

97-R0046884

DECLARATION OF PROTECTIVE COVENANTS

STATE OF TEXAS §
 COUNTY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That SADDLEBROOK ESTATES PARTNERSHIP, a Texas general partnership, desiring to adopt a uniform plan for the orderly development of the Property, hereby imposes upon the Property the following covenants, restrictions, charges, easements and liens (hereinafter referred to together as the "Protective Covenants") which shall run with the land and be binding upon any Owner (as hereinafter defined), tenant or mortgagee of any Lot (as hereinafter defined) or structure on the Property and upon the respective heirs, legal representatives, successors and assigns of any such Owner, tenant or mortgagee.

ARTICLE I

DEFINITIONS

The following terms, when used in these Protective Covenants, shall have the following meanings:

"ACC" shall mean the Architectural Control Committee, as designated by the Controlling Party and as more fully described in Article V. The initial address of the ACC for notice purposes is as follows: P. O. Box 6713, Tyler, Texas 75711.

"Assessments" shall mean any Maintenance Assessments (as hereinafter defined).

"Association" shall mean Saddlebrook Homeowners Association, Inc., a non-profit corporation, as well as the successors, legal representatives or assigns of Saddlebrook Homeowners Association, Inc. The initial address of the Association for notice purposes is as follows: P. O. Box 6713, Tyler, Texas 75711.

"Board of Directors" shall mean the Board of Directors of the Association, as more fully described in Section 8.3. The initial address of the Board of Directors for notice purposes is as follows: P. O. Box 6713, Tyler, Texas 75711.

"Common Areas" shall mean all land, including, but not limited to the Landscaped Area, the Private Streets, amenities, easements and rights comprising a part thereof, located on, appurtenant to or near the Property, and which have been or will be conveyed to the Association by the Developer for the common use, enjoyment and benefit of the Owners (as hereinafter defined). It is expressly agreed that the term "Common Areas" may include easement interests in and to certain properties.

"Controlling Party" shall mean the Developer until such time as the Developer has conveyed seventy-five percent (75%) or more of the Lots to other Owners. Upon such conveyance the term "Controlling Party" shall mean the Association.

"Developer" shall mean Saddlebrook Estates Partnership, a Texas general partnership, and its successors, legal representatives or assigns, other than Owners.

"Development Guidelines" shall mean those guidelines as contained in Article IV herein.

"Director" shall mean a member of the Board of Directors of the Association.

"Improvements" shall mean all improvements constructed upon any Lot, including, without limitation, all buildings, garages, driveways, sidewalks, swimming pools, recreational courts, and any other structure associated with the development of any Lot.

"Landscaped Area" shall mean those certain parcels or strips of land as may be designated by the Controlling Party and including, without limitation, the following areas: (i) adjacent to the Property in the right of way of CR 122 [commonly known as Old Bullard Road] (the "Old Bullard Road Landscaped Area"); and (ii) the main entrance area to the Property. The Landscaped Area may be required by the Landscape Plan (as hereinafter defined) and/or the Controlling Party to be landscaped with acceptable plant and/or other landscape materials and maintained and irrigated with the intent of enhancing the Property and preserving the Landscaped Area.

"Landscape Plan" shall mean the plan, if any, for landscaping the Landscaped Area as established by Developer, as same may be modified from time to time by the Developer.

"Lot" shall mean any of the lots designated as such on the Plat (as hereinafter defined), within the perimeter boundaries of the Property, which can be used, under applicable law and any applicable restrictions regarding the improvement or use thereof, for the construction of single family residences.

"Main Structure" shall mean primary residence meeting square footage requirements as contained herein.

"Owner" shall mean the legal title holder of record, whether one or more persons, of any Lot, but excluding any person having such interest merely as security for the performance of any obligation, but including, without limitation, (a) any person or entity holding legal title as trustee, (b) an individual or entity holding legal title as an heir, legal representative, successor or assign of a previous Owner, and (c) all other persons, acquiring or succeeding to the title of the Owner by sale, grant, will, foreclosure, execution or by any legal process or by operation of law or in any other legal manner.

"Plat" shall mean the valid plat(s) or map(s) of the Property or any part thereof now or hereafter recorded in the Map Records of Smith County, Texas, including that Plat recorded in Cabinet C, Slide 199-D, Plat Records of Smith County, Texas.

"Private Street" shall mean any lot, designated as such on the Plat, within the perimeter boundary of the Property, which can be used, under applicable law and any applicable restrictions regarding the improvement or use thereof, for the construction of private residential streets and is intended by Developer to be so used.

"Property" shall mean that certain tract of land located in Smith County, Texas, as more particularly described on that Plat recorded in Cabinet C, Slide 199-D, Plat Records of Smith County, Texas.

"Setback Areas" shall mean the area described in Section 4.4 (including building setback areas and surface parking setback areas) upon which no Improvements shall be permitted.

