"Assessable Property"** shall mean each Lot and the Permanent Improvements located thereon.
- C. **"Assessment"** means any fine at any time imposed as provided in Article VII of this Declaration and any general or special assessment at any time imposed by the Association as provided in Article IX of the Declaration.
- D. **"Assessment Lien"** shall mean the lien created and imposed against each Lot by Article VI of this Declaration.
- E. **"Association"** means Waters Edge At Oak Hollow Homeowners' Association, Inc., a Texas non-profit corporation, its successors and assigns, to be established for the purpose set forth herein.
- F. **"Board"** means the Board of Directors of the Association.
- G. **"Covenants"** shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements set forth herein.
- H. **"Declarant"** shall mean S & T Development, Ltd., a Texas limited liability company, and its successors or assigns of any or all rights and powers hereunder, but with respect to any such successor or assignee (i) such successor or assignee shall not be deemed to be a "Declarant" unless such successor or assignee is designated as



such pursuant to a written instrument signed by Declarant, which written instrument shall be filed of record in the Official Public Records of Smith County, Texas, designating that part of the Property to which it relates, and (ii) such successor or assignee shall only have those rights and powers of Declarant that are specifically assigned to such successor or assignee pursuant to such written instrument.

- I. **“Declaration”** shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements as amended or supplemented from time to time as herein provided.
- J. **“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.
- K. **“Dwelling Unit”** shall mean a residential unit or structure, and any portion thereof, situated on a Lot designed and intended for use and occupancy as a residence by a single family.
- L. **“Fines”** shall mean the fines that may be imposed as provided in Section 8.02 of this Declaration.
- M. **“Lot”** shall mean each of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of N.C.B. 1570-H and Lots 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 322, N. C. B. 1570-J, individually, of Waters Edge At Oak Hollow, as shown upon the Plat of the Property filed for record in Cabinet D, Slide 332-A of the Plat Records of Smith County, Texas, as such plat may be amended from time to time, together with any lots which may, from time to time, result from the resubdivision, combination or division of any of the Lots as may be shown upon a plat or plats of the Property, or any part thereof, hereafter filed for record in the Plat Records of Smith County, Texas.
- M. **“Maintenance Charges”** shall mean any and all costs assessed as provided in Article V of this Declaration.
- N. **“Member”** means every person or entity who holds membership in the Association.
- O. **“Oak Hollow Subdivision”** means the real property described on Exhibit “B” to this Declaration which is attached hereto and incorporated herein for all purposes.
- P. **“Owner”** shall mean the person or persons, entity or entities, who, individually or jointly, own record title to a Lot. The term “Owner” shall exclude any person or persons, entity or entities, having an interest in a Lot or any such parcel merely as security for the performance of an obligation. The term “Owner” shall include Declarant if Declarant is a record title owner of a Lot.

- Q. **“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 located thereon, including without limitation, fences and retaining walls.
- R. **“Plat”** shall mean the plat of the Property presently on file in Cabinet D, Slide 332-A of the Plat Records of Smith County, Texas, as such plat may be amended from time to time.
- S. **“Property”** shall mean all of the real property described on the Plat.
- T. **“Single-Family”** shall mean a Dwelling Unit that is occupied by (i) one (1) family consisting of persons related by blood, adoption or marriage (as defined by the laws of the State of Texas, or (ii) by no more than four (4) unrelated persons.
- U. **“Subdivision”** shall mean the residential subdivision located in Smith County, Texas, and known as Water Edge At Oak Hollow, according to the Plat, as the same may be amended or supplemented from time to time.

EXHIBIT "B"LEGAL DESCRIPTION OF OAK HOLLOW SUBDIVISION

All that certain lot, tract or parcel of land, part of the Thomas Price Survey, Abstract No. 794, Smith County, Texas, being part of that certain called 129.3 acre Tract One and 50.61 acre Tract Two described in a deed to Judy S. Tate and Louise S. Griffith Trust and recorded in Volume 6949, Page 105 of the Official Public Records of Smith County, Texas and being more completely described as follows, to-wit:

BEGINNING at a ½" iron rod (found) for the Southeast corner of the above mentioned 50.61 acre tract, an inner corner of the Paul Harman Phillips et al 276.088 acre tract described in Volume 4692, Page 56, in the southerly East line of said Price Survey;

THENCE North 89 deg. 27 min. 34 sec. West with the South line of said 50.61 acre tract, the westerly North line of said 276.088 acre tract, a distance of 2960.48 ft. to a ½" iron rod (set) for corner in the new East right-of-way of F. M. Highway No. 2493 (Old Jacksonville Highway);

THENCE Northerly with new East right-of-way of F. M Highway No. 2493 (Old Jacksonville Highway), as follows: North 19 deg. 16 min. 18 sec. East - 213.58 ft., North 19 deg. 40 min. 13 sec. East - 398.34 ft., North 51 deg. 19 min. 04 sec. East - 29.15 ft., North 20 deg. 18 min. 07 sec. East - 75.00 ft., North 11 deg. 49 min. 26 sec. East - 101.15 ft., North 22 deg. 57 min. 23 sec. East - 600.59 ft., North 23 deg. 25 min. 53 sec. East - 50.08 ft., North 03 deg. 39 min. 01 sec. East - 52.19 ft. and North 19 deg. 09 min. 13 sec. East - 237.97 ft. to a Type II right-of-way monument (found) for corner, North 20 deg. 31 min. 59 sec. East - 357.77 ft., North 24 deg. 01 min. 10 sec. East - 613.42 ft., North 41 deg. 59 min. 56 sec. East - 95.34 ft., North 29 deg. 48 min. 08 sec. East - 91.35 ft., North 19 deg. 22 min. 07 sec. East - 142.73 ft. and North 28 deg. 19 min. 08 sec. East - 778.76 ft. to a ½" iron rod (found) for the Northwest corner of the above mentioned 129.3 acre tract, the Southwest corner of the Pat Hairston 1.22 acre tract described in Volume 388, Page 497;

