

12943

DECLARATION OF COVENANTS

AND

RESTRICTIONS

ROSEBROOK DEVELOPMENT

FILED  
MARY MORRIS  
COUNTY CLERK  
1988 MAY 25 AM 11:10  
SMITH COUNTY, TEXAS  
BY *[Signature]*  
DEPUTY

THIS DECLARATION made this 25th day of January, 1988, by CANAAN LAND DEVELOPMENT CORPORATION, hereinafter called the Developer, as follows;

WITNESSETH:

WHEREAS, Developer is the owner of the real property described on Exhibit A attached hereto and desires to create thereon a residential community with common areas and facilities for the benefit of said community; and

WHEREAS, Developer desires to (1) provide for the preservation of the values and amenities in said community; (2) provide for the maintenance of the common areas and facilities; and (3) subject the property herein to the covenants, restrictions, easements, charges and liens hereinafter set forth for the benefit of the property and the owners thereof; and

WHEREAS, Developer desires each and every property owner of any lot within the subdivision, by the acceptance of a deed or other conveyance of such lot, agrees to become a member of the ROSEBROOK HOMEOWNERS ASSOCIATION, to be established for the subdivision and further covenants and agrees that he will bear and pay such portion of the specific expenses required and expended by said Homeowners Association, its successors and assigns for the maintenance of the common areas including but not limited to cleaning, mowing, park maintenance as requested by the Architectural Control Committee, or assessments as are deemed necessary by said association. Further, by the acceptance and retention of title to any lot or lots, each grantee, on behalf of himself, his heirs and assigns, does hereby covenant and agree that said Homeowners Association, its successors and assigns, shall have a lien upon the subject lot or lots second only to liens for taxes and any daily recorded mortgage or mortgages placed upon the property prior to the due date of any assessment for such expenses to secure the payment of the aforementioned expenses, including court cost, collection expenses, and reasonable attorney's fees incurred in connection with the collection of same.

Now therefore, the Developer declares that the real property described herein be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

SECTION 1. The following words shall have the following meanings when used herein unless the context clearly indicates otherwise:

(a) Association. The ROSEBROOK HOMEOWNERS ASSOCIATION, its successors and assigns.

(b) Property. The real property subject to this declaration or any supplemental declaration under the provisions hereof.

(c) Common Area. All property owned by the Association for the common use and enjoyment of the owners.

(d) Lot. Any plot of land shown upon any plat of the subdivision of the property with the exception of the common area.

(e) Owner. The record owner or owners of the fee simple title to any lot which is a part of the property.

(f) Member. The person, persons or entity who holds membership in the Association.

(g) Architectural Control Committee. The committee appointed by the Board of Directors of the Association.

(h) Joint Common Easement. The easement shared between two or more property owners for the purpose of entering or exiting the property.

ARTICLE II

Membership and Voting Rights In the Association

SECTION 1. Membership. Every person or entity who is a record owner of a lot shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot.

SECTION 2. Voting Rights. The Association shall have two classes of voting membership;

Class A. Class A members shall be those owners as defined in Section 1 hereof with the exception of the Developer. Class A members shall be entitled to one vote for each lot in which they hold the interests required for membership by Section 1. In no event, however, shall more than one vote be cast with respect to any one lot.

Class B. The Class B member shall be the Developer. The class B member shall be entitled to three votes for each lot in which it holds the interest required for membership in Section 1, Article II, provided that the Class B membership shall cease and become converted to Class A membership on the happening of either of the following events, whichever first occurs:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) July 1, 2000

### ARTICLE III

#### General Duties and Responsibilities of the Association

SECTION 1. The Association shall have the following duties and responsibilities in connection with the property:

(a) Preservation and maintenance of the common areas;

(b) Preservation and maintenance as requested by the Architectural Control Committee of the property appearance, common area appearance, vacant lot appearance, and Joint Common Easement areas.

(c) Establishing and enforcing rules, procedures and regulations governing use, maintenance and appearance of the property for the benefit of the owners.

### ARTICLE IV

#### Assessments

SECTION 1. Creation of Lien; Personal Obligation of Assessments. The owner of each lot, by acceptance of a deed therefore, shall be deemed to covenant and agree to pay to the Association monthly assessments or charges and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, and such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or special assessment is made. Each such assessment and special assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the owner of the property at the time such assessment or special assessment was made.

SECTION 2. The assessments levied by the Association shall be used exclusively for the purposes set forth in Article III hereof, for the payment of professional management fees, liability insurance premiums, legal and accounting fees incurred by the Association, real property taxes and utility costs assessed against the common areas and for such other purposes as the Association may deem proper and appropriate.