ARTICLE II

USES

2.1 Permitted Uses: All Lots shall be used solely for single family residential purposes and, except as herein expressly provided, no structure other than a single family dwelling with permanent accessory structures shall be construed or permitted to remain on any Lot. As contemplated above, accessory structures, such as servants quarters, garages, porte cocheres, cabanas and tool sheds, shall be permitted, however, said structures shall be subject to the prior written approval of the ACC, must be of the same material as the house on the same Lot and, in any case, may not be portable or constructed of metal or plastic.

2.2 Prohibited Uses and Activities: The following uses and activities are prohibits within the Property except, if applicable, for certain reasonable activities and uses which may exist during any reasonable period of construction of Improvements on any portion of the Property:

- (a) Any illegal, noxious or offensive activity of any kind;
- (b) Any use which is offensive by reason of odor, fumes, vibrations, dust, smoke, radiation, noise (including, but not limited to, excessive use of dirt bikes and motorcycles) or pollution, or that it is hazardous by reason of excessive danger of fire or explosion; however, prudent use of legal fireworks are permitted on July 3rd and July 4th of each year, so long as their use is limited to the user's property;
- (c) Any use which may cause or produce a nuisance as to any other portion of the Property;
- (d) Any commercial or business use, including, without limitation, trailer park, slaughterhouse, tannery, cannery, cemetery, junkyard, scrap metal yard or waster material collection, storage and distribution, dumping disposal, incineration or reduction of garbage or refuse, fire or bankruptcy sale or auction house operation, or establishment which sells alcoholic beverages;

- (e) The keeping of poultry or other animals or fowl of any kind; however, any Owner may keep bona fide household pets so long as they are confined to the property of Owner;
- (f) Lots of over three (3) acres may have no more than two (2) horses, with approval from the ACC;
- (g) Warehousing of goods or materials for commercial purposes;
- (h) Exterior storage of any goods or materials;
- (i) Storage of oil, gasoline, or other flammable liquids;
- (j) Overnight parking of or any storage of campers, motor homes, boats, trailers or mobile homes unless screened from view of public and adjoining property owners;
- (k) Overnight parking or storage of trucks one ton or larger in size;
- (l) Any oil exploration, any drilling or development operations, oil refining, quarrying or mining operations of any kind; placement of any oil wells, tanks, tunnels, mineral excavations or shafts or any operating derrick or other structure designated for use in boring for oil and natural gas; and
- (m) The keeping of automobiles or other vehicles which are not in roadworthy condition or which do not have a current inspection sticker or license plates.

ARTICLE III

CONSTRUCTION AND ALTERATION

3.1 Construction Standards: The construction and alteration of any improvement shall meet the standards set forth in these Protective Covenants and the Development Guidelines as set forth in Article IV herein. When a construction material is specified herein, another material may be used in lieu thereof provided that such material is determined by the ACC to be equivalent to, or better than, the specified material.

3.2 Structures: Unless otherwise approved by the ACC, the design of all building, parking and other structures shall be in keeping with the Development Guidelines and the standards set forth in these Protective Covenants and consist of no less than seventy percent (70%) brick, acceptable stone veneer, or acceptable "stucco-type" material, including EIFS (exterior insulating finishing system). The design character of structures shall be such that it is aesthetically pleasing and consistent on all sides, and it is consistent and harmonious with other structures on adjacent and surrounding Lots. Design characteristics shall exhibit uncluttered forms of a nature devoid of inappropriate ornamentations. Building material and color selection shall achieve visual order through the consistent use of a limited mix of dominant materials of a harmonious color range on any structure or groups of structures. These materials shall preferably be brick, stucco, stone, glass or glazing and lapped wood siding.

3.3 Signs: No signs shall be erected or maintained on any Lot except for a "For Sale" or "For Rent" sign, which shall not exceed five square feet in size or a sign owned by the ACC.

3.4 Initial and Subsequent Construction: Each Owner shall take care not to cause damage to any Private Street, public street, easement, utility, Landscaped Area, Common Areas or any other portion of or Improvements on the Property during construction or alteration of any Improvements on any Lot.

3.5 Indemnity: In the course of construction or alteration of any Improvement on any Owner's Lot, such Owner shall repair any damage caused to any Private Street, public street, sidewalk, easement, utility, the Landscaped Area, Common Areas, or any other portion of, or Improvements on, the Property. Each Owner shall be solely responsible for the compliance of its plans and specifications with all applicable laws, rules and regulations. Each Owner shall indemnify and hold harmless the Developer and the Association from any and all costs, losses, damages and attorneys' fees incurred by the Developer or the Association in connection with or arising out of the construction or alteration of any Improvements on such Owner's Lot.

3.6 Temporary Structures: No temporary building or structure other than sales offices, construction offices and structures for related purposes during the construction period shall be installed or maintained on any Lot. All

temporary structures used for construction or sales purposes must receive approval by the Controlling Party with regard to location and appearance, and must be removed promptly upon completion of construction or when otherwise no longer needed and that portion of the Lot from which same are removed, must be restored to its original condition or such condition as is otherwise required by these Protective Covenants.