THENCE South 61 deg. 20 min. 17 sec. East with the North line of said 129.3 acre tract, the South line of said 1.22 acre tract, a distance of 1773.49 ft. to a ½" iron rod (set) for the Southeast corner of same, the Northeast corner of said 129.3 acre tract, in the West line of Holly Park, Unit 8 as shown by plat of same recorded in Cabinet D, Slide 125-D, a ½" iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 34.02 ft. and a ½" iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 91.63 ft;

THENCE South 00 deg. 32 min. 10 sec. West with the northerly East line of said 129.3 acre tract, the West line of said Holly Park Unit 8, the West line of Holly Heights Unit 1 as shown by plat of same recorded in Cabinet D, Slide 159-B, at 1054.71 ft. pass a ½" iron rod (found) for the Southwest corner of Lot 9, N.C.B. 1606-A and continue for a total distance of 1714.91 ft. to a ½" iron rod (found) for the easterly Southeast corner of said 129.3 acre tract, in the easterly South line of said Price Survey, the easterly North line of said 276.088 acre tract;

THENCE North 89 deg. 42 min. 24 sec. West with the easterly South line of said Price Survey and 129.3 acre tract, the easterly North line of said 276.088 acre tract, a distance of 78.33 ft. to a 1/2" iron rod (found) for the easterly Northwest corner of same, an inner corner of said Price Survey and 129.3 acre tract;

THENCE South 00 deg. 43 min. 25 sec. West with the southerly East line of said Price Survey and 129.3 acre tract, the East line of said 50.61 acre tract and the northerly West line of said 276.088 acre tract, a distance of 968.74 ft. to the place of beginning, containing 174.430 acres of land.

Smith County  
Judy Carnes  
County Clerk  
Tyler Tx 75702



70 2006 00032282

Instrument Number: 2006-R00032282

As

Recorded On: June 28, 2006

Recordings - Land

Parties: S & T DEVELOPMENT LTD

Billable Pages: 2

To WATER EDGE AT OAK HOLLOW

Number of Pages: 3

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Recordings - Land	20.00
<b>Total Recording:</b>	<b>20.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2006-R00032282

Receipt Number: 392546

Recorded Date/Time: June 28, 2006 01:32:29P

User / Station: R Calderon - Cash Station 1

**Record and Return To:**

MR. STEVEN THORNTON

S & T DEVELOPMENT LTD

4565 KINSEY DRIVE

TYLER TX 75703



I hereby certify that this instrument was filed and duly recorded in the Official Records of Smith County, Texas

*Judy Carnes*

County Clerk  
Smith County, Texas

## ***AMENDMENT***

### **TO DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR *WATERS EDGE AT OAK HOLLOW* *A Residential Subdivision***

This **AMENDMENT** to the Declaration of Covenants, Restrictions, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (the "**Declaration**") for Waters Edge At Oak Hollow, a residential subdivision in Tyler, Smith County, Texas is executed by S & T Development, Ltd., a Texas limited partnership (the "**Declarant**"), on this 28<sup>th</sup> day of June, 2006. The Declaration was been recorded on June 9, 2006 in the Official Public Records of Smith County, Texas as Instrument Number 2006-R00028123.

The Lots affected by this Amendment in the Waters Edge At Oak Hollow Subdivision are described as follows, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of N.C.B. 1570-H and Lots 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 322, N. C. B. 1570-J of the ***Waters Edge At Oak Hollow Subdivision***, a residential subdivision in Tyler, Smith County, Texas, according to the Plat thereof recorded in Cabinet D, Slide 332-A of the Plat Records of Smith County, Texas.

#### **Amendment To Section 4.03 of Declaration**

Section 4.30 on page 12 of the Declaration is amended to provide that each Dwelling Unit shall contain a minimum of two thousand five hundred (2,500) square feet of air-conditioned floor area, exclusive of all porches, garages, patios or breezeways. Section 4.30 of the Declaration shall hereafter read as follows:

**4.30. Minimum Floor Space. Each Dwelling Unit shall contain a minimum of two thousand five hundred (2,500) square feet of air-conditioned floor area, exclusive of all porches, garages, patios or breezeways.**

This Amendment is made by the Declarant pursuant to and authorized by the provisions of Section 11.02 of the Declaration. As of the date of this Amendment, the Declarant has not initially sold all of the Lots in the Waters Edge At Oak Hollow Subdivision.

In all other respects, the Declaration is hereby ratified and confirmed.

**S & T DEVELOPMENT, LTD.**  
a Texas limited partnership

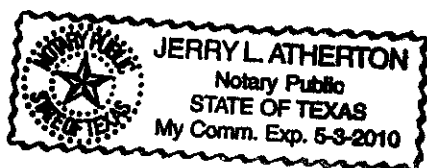
BY: W & S Development Company  
a Texas corporation  
General Partner


BY:   
STEVEN F. THORNTON, President

AMENDMENT TO DECLARATION - PAGE 2

STATE OF TEXAS     §  
COUNTY OF SMITH   §

This instrument was acknowledged before me on the 28<sup>th</sup> day of June, 2006 by Steven F. Thornton, President of W & S Development Company, a Texas corporation, the General Partner of S & T Development, Ltd., a Texas limited partnership, on behalf of said limited partnership.