SECTION 3. Monthly Assessments. For each lot on which a residence has been completed and is available for occupancy, the initial monthly assessment shall be THIRTY-FIVE AND NO/100 (\$35.00) DOLLARS, beginning on the first day of the month following completion of such residence. For each lot which has been sold or conveyed by the Developer to a third party with the intention of constructing a residence thereon, the monthly assessment shall be FIVE AND NO/100 (\$5.00) DOLLARS, beginning on the first day of the month following the date of conveyance to said third party and continuing at such monthly rate until the earliest to occur of the following events:

(a) The first day of the month following completion of a residence on said lot; or

(b) The first day of the month following the expiration of one year from the date of conveyance from Developer to the said third party; at which time the monthly assessment shall be the same as that hereinabove set forth for a lot on which a residence has been completed and is available for occupancy. For the purpose of this Section, the determination of when a residence has been completed and is available for occupancy shall rest solely with the Developer.

SECTION 4. Change in Basis of Assessments. The Association may change the Assessment fixed by Section 3 hereof by the assent of majority of the votes of all members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) nor more than fifty (50) days in advance and setting forth the purposes of the meeting.

SECTION 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area including the necessary fixtures and personal property related thereto, provided, that, any such assessment shall have the assent of a majority of the votes of all members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting setting forth the purposes of the meeting.

SECTION 6. Quorum for any action Authorized Under Section 4 and 5. At any membership meeting the purpose of which is to levy a special assessment for capital improvements as authorized by Section 5 hereof, or the purpose of which is change the monthly assessment fixed by Section 3, hereof, the presence, whether in person or by proxy, of members entitled to vote not less than ten percent (10%) of all the votes of each class of membership shall constitute a quorum for the transaction of business.

SECTION 7. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien: Remedies of the Association. If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, designates, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquent date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

SECTION 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment liens. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

##### Architectural Control Committee

SECTION 1. Review by Committee. No structure, whether residence, accessory building, tennis court, swimming pool, antennae (on a structure or on a lot), flag poles, fences, walls, exterior lighting, or other improvements, shall be constructed or maintained upon any lot and no alteration or repainting to the exterior of a structure shall be made and no landscaping performed unless complete plans, specifications, and lot plans therefor, showing the exterior design, height, building material and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, location of garbage cans and utility meters, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall be composed of three or more representatives appointed by the Board of Directors of the Association.

SECTION 2. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the property conform to and harmonize with existing surroundings and structures.

SECTION 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Architectural Control committee fails to take any action within thirty (30) days after requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with.

SECTION 4. A majority of the Architectural control committee is required for approval or disapproval of proposed improvements.

SECTION 5. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any owner within the property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

## ARTICLE VI

### General Provisions

SECTION 1. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument terminating these Covenants and Restrictions signed by the then owners of seventy-five percent (75%) of the lots has been recorded prior to the commencement of any ten-year-period.

SECTION 2. Amendments. These Covenants and Restrictions may be amended during the first twenty (20) years from date of the Declaration, by an instrument signed by not less than ninety percent (90%) of the lot owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the lot owners. Any amendment must be properly recorded.

SECTION 3. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

SECTION 4. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any Covenant or Restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by the Covenant or Restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 5. Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

#### ARTICLE VII

##### Additional Covenants and Restrictions

##### SECTION 1. Covenants and Restrictions on Lots.

(a) Residential Use. No lot shall be used for other than residential purposes, and no soil or trees shall be removed for any commercial use. Cutting of trees shall be limited to the extent necessary for clearing the foundation site and driveway for construction, or for furnishing of utility services, and any additional cutting of trees shall be done only upon written approval of the Architectural Control Committee.

(b) Building Size and Garages. No building shall be erected other than one single-family dwelling on all lots zoned R-2 "PD". The floor area (that enclosed for heating and/or air-conditioning) of any single family dwelling shall not be less than one thousand two hundred (1,200) square feet. Each dwelling shall have a 2- car enclosed garage. All garages must be set back at least twenty (20) feet from the street the resident faces or common drive area. Lots zoned MF-1 "PD" shall be constructed in parcel 3 and shall be one to four family dwellings. These buildings shall not be less than (1200) one thousand two hundred square feet of floor area (that enclosed for heating and/or air conditioning) per single dwelling. Two thousand (2,000) square feet or more for all dwellings larger than a single dwelling. Multi-family dwellings on MF-1 "PD" zoned lots shall be permitted to have a single car enclosed garage subject to approval of the Architectural Control Committee.