3.7 Curb Cuts: The number and location of all curb cuts on Private Streets, public streets, roads and highways must be approved in advance by the Controlling Party, in its sole discretion.

3.8 Driveways: Driveways of design and in location approved by the Controlling Party and being no less than ten feet (10') in width shall be constructed as a part of the development of each Lot. All driveways shall be constructed of asphalt or concrete.

3.9 Security System: Each home built on each Lot must be appropriately prewired for a full service security system.

3.10 Sprinkler System: Each Lot will be developed with sprinkler systems in the front.

ARTICLE IV

DEVELOPMENT GUIDELINES

4.1 Further Subdivision: No Owner shall subdivide any platted Lot unless approved in writing by the Controlling Party.

4.2 Easements: Perpetual easements in, on and under the Lots of width and extent shown on the Plat shall be available for use by the Controlling Party and the Owners for purposes of installing and maintaining utility services, and such other purposes as are contemplated by the Plat. The easements will be governed pursuant to Article VII herein. No structure shall be constructed or permitted to remain on or over any easement as shown on the Plat, and no party shall be liable to the Owner of such Lot for damages to any structure by reason of its use of such easement as contemplated hereby.

4.3 Frontage: Residential structures shall face the street upon which the subject Lot fronts. Lots 9 and 23 are corner lots and shall maintain a sixty foot (60') main structure setback on both street sides.

4.4 Set Back Areas: Any and all building lines as shown on the Plat shall be observed. In addition:

(a) No fence or wall shall be constructed or permitted to remain on any Lot within any building setback line area unless approved in writing by the Controlling Party; and

(b) No structure shall be constructed or permitted to remain on any Lot nearer than thirty feet (30') from one side boundary line, thirty feet (30') from the other side boundary line and thirty feet (30') from the rear boundary line and sixty feet (60') from the front boundary line.

(c) The main structure shall be constructed a minimum of sixty feet (60') from the front property line and no more than one hundred twenty feet (120') from the front property line. The Controlling Party or the ACC may, in its sole discretion, allow variations from the 100' setback.

4.5 Sight Lines: No fence, wall hedge or shrub which obstructs sight lines and elevations between two feet and six feet (2' and 6') above street elevations shall be constructed, planted or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points twenty-five feet (25') from the intersection of such street right-of-way lines, or, in the case of a rounded corner, from the intersection of the street right-of-way lines extended to intersect. The same sight line requirements shall apply to any triangular area formed by a street right-of-way line, a driveway boundary line, and a line connecting them at points ten feet (10') feet from the intersection thereof. No trees shall be planted or permitted to remain within any of the above described triangular areas unless the foliage line is maintained at sufficient height to prevent the obstruction of sight lines within the above parameters.

4.6 Square Footage: All residential dwellings on Lots 1, 2, 11, 12, 13, 14, 18, 19, 20, 21, 28, 29, and 30 shall contain not less than 3,500 square feet

of living area. All remaining Lots shall contain not less than 4,000 square feet of living area. All residential dwellings shall have a garage with a capacity for not less than three (3) automobiles. No residential dwelling shall exceed three and one-half (3-1/2) stories in height.

4.7 Landscaping: The Owner of each Lot upon which a Dwelling Unit is constructed shall landscape the lawn area between the front of the Dwelling Unit and the curb line of the abutting streets with solid sod or hydromulch. The sod or hydromulch shall be of a type within standards permitted by the Controlling Party. On all areas of each Lot, grass and weeds shall be kept mowed to prevent unsightly appearance. If not mowed and edged by the Owner after written request to do so is made by the Controlling Party, the Controlling Party shall have the right to cause the mowing and edging to be performed at the Owner's expense. Dead or damaged trees, which may create a hazard to property or persons within the Subdivision, shall be promptly removed or repaired. If not repaired by Owner upon request, then the Controlling Party may remove or cause to be removed such trees at the Owner's expense. The Controlling Party shall not be liable for damage caused by such removal. Vacant lots shall be mowed and maintained in appearance by the owner and shall not be used as dumping grounds for rubbish, trash, rubble or soil, except that Controlling Party may designate fill areas into which materials specified by Controlling Party may be placed. All landscaping shall be completed within two months after completion of the house.

4.8 Trees: Every effort shall be made to protect as many trees as possible within the subdivision and each Lot owner is encouraged to design their residence so as to accomplish this purpose. Prior to construction, each Lot Owner shall meet with the Controlling Party or the ACC or his/its representative to designate those trees that will not be removed. Controlling Party or the ACC or his/its representative shall make the final decision as to which trees shall remain. Once so designated, those trees shall not be removed without the consent of the Controlling Party of the ACC or his/its representative. The Controlling Party or ACC shall be notified by the Lot Owner or his representative prior to site preparation as to when such site preparation shall take place, and the Controlling Party or ACC or his/its representative has the right to be present at the time of such preparation.