  
NOTARY PUBLIC, STATE OF TEXAS

**WHEN RECORDED RETURN TO:**

Mr. Steve Thornton  
S & T Development, Ltd.  
4565 Kinsey Drive  
Tyler TX 75703

**NOTICE OF CONFIDENTIALITY RIGHTS:** If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.

**SPECIAL WARRANTY DEED WITH VENDOR'S LIEN 12**

Date: May 2, 2005

Effective Date: May 12, 2005

Grantor: Ralph Spence, Jr., Trustee of the Ralph Spence Jr. Trust; Louise Spence Griffeth, Trustee of the Louise Spence Griffeth Trust; and Judy Spence Tate, Trustee of the Judy Spence Tate Trust

Grantor's Mailing Address:  
c/o Ralph Spence, Jr.  
100 North 27<sup>th</sup> Street  
Billings, Montana 59101

Grantee: S & T Development, Ltd., Texas limited partnership

Grantee's Mailing Address:  
2400 Dallas Parkway, Suite 560  
Plano, Texas 75093

Consideration: Ten and No/100 (\$10.00) Dollars and a Promissory Note of even date that is in the principal amount of \$3,728,438.00 and is executed by Grantee, payable to the order of Texas State Bank ("Lender"). The note is secured by a vendor's lien retained in favor of Lender in this deed and by a deed of trust of even date from Grantee for the benefit of Lender.

**Property:**

The surface estate in and to 174.430 acres of land, more or less, situated in the Thomas Price Survey, A-794, Smith County, Texas, and being more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), together with all of Grantor's right, title and interest in the rights, privileges and appurtenances thereto including any interest of Grantor in utilities, adjacent streets, alleys and rights of way. Provided, the Property shall not include the equipment, fixtures and other improvements located on the 4.471 acre tract of land described in Exhibit B attached hereto and made a part hereof (the "Drill Site").

**Reservations and Exceptions to Conveyance and Warranty:**

1. Rights of way, easements, building setback lines, restrictions and mineral conveyances/reservations filed of record in the Official Public Records of Smith County, Texas and affecting the Property; ad valorem taxes for the year 2005; rollback taxes; zoning and building ordinances and other applicable laws; roads, rights of way, power lines and



poles and other matters shown on plat of survey of the Land dated January 3, 2005, prepared by Terry D. Cowan, RPLS No. 4139; and rights of the tenant in possession of the residence.

2. Paid-Up Oil and Gas Lease in favor of MIZPAH, LTD., recorded in Volume 7671, Page 70 of the Official Public Records of Smith County, Texas. Grantor reserves all of its rights under the said Paid-Up Oil and Gas Lease, and the Property shall not include any claims relating to mineral exploration or production activities occurring on or about the Land prior to the date of this Deed.
3. SAVE AND EXCEPT, and there is hereby reserved unto Grantor, and Grantor's heirs, successors and assigns, all of the oil, gas and other minerals in, on, under or that may be produced from the Land; provided, however, except for access to the Drill Site reserved by Grantor in paragraph 4 below, without the prior written consent of Grantee, its successors or assigns, Grantor shall not enter upon or use any of the surface of the Land for exploration, drilling, development, marketing or production of oil, gas or other minerals.
4. SAVE AND EXCEPT, and there is hereby reserved unto Grantor, and Grantor's heirs, lessees, successors and assigns, an exclusive easement (i) over, across, under and upon the Drill Site for the purposes of operating, maintaining, reworking, re-entering or otherwise using and improving the well, equipment, fixtures and improvements located thereon for the development and production of oil, gas and/or other minerals, and (ii) for the existing aerial power line that serves the Drill Site (collectively the "Easements"). While the Easements remain in effect, Grantee, its successors and assigns, shall not use, improve or occupy the Drill Site without the prior written approval of Grantor (which approval shall not be unreasonably withheld or denied with respect to any use or improvements which will not, in Grantor's judgment, interfere with operation of the said well or exercise of the other rights of Grantor and the operator of the said well under the Easements). In no event shall Grantor or any operator of the said well be liable for any loss, damage or destruction of any improvements placed on the Drill Site, regardless of cause. The foregoing covenants are deemed to be covenants running with the title to the Land and shall be binding upon Grantee and its successors in title to any part of the Land or any estate therein. Grantor may, at any time while the Easements remain in effect, salvage and remove any of the equipment, pipe, fixtures and other improvements located on the Drill Site. The Easements shall terminate 180 days after Ralph Spence Oil Company, the current operator of the said well, or any successor operator, plugs and abandons the said well (and files a plugging report with the Texas Railroad Commission). For so long as the Easements remain in effect, Grantor, and Grantor's heirs, lessees, successors and assigns also reserve all rights and obligations of the of the "Grantor" under the Right of Way Agreements with the City of Tyler recorded in Volume 5286, pages 240 through 266 of the Official Public Records of Smith County, Texas, but only insofar as such rights and obligations pertain to the Drill Site; and otherwise, Grantee shall have and assume all rights and obligations of the "Grantor" under the said Right of Way Agreements.
5. Grantee shall not perform any environmental or other studies, assessments, tests or inspections with respect to the Drill Site unless and until the Easements have terminated.

The foregoing covenant shall be a covenant running with the Land and shall be binding upon Grantee and Grantee's successors in title to all or any part of the Land or any estate therein.

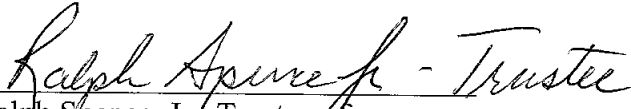
Grantor, for the consideration and subject to the Reservations and Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors or assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, but subject to the Reservations and Exceptions to Conveyance and Warranty.