(c) Lot Size and Subdivision. No subdivision or re-subdivision of any lot or combination of lots shall be permitted except upon prior approval of the Architectural Control Committee; provided, however, that individual lots may be divided between abutting owners and thereafter each resulting oversize lot shall be considered as one lot for all purposes. Nothing herein contained shall prohibit the construction of single residence on two or more lots, in which case such lots shall be considered as one for all purposes.

(d) Roofs. The roof on each private dwelling house erected upon any lot shall not have a pitch of less than six-twelve (6/12) and shall be constructed of composition shingles as approved by the Architectural Control Committee.

(e) Windows. All windows visible from any street shall be of quality materials.

(f) Temporary Residences, Facilities. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, and no used structure of any sort shall be moved onto any lot. Any garage shall be constructed at the same time as the construction of the house it is intended to serve. All improvements shall be completed within six (6) months from the beginning of construction. Facilities used in connection with any sales or construction operations shall be subject to the approval of the Architectural Control Committee.

(g) Animals. No residential lot shall be used for the purpose of keeping, breeding, or raising any animals for commercial purposes or as a place for keeping horses, mules, cattle or other animals or poultry; provided, however, that the occupants of each residence may keep the usual and customary domestic or household pets. No commercial cat or dog kennel shall be permitted. Pets must be kept fenced or on leash. No pets shall be permitted to run at large.

(h) Sanitation and Unsightly Objects. All lots shall be kept clean and free of trash, rubbish, garbage, debris, or other unsightly objects or materials at all times. Trash, garbage or other wastes shall be disposed of in a sanitary manner and all containers or other equipment for the storage or disposal of garbage and trash shall be kept in a clean, sanitary condition inside garages, behind decorative fencing, or otherwise hidden from view from the street.

(i) Garage Storage. Any garage being used for storage shall be kept closed at all times except when in immediate use for ingress or egress. All garages shall have garage doors with automatic electric door openers.

(j) Unused Vehicles. No unused automobiles or vehicle of any kind, except as hereinafter provided, shall be stored or parked on any lot, except in a closed garage, or on any residential street. "Unused vehicle" shall be defined as any vehicle which has not been operated for a period of one week or longer. Streets are not to be used for private parking except by visitors.

(k) Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon or any condition permitted to exist thereon which may be or become any annoyance, nuisance, or hazard to the health of the neighborhood.



(l) Driveways. All driveways are to be concrete or such other equivalent materials as are approved by the Architectural Control Committee. Driveways with Joint Common Easements shall be maintained jointly by such property owners as are joined by these easements. Failure to maintain in a proper and sightly manner will be enforced by the Homeowners Association. After giving adequate notice the Association will hire the needed work performed and shall bill property owners adjoining such easement equally, the charges may include all cost incurred by Association plus reasonable interest until paid.

(m) Easements. Easements for the installation, operation and maintenance of fences, utilities, and drainage facilities, are reserved as shown on the recorded plat, and on, over and under a strip of ground five (5) feet wide, along each side lot line and rear lot line, and the right of entry for such purposes is expressly reserved; provided, however, that any such easement shall be deemed canceled or discontinued when its continued use would interfere with the location of any approved residential construction site.

(n) Billboards and Signs. No billboards, signboards, or advertising displays of any kind shall be installed, maintained or permitted to remain on any residential lot, except that one sign containing not more than five (5) square feet of surface area may be displayed in connection with the construction and/or sale of a house. Such sign shall be displayed only after the construction of the dwelling house has actually begun. No such sign for the sale of unimproved lots shall be permitted.

(o) House Trailer, Etc. No house trailer, mobile home, camper, boat trailer, or similar wheeled vehicle shall be stored or parked on any street or lot except in a closed garage, except for visitors on a temporary basis:

(p) Commercial or Transport Vehicles. No commercial-type vehicles and no trucks shall be stored or parked on any lot except in a closed garage, nor parked on any residential street except while engaged in delivery to or transport from a residence. For the purpose of this covenant, a three-quarter-ton or smaller vehicle (commonly known as a pick-up truck) shall not be deemed to be a commercial vehicle or truck. No vehicle of any size which normally transports flammable or explosive cargo may be kept in the subdivision at any time.

(q) Outside Lines, Antennas, and Smaller Structures. Outside clothes lines, aerials, antennas, carports, patio covers, freestanding basketball boards and other similar structures shall not be allowed unless approved by the Architectural Control Committee.