4.9 Temporary Structure as a Residence: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used at any time as a residence, either temporarily or permanently, nor shall any structures, of a temporary character be permitted on any Lot.

4.10 Garages: All garages and porte cocheres shall have either a side or rear entry, and must accommodate three (3) full size automobiles.

4.11 Roofing: Any building constructed on a Lot shall have wooden, shake tile or other heavy duty composition shingles which closely resemble or simulate wood, and the minimum roof pitch shall be 10/12. In the event this provision shall conflict with any applicable city ordinance, the terms of said city ordinance shall prevail. The ACC, in its sole discretion, may reduce the roof pitch.

4.12 Tanks and Wells: Septic tanks shall be installed or permitted to remain on or under any Lot and individual water wells can be drilled, dug, maintained and operated by any Owner. All appurtenant equipment must be constructed so that same protrudes above ground level no more than eighteen inches (18") or, is camouflaged in a manner approved in writing by the ACC.

4.13 Antennas: No television, radio or other similar antennas, mast or receiving or sending apparatus shall be erected on any portion of any Lot whatsoever, except a satellite dish structure. No Lot or Improvement shall be used as a base for any type of radio, television or similar broadcasting systems.

4.14 Utilities: Easements and access easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Except as to special street lighting or other aerial facilities which may be required by the City of Tyler or which may be required by any utility company or which may be installed by the Controlling Party pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Property, whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including but not limited to any person owning or acquiring any part of the Property, and all utilities, service facilities (including but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground. All utility meters, equipment and air conditioning compressors and similar items must be visually screened and located in areas appropriately designated by the ACC. Within the set back area for each Lot, an easement and right-of-way is reserved for the Association and/or the Developer to properly facilitate and carry out any

reasonable maintenance. There may be an additional charge for underground electrical service beyond one hundred fifty feet from TU Electric's pedestal.

4.15 Rooftop Solar Facilities: No solar heating or electricity systems of any kind shall be attached to or placed on any rood of any Improvement constructed or placed on any Lot.

4.16 Fences: Any fences, gates or similar structures located on a Lot must be built of wood or a material that is determined by the ACC to be equivalent to, or better than, wood such as wrought iron or brick. Fences, gates or other similar structures located on a Lot may be constructed of chain link, barbed wire and/or other metal material, if they are not visible from the street.

4.17 Mailboxes: All mailboxes must be entirely of brick veneer (other than the mailbox door) and of a size and design approved by the ACC and generally consistent with those on the other Lots. Each mailbox will be located adjoining the street on which the Lot faces and will be in a location consistent with that of the other Lots.

4.18 Drainage: It is intended that the Property be developed in an orderly manner such that the Owner of each Lot shall absorb its share of drainage responsibility with respect to the surface water running across, from or to the Property as a whole. Without limiting the remedies otherwise described herein, to the extent any Lot should be developed in a manner which disproportionately diverts surface water onto another Lot or is otherwise developed so as to not absorb its proportionate share of responsibility for the Property's surface water drainage, then, the Controlling Party shall be entitled to require the Owner of any such Lot to rectify such situation and, if not timely rectified, to itself effectuate such maintenance or repairs as may be desirable to more equitably resolve any drainage problems. Without limiting the foregoing, the Controlling Party shall be entitled to install drainage devices, culverts or other arrangements as the Controlling Party may, in its sole discretion, deem necessary or desirable. To the extent the Controlling Party deems the necessity for such maintenance to be the responsibility of only certain of the Lots, then, the Controlling Party may effectuate a special Maintenance Assessment against only those Lots. To the extent the Controlling Party deems such drainage maintenance to not be attributable to only certain Lots, but, rather, the Property as a whole, then, any such maintenance may be effectuated by way of general Maintenance Assessments described in Section 9.1 hereof.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

5.1 Architectural Control Committee: The ACC shall be composed of three (3) individuals or business entities selected and appointed by Controlling Party, each generally familiar with residential and community development design matters and knowledgeable about the Controlling Party's concern for a high level of taste and design standards within the Property. In the event of the death or resignation of any member of the ACC, the remaining members shall have full authority to designate and appoint a successor. The ACC shall function as the representative of the Owners for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The ACC shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Property. No member of the ACC shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this covenant.

5.2 Approval of Plans and Specifications: No Improvements shall be erected, placed or altered on any Lot or any construction or on-site preparation work of any nature whatsoever begun until all plans and specifications, a plot plan and a general landscape plan have been submitted to and approved in writing by the ACC, or a majority of its members, as to:

(a) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets;

(b) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping; and

(c) the other standards set forth within these Protective Covenants (and any amendments hereto).

The ACC is authorized and empowered to consider and review any and all aspects of the construction of any Improvements, which may, in the reasonable opinion of

the ACC, adversely affect the living enjoyment of one or more Owners or the general value of the Property.