The vendor's lien against and superior title to the Property are retained until the promissory note described above is fully paid according to its terms, at which time this deed shall become absolute. Lender, at Grantee's request, has paid in cash to Grantor all or a portion of the purchase price of the Property and the vendor's lien and superior title to the Property are retained for the benefit of Lender and are transferred to Lender without recourse on Grantor.

By acceptance of this deed, Grantee accepts the Property AS IS AND WITH ALL FAULTS, and without any representations or warranties by Grantor (or anyone acting on behalf of Grantor) with respect to the condition of the Property, the value of the Property, the suitability of the Property for any particular use or purpose, or any other matter, except for the special warranty of title contained herein and any express written representations of Grantor set forth in the Commercial Contract - Unimproved Property by and between Grantor, as Seller, and Grantee, as Buyer. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.

*(End of page---signatures and acknowledgements follow on pages 4 and 5)*

SIGNED as of the month, day and year first set forth above, but effective as of the Effective Date. This deed may be signed in multiple counterparts, all of which taken together shall constitute a single document.

  
\_\_\_\_\_  
Ralph Spence, Jr., Trustee of  
The Ralph Spence, Jr. Trust

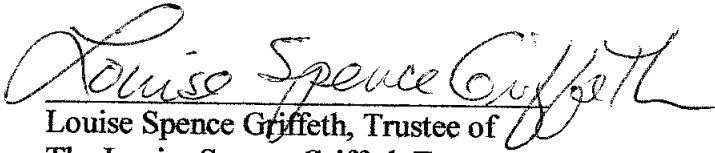
\_\_\_\_\_  
Louise Spence Griffeth, Trustee of  
The Louise Spence Griffeth Trust

\_\_\_\_\_  
Judy Spence Tate, Trustee of  
The Judy Spence Tate Trust

SIGNED as of the month, day and year first set forth above, but effective as of the Effective Date. This deed may be signed in multiple counterparts, all of which taken together shall constitute a single document.

---

Ralph Spence, Jr., Trustee of  
The Ralph Spence, Jr. Trust

  
Louise Spence Griffeth, Trustee of  
The Louise Spence Griffeth Trust

---

Judy Spence Tate, Trustee of  
The Judy Spence Tate Trust

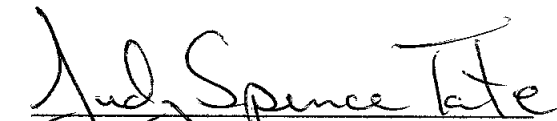
SIGNED as of the month, day and year first set forth above, but effective as of the Effective Date. This deed may be signed in multiple counterparts, all of which taken together shall constitute a single document.

---

Ralph Spence, Jr., Trustee of  
The Ralph Spence, Jr. Trust

---

Louise Spence Griffeth, Trustee of  
The Louise Spence Griffeth Trust



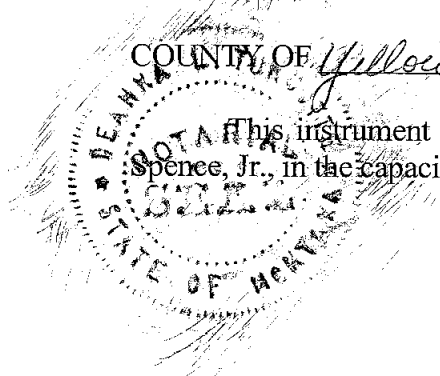
---

Judy Spence Tate, Trustee of  
The Judy Spence Tate Trust

STATE OF MONTANA

COUNTY OF *Yellowstone*

This instrument was acknowledged before me on the *9th* day of May, 2005, by Ralph Spence, Jr., in the capacity stated.



*Deanna L. Turcotte*  
Notary Public, State of Montana

**DEANNA L. TURCOTTE**  
**NOTARY PUBLIC for the State of Montana**  
**Residing at Billings, Montana**  
**My Commission Expires October 20, 2005**

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the \_\_\_\_ day of May, 2005, by Louise Spence Griffeth, in the capacity stated.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the \_\_\_\_ day of May, 2005, by Judy Spence Tate, in the capacity stated.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

S & T Development, Ltd.  
Attn: Bill Shaddock  
2400 Dallas Parkway, Suite 560  
Plano, Texas 75093

*BF# 42313*

STATE OF MONTANA

COUNTY OF \_\_\_\_\_

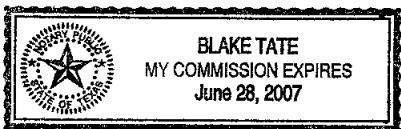
This instrument was acknowledged before me on the \_\_\_\_ day of May, 2005, by Ralph Spence, Jr., in the capacity stated.

\_\_\_\_\_  
Notary Public, State of Montana

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 2 day of May, 2005, by Louise Spence Griffeth, in the capacity stated.



*Blake Tate*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the \_\_\_\_ day of May, 2005, by Judy Spence Tate, in the capacity stated.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**  
S & T Development, Ltd.  
Attn: Bill Shaddock  
2400 Dallas Parkway, Suite 560  
Plano, Texas 75093

STATE OF MONTANA

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_ day of May, 2005, by Ralph Spence, Jr., in the capacity stated.

\_\_\_\_\_  
Notary Public, State of Montana

STATE OF TEXAS

COUNTY OF DALLAS

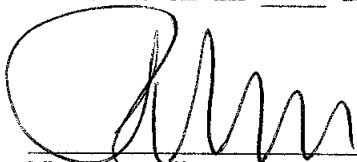
This instrument was acknowledged before me on the \_\_\_\_ day of May, 2005, by Louise Spence Griffeth, in the capacity stated.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 2<sup>nd</sup> day of May, 2005, by Judy Spence Tate, in the capacity stated.