(r) Underground Utilities. All utilities shall be buried underground. All wiring on street and yard lights shall be encased in metal standards having an outside dimension of no less than three (3) inches. Outside lights or yard lights shall be approved by the Architectural Control Committee.

(s) Exceptions to Residential Use. Notwithstanding anything to the contrary herein, Developer reserves unto itself, its heirs, successors and assigns, and its or their designated agent or agents, the right to use any unsold lot or lots for storage and use of construction equipment and materials. The developer exempts and deletes lots 29 and 33 from all these covenants and restrictions. It is the intent of the developer that lots 29 and 33 have future commercial use rather than residential.

(t) Subordination and Mortgages. Breach of any of the conditions and restrictions hereof, or any reversion by reason of such breach, shall not defeat, impair, or render invalid the lien of any mortgage, deed of trust, or other valid encumbrance made in good faith for value as to such affected property.

(u) Severability. Invalidation of any one of these restrictions, covenants or conditions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of a period of time herein stated for which the same shall be effective, then, in that event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Texas.

EXECUTED this 25th day of January, A.D. 1988.

CANAAN LAND DEVELOPMENT CORPORATION

By: Stephen E. Conaway, PRES.  
Stephen E. Conaway, PRESIDENT

ATTEST:

By: Janet Conaway, Secretary  
Janet Conaway, SECRETARY

LEGAL  
DESCRIPTION  
EXHIBIT "A"

## TRACT 1

All that certain tract or parcel of land, part of the Manuel Gutteriez Survey, Abstract No. 364, Smith County, Texas, being part of that certain Tract No. One, described in a deed from J. A. Cordell to Cordell Energy Corp., dated October 16, 1984, recorded in Volume 2325, Page 736 of the Deed Records of Smith County, Texas, also being all that certain 9.65 acre tract described in a deed from J. A. Cordell to Cordell Energy Corp., dated March 25, 1985, recorded in Volume 2390, Page 205 of the Deed Records of Smith County, Texas. This tract being more completely described as follows, to-wit:

BEGINNING at the southernmost southeast corner of the above mentioned Tract No. One conveyed to Cordell Energy Corp.;

THENCE South 88 Degrees 48 Minutes West, with the south line of said Tract No. One and with the south line of the above mentioned 9.65 acre tract, a distance of 762.10 feet to the southerly southwest corner of the 9.65 acre tract;

THENCE North 00 Degrees 08 Minutes East, with the west line of said 9.65 acre tract, a distance of 520.20 feet to an ell corner of same;

THENCE South 89 Degrees 20 Minutes West, a distance of 463.6 feet to the westerly southwest corner of said 9.65 acre tract, being in the east line of State Highway No. 110;

THENCE North 14 Degrees 17 Minutes West, with the east line of said highway, a distance of 49.47 feet to the westerly northwest corner of said 9.65 acre tract;

THENCE North 89 degrees 52 Minutes East, a distance of 214.10 feet to an ell corner of said 9.65 acre tract;

THENCE North 00 Degrees 53 Minutes East, with the west line of said 9.65 acre tract, a distance of 726.01 feet to the southwest corner of Lot No. 13 of Forest Creek Subdivision, Unit No. One according to plat of same recorded in Volume 8, Page 135 of the Smith County Plat Records;

THENCE South 89 Degrees 23 Minutes East, a distance of 116.76 feet to the southeast corner of said Lot No. 13, being in the west line of Forest Creek Drive;

THENCE South 00 Degrees 52 Minutes West, with the west line of Forest Creek Drive, a distance of 19.86 feet to the P.C. of a curve;

THENCE Southerly, with said curve to the left whose Central Angle is 62 Degrees 08 Minutes 20 Seconds and Radius is 187.50 feet, a distance of 203.35 feet to the P.R.C. of same;

THENCE Southerly, with a curve to the right whose Central Angle is 32 Degrees 23 Minutes 46 Seconds and Radius is 137.50 feet, a distance of 77.74 feet to the P.T. of same;

THENCE South 26 Degrees 50. Minutes 45 Seconds East, continuing with the west line of Forest Creek Drive, a distance of 49.28 feet to a point for corner;

THENCE North 63 Degrees 09 Minutes 16 Seconds East, at 50.00 feet pass the east line of Forest Creek Drive at the south corner of Lot No. 23 of a Re-Subdivision of Forest Creek Subdivision, Unit No. One, according to a plat of same recorded in Volume 9, Page 29 of the Smith County Plat Records, continue a total distance of 112.50 feet to the P.C. of a curve;