5.3 Approval Procedure: Final plans and specifications shall be submitted in duplicate to the ACC for approval or disapproval. The ACC is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the ACC, one complete set of plans and specifications will be retained by the ACC and the other complete set of plans will be marked "Approved" and returned to the Owner or his designated representative. If found not to be in compliance with these Protective Covenants, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Protective Covenants. Any modification or change to the disapproved set of plans and specifications must again be submitted to the ACC for its inspection and approval. The ACC's approval or disapproval, as required herein, shall be in writing. If the ACC fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of submission, then such plans shall be submitted to the Board of Directors. If the Board of Directors fails to approve or disapprove such plans and specifications within fifteen (15) days, then the approval of the ACC and Association shall be presumed.

ARTICLE VI

COMPLIANCE WITH THESE PROTECTIVE COVENANTS

6.1 Duty: The Owner of a Lot shall keep and maintain that Lot and the Improvements located thereon in a safe, clean and attractive condition and otherwise in compliance with these Protective Covenants; provided, however, it shall be the exclusive responsibility of the Association, as described in Section 9.1, to keep and maintain the Common Areas, specifically including, but not limited to, the Landscaped Area and the Private Streets.

6.2 Failure to Comply: If, in the opinion of the Developer or the Association, any Owner is failing in the duty set forth in these Protective Covenants, then either the Developer or the Association may give such Owner notice of such fact and such Owner shall, within ten (10) days of such notice, undertake the work required to restore said Owner's Lot to a safe, clean and attractive condition, and otherwise bring said Lot into compliance with these Protective Covenants (including, but not limited to, the installation of landscaping). Should any such Owner fail to fulfill this duty and responsibility after such notice, then the Developer or the Association shall have the right and power (but not the obligation) to enter upon such Lot (without liability for trespass or other cause of action) and perform such work and bring such Lot into compliance with these Protective Covenants, and the Owner of the Lot on which such work is performed by Developer or the Association, shall be liable for the cost of any such work and shall on demand pay the party or parties who performed such work such amount, together with interest thereon at the maximum rate allowed by applicable law (or, if there is no maximum rate, at eighteen percent (18%) per annum) from the date incurred by such party or parties until paid. If such Owner shall fail to so pay the Developer or the Association, as the case may be, within thirty (30) days after demand therefor, then said cost and interest thereon shall be a debt of such Owner, payable to the Developer, or the Association, as the case may be, and shall be secured by a lien against such Owner's Lot, in accordance with the provisions of Section 9.8.

ARTICLE VII

EASEMENTS

7.1 Adoption: The Plat dedicates for use subject to the limitations set forth therein, certain easements shown and provided for thereon, and the Plat further establishes dedications, limitations, reservations and restrictions applicable to the Lots. Additionally, the Controlling Party may hereafter grant, create and dedicate, by recorded instruments, certain other easements and related rights affecting the Setback Areas of certain of the Lots. All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements and related rights heretofore or hereafter made by the Controlling Party affecting Property are incorporated herein by reference and made apart of these Protective Covenants for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed of conveyance executed or to be executed by or on behalf Controlling Party conveying or leasing any part of the Property.

7.2 Title to Easement Estates and Appurtenances Not Conveyed: Title to any Lot conveyed by Developer shall not be held or construed, in any event, to include the title to any easement estates or any Improvements within such easement estates constructed by Developer, or its agents, through, along or upon any portion of the Property, and the right to maintain, repair, sell or lease such Improvements to any municipality or other governmental agency or to any

public service corporation or to any other party is hereby expressly reserved in Developer.

7.3 Association Easement: An easement is hereby granted to the Developer and the Association, their respective officers, agents, employees and management personnel to enter upon any Lot to render any service or perform any of their respective functions. In addition, an easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Property in the performance of their duties.

7.4 Restriction: Owner shall not grant any easement on, over, under or across any Lot with the prior written approval of the Controlling Party.

7.5 Surface Areas: The surface of easement areas for underground utility services may be used for planting and maintenance of shrubbery, trees, lawns or flowers and for driveways providing ingress and egress across such areas subject to the requirements of the grantee(s) of such easement(s) and applicable governmental regulations. However, neither the Controlling Party nor any supplier of any utility or service using any easement area shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

ARTICLE VIII

THE ASSOCIATION

8.1 Non-Profit: The Association will be formed and organized by the Developer prior to January 31, 1998, or as soon thereafter as is reasonably prudent in the discretion of the Developer, and once formed shall be operated, as a non-profit corporation under the laws of the State of Texas.

8.2 Purposes: The purposes of the Association shall be as set forth in its Articles of Incorporation and include the collection and use of the Assessments as described in Article IX.