  
\_\_\_\_\_  
Notary Public, State of Texas



**AFTER RECORDING RETURN TO:**  
S & T Development, Ltd.  
Attn: Bill Shaddock  
2400 Dallas Parkway, Suite 560  
Plano, Texas 75093



## EXHIBIT "A"

All that certain lot, tract or parcel of land, part of the Thomas Price Survey, Abstract No. 794, Smith County, Texas, being part of that certain called 129.3 acre Tract One and 50.61 acre Tract Two described in a deed to Judy S. Tate and Louise S. Griffith Trust and recorded in Volume 6949, Page 105 of the Official Public Records of Smith County, Texas and being more completely described as follows, to-wit:

BEGINNING at a ½" iron rod (found) for the Southeast corner of the above mentioned 50.61 acre tract, an inner corner of the Paul Harman Phillips et al 276.088 acre tract described in Volume 4692, Page 56, in the southerly East line of said Price Survey;

THENCE North 89 deg. 27 min. 34 sec. West with the South line of said 50.61 acre tract, the westerly North line of said 276.088 acre tract, a distance of 2960.48 ft. to a ½" iron rod (set) for corner in the new East right-of-way of F. M. Highway No. 2493 (Old Jacksonville Highway);

THENCE Northerly with new East right-of-way of F. M Highway No. 2493 (Old Jacksonville Highway), as follows: North 19 deg. 16 min. 18 sec. East - 213.58 ft., North 19 deg. 40 min. 13 sec. East - 398.34 ft., North 51 deg. 19 min. 04 sec. East - 29.15 ft., North 20 deg. 18 min. 07 sec. East - 75.00 ft., North 11 deg. 49 min. 26 sec. East - 101.15 ft., North 22 deg. 57 min. 23 sec. East - 600.59 ft., North 23 deg. 25 min. 53 sec. East - 50.08 ft., North 03 deg. 39 min. 01 sec. East - 52.19 ft. and North 19 deg. 09 min. 13 sec. East - 237.97 ft. to a Type II right-of-way monument (found) for corner, North 20 deg. 31 min. 59 sec. East - 357.77 ft., North 24 deg. 01 min. 10 sec. East - 613.42 ft., North 41 deg. 59 min. 56 sec. East - 95.34 ft., North 29 deg. 48 min. 08 sec. East - 91.35 ft., North 19 deg. 22 min. 07 sec. East - 142.73 ft. and North 28 deg. 19 min. 08 sec. East - 778.76 ft. to a ½' iron rod (found) for the Northwest corner of the above mentioned 129.3 acre tract, the Southwest corner of the Pat Hairston 1.22 acre tract described in Volume 388, Page 497;

THENCE South 61 deg. 20 min. 17 sec. East with the North line of said 129.3 acre tract, the South line of said 1.22 acre tract, a distance of 1773.49 ft. to a ½" iron rod (set) for the Southeast corner of same, the Northeast corner of said 129.3 acre tract, in the West line of Holly Park, Unit 8 as shown by plat of same recorded in Cabinet D, Slide 125-D, a ½" iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 34.02 ft. and a ½" iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 91.63 ft;

THENCE South 00 deg. 32 min. 10 sec. West with the northerly East line of said 129.3 acre tract, the West line of said Holly Park Unit 8, the West line of Holly Heights Unit 1 as shown by plat of same recorded in Cabinet D, Slide 159-B, at 1054.71 ft. pass a ½" iron rod (found) for the Southwest corner of Lot 9, N.C.B. 1606-A and continue for a total distance of 1714.91 ft. to a ½' iron rod (found) for the easterly Southeast corner of said 129.3 acre tract, in the easterly South line of said Price Survey, the easterly North line of said 276.088 acre tract;

THENCE North 89 deg. 42 min. 24 sec. West with the easterly South line of said Price Survey and 129.3 acre tract, the easterly North line of said 276.088 acre tract, a distance of 78.33 ft. to a  $\frac{1}{2}$ " iron rod (found) for the easterly Northwest corner of same, an inner corner of said Price Survey and 129.3 acre tract;

THENCE South 00 deg. 43 min. 25 sec. West with the southerly East line of said Price Survey and 129.3 acre tract, the East line of said 50.61 acre tract and the northerly West line of said 276.088 acre tract, a distance of 968.74 ft. to the place of beginning, containing 174.430 acres of land.

EXHIBIT "B"

All that certain lot, tract or parcel of land, part of the Thomas Price Survey, Abstract No. 794, Smith County, Texas, being part of that certain called 129.3 acre Tract One described in a deed to Judy S. Tate and Louise S. Griffith Trust and recorded in Volume 6949, Page 105 of the Official Public Records of Smith County, Texas and being more completely described as follows, to-wit:

COMMENCING at a 1/2" iron rod (set) for corner in the intersection of the new East right-of-way of F. M. Highway No. 2493 (Old Jacksonville Highway) with the South line of a 50.61 acre Tract Two also described in Volume 6949, Page 105;

THENCE Northerly with new East right-of-way of F. M Highway No. 2493 (Old Jacksonville Highway), as follows: North 19 deg. 16 min. 18 sec. East - 213.58 ft., North 19 deg. 40 min. 13 sec. East - 398.34 ft., North 51 deg. 19 min. 04 sec. East - 29.15 ft., North 20 deg. 18 min. 07 sec. East - 75.00 ft., North 11 deg. 49 min. 26 sec. East - 101.15 ft., North 22 deg. 57 min. 23 sec. East - 446.27 ft. to the PLACE OF BEGINNING;