THENCE Northeasterly, with a curve to the left whose Central Angle is 01 Degrees 17 Minutes 56 Seconds and Radius is 62.50 feet, a distance of 1.42 feet to the P.T. of same;

THENCE North 17 Degrees 06 Minutes 03 Seconds East, continuing with the east line of said Lot No. 23, a distance of 127.77 feet to the northeast corner of same, being in the south line of Oakwood Drive;

THENCE North 43 Degrees 14 Minutes 39 Seconds East, a distance of 55.78 feet to the southeast corner of a lot conveyed to Fred Nowiski by J. A. Cordell on April 25, 1984, recorded in Volume 2264, Page 596 of the Smith County Deed Records, also being in the north line of Oakwood Drive;

THENCE North 33 Degrees 28 Minutes 05 Seconds East, a distance of 138.31 feet to the northeast corner of said Nowiski Lot;

THENCE North 85 Degrees 58 Minutes 46 Seconds West, a distance of 92.54 feet to the northwest corner of said Nowiski Lot, being the northeast corner of Lot No. 20 according to a Re-Subdivision Plat of a portion of Forest Creek Subdivision recorded in Volume 10, Page 76 of the Smith County Plat Records;

THENCE Westerly, with the north line of said Lot No. 20 and a curve to the right whose Central Angle is 16 Degrees 42 Minutes 02 Seconds and Radius is 220.12 feet, a distance of 29.75 feet to a point for corner;

THENCE North 43 Degrees 31 Minutes 17 Seconds East, at 25.9 feet pass the southeast corner of a certain 0.75 acre tract described in a deed from Cordell Energy Corp. to Vesta Lightfoot Fowler, dated July 14, 1981, continue a total distance of 137.87 feet to the northeast corner of said 0.75 acre tract;

THENCE Westerly, with the north line of said 0.75 acre tract and a curve to the right whose Central Angle is 15 Degrees 58 Minutes and Radius is 82.60 feet, a distance of 23.02 feet to the northwest corner of same, being the northeast corner of Lot No. 17, according to said Plat recorded in Volume 9, Page 29 of the Plat Records, also being in the south line of Pinewood Drive;

THENCE North 54 Degrees 10 minutes 02 Seconds East, a distance of 50.00 feet to a point for corner in the north line of Pinewood Drive;

THENCE Westerly, with the north line of Pinewood Drive and a curve to the left whose Central Angle is 51 Degrees 16 Minutes 12 Seconds and Radius is 277.25 feet, a distance of 108.52 feet to the southeast corner of Lot No. 6, according to the above mentioned plat recorded in Volume 8, Page 135 of the Plat Records;

THENCE North 39 Degrees 11 Minutes 21 Seconds East, a distance of 81.64 feet to a corner in the east line of Lot No. 6, being an ell corner of the above mentioned Tract No. One conveyed to Cordell Energy Corp.;

THENCE South 89 Degrees 10 Minutes East, a distance of 230.4 feet to a middle northeast corner of said Tract No. One;

THENCE South 26 Degrees 57 Minutes East, a distance of 754.64 feet to an ell corner of said Tract No. One;

THENCE North 63 Degrees 03 Minutes East, a distance of 200.22 feet to the easterly northeast corner of said Tract No. One, being at the east edge of a county road in the west line of the Missouri Pacific Railroad;

THENCE South 26 Degrees 57 Minutes East, with the west line of said Railroad and the easterly east line of said Tract No. One, a distance of 60.00 feet to the northeast corner of the Raiford Perry 2.732 acre tract;

THENCE South 63 Degrees 03 Minutes West, with the north line of said 2.732 acre tract, a distance of 200.22 feet to the northwest corner of same;

THENCE South 13 Degrees 37 Minutes 53 Seconds West, a distance of 454.94 feet to the southwest corner of said 2.732 acre tract, being an ell corner of said Cordell Energy Corp. Tract No. One;

THENCE South 00 Degrees 31 Minutes East, with the east line of said Tract No. One, a distance of 449.73 feet to the place of beginning, containing 29.07 acres of land.