8.3 Board of Directors: The Association shall act through a three (3) to five (5) member Board of Directors, which shall manage the affairs of the Association. The initial Directors shall be selected by Developer. Each initial Director shall serve on the Board of Directors until such time as the Developer has conveyed seventy-five percent (75%) or more of the Lots to Owners and until his successor is duly elected and qualified. After the expiration of the term of the initial Directors, the Members (as defined in Section 8.4) shall elect a Board of Directors as provided for in the Bylaws. Any vacancy, from whatever cause, occurring in the Board of Directors shall be filled by an election of the remaining Board Members pursuant to the Bylaws. The person elected to fill any such vacancy shall serve for the remainder of his predecessor's term and until his successor is duly elected and qualified.

8.4 Membership: The Association shall have one class of Members. Each Owner, whether one or more persons or entities, shall, upon and by virtue of becoming such Owner, automatically become a member of the Association (hereafter referred to a "Member" individually or "Members" collectively) and shall remain a Member thereof until its ownership ceases for any reason, at which time its membership in the Association shall automatically cease. Each Owner's membership in the Association shall be appurtenant to and shall automatically follow the Owner's legal ownership in any Lot and may not be separated from such interest. Whenever the fee ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer or membership in the Association, and no certificate of membership will be issued. The Developer shall also be a Member of the Association so long as Developer is the holder of legal title to a Lot.

ARTICLE IX

COVENANTS FOR ASSESSMENTS

9.1 Maintenance Assessments: Maintenance Assessments (so called herein) shall be levied by the Board of Directors against the Members, and may be used by the Association for the purposes of promoting the recreation, health, safety and welfare of the Owners, residents and tenants of the Property as the Association in its discretion may deem appropriate, including, but not limited to, the following:

- (a) Maintaining, illuminating and repairing the Common Areas and any and all improvements constructed by the Controlling Party and located thereon;

- (b) Planting, landscaping, sprinklering, mowing, tree surgery and general upkeep of the Landscaped Area which may, at the Controlling Party's option, include the construction, maintenance and repair of a fountain at the entrance to the Property;
- (c) Provision of safety and security measures including, but not limited to, the erection, maintenance and repair of gates at the entrance and exit areas of the Property;
- (d) Construction, maintaining, illuminating and repairing the Private Streets;
- (e) Enforcement of parking restrictions;
- (f) Erection, maintenance and repair of parking restriction signs along any roadway or street used for public traffic, street signs and other Property identification;
- (g) Illumination, landscaping, maintenance and repair of any dedicated and nondedicated boulevards, streets, and roads, in or adjacent to the Property (to the extent not performed to the satisfaction of the Association by governmental authority having jurisdiction over same);
- (h) Maintenance, repair and lighting along any roadway or street used for public traffic;
- (i) Capital items necessary to accomplish the foregoing purposes, as determined by the Association, in its sole discretion;
- (j) Reimbursement for reasonable out-of-pocket expenses incurred by Developer or the Association in connection with or arising out of these Protective Covenants; and
- (k) Non-capital items or expenses as may be deemed by the Association, in its discretion and good faith, to be necessary or desirable for the carrying out of these provisions and for the general benefit of the Members.

Irrespective of anything contained herein to the contrary, in no event shall the Developer or the Association be responsible for the cost of initial planting and landscaping of Lots owned by an Owner.

9.2 Personal Obligation of Assessments: The Developer with respect to the Lots owned by it, and each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Maintenance Assessments.

9.3 Basis of Maintenance Assessments: For the current fiscal year and each subsequent year, the annual Maintenance Assessment shall be established on a per acre of land basis for all the land located within the Property. Each year or otherwise from time-to-time, the annual Maintenance Assessment may be increased as the Association deems appropriate. Further more, the Board of Directors may determine and certify that the then current annual Maintenance Assessment is not sufficient to meet the expenses of the Association and, at a meeting called for such purpose by majority vote of all Directors present, in person or by proxy, may vote to increase the annual Maintenance Assessment up to an amount which is consistent with other first-class residential developments then in existence in Smith County, Texas, or like communities. It is expressly understood that the Maintenance Assessment shall be established on a per acre of land basis for all the land located within the Property.

9.4 Payment of Assessments -- Due Dates: The Maintenance Assessments shall be due and payable in advance on a monthly, quarterly or annual basis as the Association may require. The Association is further empowered to change the timing of such required payments at its discretion.

9.5 Effect of Non-Payment of Assessments -- The Personal Obligation of the Owner; The Lien; Remedies of Association: If any Assessments are not paid on the date when due and payable as specified in Section 9.4 hereon, then such Assessment shall be delinquent and shall, together with interest thereon, attorney's fees, court costs and other costs of collection thereof, become a continuing lien on the Lot as well as the personal obligation of the then Owner.

If such Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at the maximum rate permitted by applicable law or, if there is no maximum rate, at eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. No Owner may waive or otherwise avoid liability for the Assessments provided for herein by non-use or abandonment of its Lot.