THENCE North 22 deg. 57 min. 23 sec. East with the new East right-of-way of F. M. Highway No. 2493, a distance of 101.08 ft. to a corner;

THENCE South 75 deg. 24 min. 44 sec. East, a distance of 410.40 ft. to a corner;

THENCE North 87 deg. 51 min. 16 sec. East, a distance of 116.92 ft. to a corner;

THENCE North, a distance of 90.79 ft. to a corner;

THENCE East, a distance of 350.00 ft. to a corner;

THENCE South, a distance of 400.00 ft. to a corner;

THENCE West, a distance of 350.00 ft. to a corner;

THENCE North, a distance of 209.14 ft. to a corner;

THENCE South 87 deg. 51 min. 16 sec. West, a distance of 127.88 ft. to a corner;

THENCE North 75 deg. 24 min. 44 sec. West, a distance of 439.82 ft. to the place of beginning, containing 4.471 acres of land.

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



MAY 16 2005

Judy Carnes  
JUDY CARNES  
COUNTY CLERK, Smith County, Texas

COUNTY CLERK'S MEMO  
PORTIONS OF THIS  
DOCUMENT NOT  
REPRODUCIBLE  
WHEN RECORDED.

Filed for Record in:  
SMITH COUNTY, TEXAS  
JUDY CARNES, COUNTY CLERK  
On May 16 2005  
At 2:12pm  
Receipt #: 348338  
Recording: 36.00  
Doc/Num : 2005-R0023517  
Doc/Type : REC  
Deputy -Rebeca Calderon

Smith County  
Judy Carnes  
County Clerk  
Tyler Tx 75702



70 2008 0001 4833

Instrument Number: 2008-R00014833

As

Recorded On: April 01, 2008

Recordings - Land

Parties: S & T DEVELOPMENT LTD

Billable Pages: 2

To WATERS EDGE AT OAK HOLLOW

Number of Pages: 3

Comment: AMENDMENT

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Recordings - Land	20.00
<b>Total Recording:</b>	<b>20.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2008-R00014833

Receipt Number: 467379

Recorded Date/Time: April 01, 2008 08:56:20A

User / Station: D Hawkins - Cash Station 2

**Record and Return To:**

S & T DEVELOPMENT LTD

MR STEVE THORNTON

2203 OAK ALLEY

TYLER TX 75703



I hereby certify that this instrument was filed and duly recorded in the Official Records of Smith County, Texas

*Judy Carnes*

County Clerk  
Smith County, Texas

2  
**AMENDMENT**

**TO DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS,  
CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR  
WATERS EDGE AT OAK HOLLOW  
A Residential Subdivision**

This **AMENDMENT** to the Declaration of Covenants, Restrictions, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (the "**Declaration**") for Waters Edge At Oak Hollow, a residential subdivision in Tyler, Smith County, Texas is executed by S & T Development, Ltd., a Texas limited partnership (the "**Declarant**"), on this 19<sup>th</sup> day of March, 2008. The Declaration was been recorded on June 9, 2006 in the Official Public Records of Smith County, Texas as Instrument Number 2006-R00028123.

The Lots affected by this Amendment in the Waters Edge At Oak Hollow Subdivision are described as follows, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of N.C.B. 1570-H and Lots 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, N. C. B. 1570-J of the **Waters Edge At Oak Hollow Subdivision**, a residential subdivision in Tyler, Smith County, Texas, according to the Plat thereof recorded in Cabinet D, Slide 331-D and Slide 332-A of the Plat Records of Smith County, Texas.

**Amendment To Recitals**

Paragraph one of Recitals on page one of the Declaration is amended to change Lot 322 N.C.B. 1570-J to Lot 32 N.C.B. 1570-J and to provide that the Plat of Waters Edge At Oak Hollow Subdivision is recorded in Cabinet D Slide 331-D and Slide 332-A of the Plat Records of Smith County, Texas.

**Amendment To Paragraph "M"**

Paragraph "M" of Exhibit "A", Definitions, is amended to read as follows:

- M.** "Lot" shall mean each of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of N.C.B. 1570-H and Lots 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, N. C. B. 1570-J, individually, of Waters Edge At Oak Hollow, as shown upon the Plat of the Property filed for record in Cabinet D, Slide 331-D and Slide 332-A of the Plat Records of Smith County, Texas, as such plat may be amended from time to time, together with any lots which may, from time to time, result from the resubdivision, combination or division of any of the Lots as may be shown upon a plat or plats of the Property, or any part thereof, hereafter filed for record in the Plat Records of Smith County, Texas.

**Amendment to Paragraph "R"**

Paragraph "R" of Exhibit "A", Definitions is amended to read as follows:

- R.** "Plat" shall mean the plat of the Property presently on file in Cabinet D, Slide 331-D and Slide 332-A of the Plat Records of Smith County, Texas, as such plat may be amended from time to time.

This Amendment is made by the Declarant pursuant to and authorized by the provisions of Section 11.02 of the Declaration. As of the date of this Amendment, the Declarant has not initially sold all of the Lots in the Waters Edge At Oak Hollow Subdivision.

In all other respects, the Declaration is hereby ratified and confirmed.

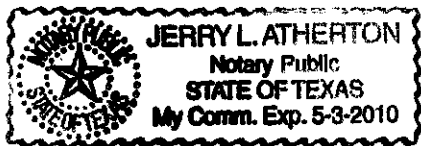
**S & T DEVELOPMENT, LTD.**  
a Texas limited partnership

BY: W & S Development Company  
a Texas corporation  
General Partner

BY:   
STEVEN F. THORNTON, President

STATE OF TEXAS §  
COUNTY OF SMITH §

This instrument was acknowledged before me on the 19<sup>th</sup> day of March, 2008 by Steven F. Thornton, President of W & S Development Company, a Texas corporation, the General Partner of S & T Development, Ltd., a Texas limited partnership, on behalf of said limited partnership.