9.6 Liens to Secure Assessments -- Subordination of Lien to Mortgages: The Assessments shall each constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, which shall exist upon and against each Lot and all Improvements thereon, for the benefit of the Association and all Owners, and shall be prior and superior to all other liens, except that the same shall be subordinate and inferior to (a) all liens for taxes levied by County and State governments or any political subdivision or special district thereof, and (b) all liens or deeds of trust in favor of any lender and granted by Developer, and all liens, including, but not limited to, vendor's liens, deeds of trust, mortgages and other security instruments which secure any loan for any part of the purchase price of any Lot and/or cost of Improvements placed thereon, to the extent such liens described in this item (b) should be filed for record prior to the date when such Assessments become due and payable. No foreclosure shall free any Lot from the liens securing Assessments thereafter becoming due and payable, nor shall the personal obligation of the foreclosed Owner be extinguished by any foreclosure.

9.7 Association's Power to Borrow Money: The Association shall have the right, but not the obligation, to borrow money on terms acceptable to the Association, in its sole discretion, for the purpose of paying expenses incurred by the Association pursuant to Section 9.1. Any such debt shall be repaid with monies collected from the Maintenance Assessments described in Section 9.1.

9.8 Financial Statements: The Association shall, not later than one hundred twenty (120) days after the end of each fiscal year of the Association, furnish to each Member financial statements which shall include a balance sheet as of the end of such year and a statement of operations for the year then ended. Such financial statements may, but shall not be required to be, audited. All Members shall have the right during regular business hours to inspect the books and records of the Association at the office of the Association.

9.9 Limited Liability: It is understood that the judgment of the Association, its successors, legal representatives and assigns, in the allocation and expenditure of the Assessments shall be final so long as such judgment is exercised in good faith. None of the Developer, Association, the Board of Directors, or any Director, shall have any liability to any person or entity under any theory or circumstance for any error or judgment, action or inaction of the Developer, Association, the Board of Directors or any Director. The enumeration of the services for which the assessments may be expended carries no obligation to furnish any of such services except to the extent of funds actually received by the Association.

ARTICLE X

RESERVATION OF RIGHT TO RESUBDIVIDE AND FURTHER RESTRICT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Developer hereby reserves the right, so long as the Developer is the Controlling Party, to subdivide or resubdivide, as the case may be, plat or replat, as the case may be, and/or execute further covenants, restrictions, charges, easements and liens on all or any portion of the Property.

ARTICLE XI

COVENANT TO DEVELOP

11.1 Covenant to Develop: By acceptance of a deed for a Lot, each Owner covenants and agrees to complete the construction on and/or development of such Lot as a single family residence, in accordance with these Protective Covenants and all applicable governmental ordinances and requirements, within two (2) years from the date of such deed ("Construction Period"). The Developer reserves the right, title and privilege to repurchase the Lot and all Improvements thereon, at any time within one (1) year after the end of the Construction Period, if Owner fails to comply with the foregoing covenant. Such repurchase option shall be exercised by the Developer giving thirty (30) days prior written notice to Owner, at Owner's address as specified in Section 12.9 hereof, of the Developer's election to repurchase the Lot. Such election notice shall specify the time, date and place of repurchase of the Lot and shall have attached thereto the form of deed to be used to convey the Lot to Developer. Such deed shall be substantially similar in form as the deed to Owner, containing the same warranties of title and shall be subject to any and all exceptions of record.

The purchase price for the Lot shall be the same price paid by Owner to the Developer for the purchase of the Lot.

ARTICLE XII

MISCELLANEOUS

12.1 Enforcement: These Protective Covenants shall run with and bind the Property, and (except where expressly provided otherwise) shall inure to the benefit of and be enforceable by the Developer, the Association, or the Owner of any land subject to these Protective Covenants. The Association, the Developer or any Owner shall have the right to enforce, by proceedings at law or in equity, (a) all restrictions, covenants, conditions, reservations, liens, charges, assessments and all other provisions set out in these Protective Covenants, and (b) unless specifically provided to the contrary therein, all restrictions, covenants, conditions, reservations, liens, charges, assessments and other provisions set out in any deed, ground lease or other instrument executed by Developer further restricting, as herein authorized, the use or development of the Property or any portion thereof; provided, however, that the failure of the Association, the Developer or any Owner to take any action upon a breach of these Protective Covenants shall not render such party liable in any manner for such failure. Failure of the Association, the Developer, or any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of the right to take enforcement action upon any subsequent breach or default. All court costs, litigation costs, attorney fees, etc. incurred in connection with enforcing these Protective Covenants shall be the obligation of the party breaching said covenants.

12.2 Termination of Covenants: These Protective Covenants shall be effective upon the date of recordation hereof, and as amended from time to time, shall continue in full force and effect to and including December 17, 2019. From and after said date, these Protective Covenants, as amended, shall be automatically extended for successive periods of ten (10) years, unless the Owners of eighty percent (80%) of the Lots within the Property, by written declaration signed, acknowledged and filed for record, elect to terminate these Protective Covenants. Notwithstanding the foregoing, the Developer may, so long as the Developer is the Controlling Party, alter, amend and terminate or extend these Protective Covenants. Thereafter the Owners may alter, amend, terminate or extend these Protective Covenants, and this right shall exist as long as the then Owners of eighty percent (80%) of the Lots within the Property desire; provided, however, that no amendment of the Permitted Uses in Section 2.1 shall have retroactive application to any Improvements theretofore constructed or for which construction has commenced.

12.3 Assignability of Developer's Rights: Developer reserves the right to assign or delegate all or any part of its rights or obligations hereunder to the Association. Upon any such written assignment or delegation Developer shall be relieved of the rights and obligations so assigned or delegated. In the event that Developer no longer owns nor has ground leased any portion of the Property, all rights and obligations of Developer hereunder shall automatically be transferred to and assumed by the Association, and Developer shall automatically be relieved of same, without need of any written assignment or delegation.

12.4 Protection of Name: No Owner, or any tenant or mortgagee of any Owner shall use the phrase "Saddlebrook" or any phrase or phrases similar thereto in connection with any Lot or any business operated in connection with any Lot, without the prior written consent of Developer except that Owner may use such phrase to identify the location of such Lot and Owner's contemplated development thereof. This restriction is for the benefit of and may be enforced only by Developer. Nothing contained herein shall be construed to restrict Developer's use of the word described in this Section 12.4 and further, Developer specifically reserves the right to use such word.

12.5 Utility District: Notwithstanding anything herein to the contrary, any land within the Property conveyed by the Developer to a municipal utility district or other public authority to provide utility service to the Property shall not be subject to these Protective Covenants (including, without limitation, the provisions hereof pertaining to the assessments so long as such land is owned by such utility district or other public authority for the provisions of utilities to the Property).

12.6 Corrections: The Developer shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend these Protective Covenants by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error or any ambiguity or inconsistency appearing herein.

12.7 Interpretation: If these Protective Covenants or any word, clause, sentence, paragraph or other part thereof shall be susceptible of contradicting interpretations, the interpretation which is most nearly in accordance with the general purposes and objectives of these Protective Covenants shall govern.

12.8 Omissions: If any punctuation, word, clause, sentence or provision necessary to give meaning, validity, or effect to any other word, clause, sentence or provision appearing in these Protective Covenants is omitted herefrom, such omission is unintentional and the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

12.9 Notices: All notices or other communications required or permitted to be given pursuant hereto shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the address of any Owner shall be the last known address of such Owner as shown on the records of the Controlling Party at the time of such mailing and the address of Developer, the Association and the ACC shall be as shown in Article I hereof; provided, however, that (i) any Owner shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the Controlling Party in the manner set forth herein; and (ii) any of the Developer, the Association and the ACC shall have the right to change their respective addresses for notice hereunder to any other location within Smith County, Texas, by the giving of thirty (30) days' notice to the Owners in the manner set forth herein.

12.10 Rules of Construction: The singular, wherever used herein, shall be construed to include the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships or individuals, males or females, shall in all cases be assumed as though in each case fully expressed. The word "or" is not exclusive. The words "herein", "hereinafter", "hereafter", "hereunder" and "hereof" refer to these Protective Covenants as a whole and not merely to the sections in which such words appear, unless the context otherwise requires.

12.11 Severability: The invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in these Protective Covenants, or any part thereof, shall not affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

12.12 Headings: All headings contained herein are for convenience only, and shall not be deemed to modify any substantive provision hereof.

12.13 Writing Required: In the event the approval or consent of the Developer, Association, Controlling Party or Board of Directors is required under these Protective Covenants, such approval or consents must be obtained in writing to be effective unless expressly provided to the contrary herein.

Executed this 17th day of December, 1997.

SADDLEBROOK ESTATES PARTNERSHIP

By: JOHNSON HUMPHREY HOMES, INC., a Texas Corporation, its Operating Officer

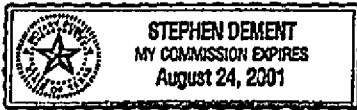
By:

David D. Humphrey
DAVID D. HUMPHREY
President

STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the 17th day of December, 1997, by DAVID D. HUMPHREY, President of JOHNSON HUMPHREY HOMES, INC., a Texas corporation, as Operating Officer of SADDLEBROOK ESTATES PARTNERSHIP, a Texas general partnership, on behalf of said partnership.



Stephen Dement
Notary Public, State of Texas
Printed Name of Notary:

My Commission Expires:

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

On Dec 18 1997
At 9:21am

Deputy - Janis Farrell

After recording, return to:

Saddlebrook Estates Partnership
P. O. Box 6713
Tyler, Texas 75711

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



DEC 18 1997

MARY MORRIS
COUNTY CLERK, Smith County, Texas
By Janis Farrell Deputy