  
NOTARY PUBLIC, STATE OF TEXAS

**WHEN RECORDED RETURN TO:**

Mr. Steve Thornton  
S & T Development, Ltd.  
2203 Oak Alley  
Tyler TX 75703

Smith County  
Judy Carnes  
County Clerk  
Tyler Tx 75702



70 2008 00051423

Instrument Number: 2008-R00051423

Recorded On: November 04, 2008

As  
Recordings - Land

Parties: S & T DEVELOPMENT LTD

Billable Pages: 4

To PUBLIC

Number of Pages: 5

Comment: REST COVENENT

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Recordings - Land	28.00
<b>Total Recording:</b>	<b>28.00</b>

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2008-R00051423  
Receipt Number: 491740  
Recorded Date/Time: November 04, 2008 03:35:16P  
User / Station: D Colclasure - Cash Station 2

**Record and Return To:**

S & T DEVELOPMENT  
2203 OAK ALLEY  
TYLER TX 75703



I hereby certify that this instrument was filed and duly recorded in the Official Records of Smith County, Texas

*Judy Carnes*  
County Clerk  
Smith County, Texas

4

**RESTRICTIVE COVENANT**

STATE OF TEXAS       §  
COUNTY OF SMITH    §

This **RESTRICTIVE COVENANT**, hereinafter referred to as the "**Declaration**," is made on November 4, 2008 by S & T Development, Ltd., a Texas limited partnership, hereinafter referred to as "**Declarant**."

**WITNESSETH:**

**WHEREAS**, Declarant is the developer of the 174.430 acres, more or less, of real property described on Exhibit "A" which is attached hereto and incorporated herein for all purposes, hereinafter referred to as the "**Oak Hollow Subdivision**," which is to be developed as a master planned retail, commercial and residential community; and

**WHEREAS**, a substantial portion of the Oak Hollow Subdivision has been sold by Declarant to third parties, and none of the portion of the Oak Hollow Subdivision that has heretofore been sold by Declarant is subject to this Declaration; and

**WHEREAS**, Declarant does desires to subject all of the Oak Hollow Subdivision that is owned by Declarant on the date of this Declaration to the restrictive covenant hereinafter set forth;

**NOW THEREFORE**, Declarant hereby declares that all of the remaining portion of the Oak Hollow Subdivision that is owned by Declarant on the date and at the time that this Declaration is recorded in the Official Public Records of Smith County, Texas (the "**Declarant's Restricted Property**") shall be held, sold and conveyed subject to this Declaration, which shall be deemed a covenant running with the land and imposed upon and intended to benefit and burden each part of the Declarant's Restricted Property.

**RESTRICTIVE COVENANT**

No banking association, banking corporation, savings bank, savings and loan association, credit union or loan production office shall be allowed to maintain or operate a banking facility or otherwise conduct banking business on any part of portion of the Declarant's Restricted Property for so long as Bank Texas, National Association, or its successors or assigns, owns the following described real property, to-wit:

All that certain lot, tract or parcel of land situated in the corporate limits of the City of Tyler, Smith County, Texas, and being Lot 11-A, New City Block 1570-G of The Villages At Oak Hollow, Unit 1, an amending replat of Swann Plaza At Oak Hollow Unit 1, an addition to the City of Tyler, according to the First Amending Replat thereof recorded in Cabinet E, Slide 66-C of the Plat Records of Smith County, Texas (the "**Bank Texas Property**"),

unless expressly agreed to in writing by Bank Texas, National Association, its successors or assigns (provided that such restriction shall not prohibit a sale by Declarant of any of Declarant's Restricted Property to an investment brokerage business such as Merrill Lynch, or to a tax preparation service such as H & R Block, or to a private financial advisor, or to an insurance company or insurance agency that does not provide any consumer or commercial banking services).

**ADDITIONAL PROVISIONS**

1. From and after the date of the recording of this Declaration in the Official Public Records of Smith County, Texas, the Declarant's Restricted Property, as the same may be platted, subdivided, replatted, added to or expanded as provided in this Declaration, shall be subject to this Declaration, and the restrictive covenant set forth above shall run with, be for the benefit of, bind and burden the Declarant's Restricted Property.

2. From and after the date of the recording of this Declaration in the Official Public Records of Smith County, Texas, the restrictive covenant set forth above in this Declaration shall be binding upon and inure to the benefit of the Declarant and Bank Texas, National Association, and the respective successors and assigns of such parties, whether or not so provided or otherwise mentioned in any deed or other conveyance.



3. This Declaration and the restrictive covenant set forth above shall be effective upon the date of recordation hereof and shall continue in full force and effect to and including December 31, 2058. From and after December 31, 2058, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then owner(s) of the Bank Texas Property.

4. 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, remaining provisions hereof, which remaining provisions shall be and remain in full force and effect.

5. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property.

6. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions of this Declaration, 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.

7. Any failure or delay on the part of Bank Texas, National Association, its successors or assigns, (i) to exercise any right, remedy or duty under this Declaration, or (ii) to take any action to enforce any covenant or provisions of this Declaration, with regard to anyone matter or situation or group of matters or situations in any manner covered by or arising out of this Declaration shall not in any manner be deemed or construed to be a waiver of the same or any subsequent matter or situation or group of matters or situation arising hereunder. No forbearance of any type for any period of time by Bank Texas, National Association, its successors or assigns, shall be in any manner deemed or construed to be a waiver of any right, remedy or duty hereunder, but all such rights, remedies and duties shall continue in full force and effect as if no forbearance had occurred.

8. This Declaration, and all of the restrictive covenant set forth herein, shall be liberally construed to effectuate the purposes of this Declaration.

**S & T DEVELOPMENT, LTD.**

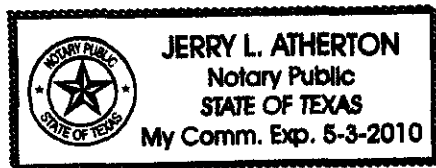
a Texas Limited Partnership

BY: W & S Development Company, a Texas corporation  
General Partner

BY:   
STEVEN F. THORNTON, President

STATE OF TEXAS §  
COUNTY OF SMITH §

This instrument was acknowledged before me on November 4, 2008 by Steven F. Thornton, President of W & S Development Company, a Texas corporation, the general partner of S & T Development, Ltd., a Texas limited partnership, on behalf of said limited partnership.



  
NOTARY PUBLIC, STATE OF TEXAS

**AFTER RECORDING RETURN TO:**  
Mr. Steve Thornton, President  
S & T Development, Ltd.  
2203 Oak Alley  
Tyler TX 75703

EXHIBIT "A"

All that certain lot, tract or parcel of land, part of the Thomas Price Survey, Abstract No. 794, Smith County, Texas, being part of that certain called 129.3 acre Tract One and 50.61 acre Tract Two described in a deed to Judy S. Tate and Louise S. Griffith Trust and recorded in Volume 6949, Page 105 of the Official Public Records of Smith County, Texas and being more completely described as follows, to-wit:

**BEGINNING** at a  $\frac{1}{2}$ " iron rod (found) for the Southeast corner of the above mentioned 50.61 acre tract, an inner corner of the Paul Harman Phillips et al 276.088 acre tract described in Volume 4692, Page 56, in the southerly East line of said Price Survey;

**THENCE** North 89 deg. 27 min. 34 sec. West with the South line of said 50.61 acre tract, the westerly North line of said 276.088 acre tract, a distance of 2960.48 ft. to a  $\frac{1}{2}$ " iron rod (set) for corner in the new East right-of-way of E. M. Highway No. 2493 (Old Jacksonville Highway);

**THENCE** Northerly with new East right-of-way of E. M. Highway No. 2493 (Old Jacksonville Highway), as follows: North 19 deg. 16 min. 18 sec. East - 213.58 ft., North 19 deg. 40 min. 13 sec. East - 398.34 ft., North 51 deg. 19 min. 04 sec. East - 29.15 ft., North 20 deg. 18 min. 07 sec. East - 75.00 ft., North 11 deg. 49 min. 26 sec. East - 101.15 ft., North 22 deg. 57 min. 23 sec. East - 600.59 ft., North 23 deg. 25 min. 53 sec. East - 50.08 ft., North 03 deg. 39 min. 01 sec. East - 52.19 ft. and North 19 deg. 09 min. 13 sec. East - 237.97 ft. to a Type II right-of-way monument (found) for corner, North 20 deg. 31 min. 59 sec. East - 357.77 ft., North 24 deg. 01 min. 10 sec. East - 613.42 ft., North 41 deg. 59 min. 56 sec. East - 95.34 ft., North 29 deg. 48 min. 08 sec. East - 91.35 ft., North 19 deg. 22 min. 07 sec. East - 142.73 ft. and North 28 deg. 19 min. 08 sec. East - 778.76 ft. to a  $\frac{1}{2}$ " iron rod (found) for the Northwest corner of the above mentioned 129.3 acre tract, the Southwest corner of the Pat Hairston 1.22 acre tract described in Volume 388, Page 497;

**THENCE** South 61 deg. 20 min. 17 sec. East with the North line of said 129.3 acre tract, the South line of said 1.22 acre tract, a distance of 1773.49 ft. to a  $\frac{1}{2}$ " iron rod (set) for the Southeast corner of same, the Northeast corner of said 129.3 acre tract, in the West line of Holly Park, Unit 8 as shown by plat of same recorded in Cabinet D, Slide 125-D, a  $\frac{1}{2}$ " iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 34.02 ft. and a  $\frac{1}{2}$ " iron rod (found) bears North 00 deg. 32 min. 10 sec. East - 91.63 ft.;

**THENCE** South 00 deg. 32 min. 10 sec. West with the northerly East line of said 129.3 acre tract, the West line of said Holly Park Unit 8, the West line of Holly Heights Unit 1 as shown by plat of same recorded in Cabinet D, Slide 159-B, at 1054.71 ft. pass a  $\frac{1}{2}$ " iron rod (found) for the Southwest corner of Lot 9, N.C.B. 1606-A and continue for a total distance of 1714.91 ft. to a  $\frac{1}{2}$ " iron rod (found) for the easterly Southeast corner of said 129.3 acre tract, in the easterly South line of said Price Survey, the easterly North line of said 276.088 acre tract;

THENCE North 89 deg. 42 min. 24 sec. West with the easterly South line of said Price Survey and 129.3 acre tract, the easterly North line of said 276.088 acre tract, a distance of 78.33 ft. to a 1/2" iron rod (found) for the easterly Northwest corner of same, an inner corner of said Price Survey and 129.3 acre tract;

THENCE South 00 deg. 43 min. 25 sec. West with the southerly East line of said Price Survey and 129.3 acre tract, the East line of said 50.61 acre tract and the northerly West line of said 276.088 acre tract, a distance of 968.74 ft. to the place of beginning, containing 174.430 acres of land.