## TRACT 2

All that certain tract or parcel of land situated in the County of Smith, State of Texas, being a part of a 5 acre tract in the Manuel Gutierrez Survey, Abst. No. 364, conveyed by J. P. Senter and wife, Sallie Senter, to A. J. Hearon by deed dated May 14th, 1924, recorded in Vol. 169, page 483, Deed Records of Smith County, Texas, described as follows, to-wit:  
 BEGINNING at the NW corner of said 5 acre tract, a point in the center of the Tyler-Troup Highway, which is the SW corner of the Charlie Lacy land;  
 THENCE East with the N.B. line of said 5 acre tract, 430 feet to the N.E. corner of same, which is the N.W. corner of the W. P. Myers tract;  
 THENCE South with the E.B. line of said 5 acre tract 100 feet to corner on said line;  
 THENCE West parallel with the N.B. line of said tract to the center of said Tyler-Troup Highway;  
 THENCE in a Northwesterly direction with the center of said highway to the place of beginning;

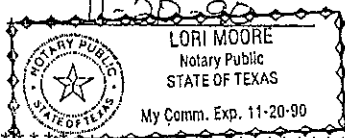
## TRACT 3

That certain tract or parcel of land, a part of the M. Gutierrez Survey, Abstract No. 364, located about 9 miles S.E. from Tyler, Smith County, Texas, and more completely described as follows, to-wit:  
 BEGINNING at an iron pin for corner, on the East right of way line of the Tyler and Troup Highway as it was built about the year 1922, such place of beginning being located at the SWC of the one acre tract described in Volume 233, Page 229, of the Smith County, Deed Records;  
 THENCE N. 89 deg. 15 min. E at 187.3 feet pass the SEC of the above mentioned one acre tract from which a 16 in. pine tree brs. N 43 1/2 E. 3.3 ft. continue in same direction in all 506.1 feet to an iron pin for corner, from which a PO with no marks brs. W 30 deg. E 40.3 ft;  
 THENCE N. 0 deg. 3 min. E 100 feet to an iron pin for corner;  
 THENCE S. 37 deg. 49 min. W 345 1/2 feet to an iron pin for corner on E. right of way line of the above mentioned highway;  
 THENCE S. 24 deg. 52 min. E. 100 feet to the place of beginning, containing 72/100th of one acre of land, recorded in Volume 1518, page 465, Deed Records of Smith County, Texas.

STATE OF TEXAS  
COUNTY OF

This instrument was acknowledged before me on the  
25 day of May, 1990 by Stephen E. Caraway,  
President, Canaah Land Development Corporation

My commission expires:



Lori Moore  
Notary Public, State of  
Texas  
Notary's printed name:  
Lori Moore

\*\*\*\*\*

(Acknowledgement)

STATE OF TEXAS  
COUNTY OF

This instrument was acknowledged before me on the  
\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by

My commission expires:

\_\_\_\_\_  
Notary Public, State of  
Texas  
Notary's printed name:  
\_\_\_\_\_

\*\*\*\*\*

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 Land  
Records of Smith County, Texas.



MAY 29 1990

MARY MORRIS  
COUNTY CLERK, Smith County, Texas  
By Aylina Mellett Deputy

FIRST AMENDMENT TO DECLARATION  
OF CONVENANTS AND RESTRICTIONS  
ROSEBROOK SUBDIVISION

FILED  
MARY MORRIS  
COUNTY CLERK

91 JUL -9 PM 2:29

SMITH COUNTY, TEXAS  
BY *Jasmine Smith*  
DEPUTY

STATE OF TEXAS §  
COUNTY OF SMITH §

THIS FIRST AMENDMENT TO DECLARATION IS MADE EFFECTIVE AS OF THE 8<sup>th</sup> OF July, 1991, BY CANAAN LAND DEVELOPMENT CORPORATION, HEREINAFTER CALLED "DECLARANT".

W I T N E S S E T H:

WHEREAS, effective January 25, 1988, Declarant executed a certain Declaration of Conenants and Restrictions affecting ROSEBROOK SUBDIVISION (the "Declaration") recorded May 25, 1990, in Volume 3012, Page 633, of the Land Records of SmithCounty, Texas; and

WHEREAS, Declarant having the requisite ownership to amend such Declaration, has approved certain amendments to said Declaration.

NOW, THEREFORE, for and in the consideration of the premises and other good and valuable consideration, the Declaration is hereby amended as follows:

ARTICLE IV, Assessments, SECTION 3.

MONTHLY ASSESSMENTS. For each lot on which a residence has been completed and is available for occupancy, the initial monthly assessment shall be twenty (\$20.00) dollars, beginning on the first day of the month following completion of such residence. Monthly assessments may also be paid in one annual payment of two-hundred forty (\$240.00) dollars. For each lot which has been conveyed or sold by the developer to a third party with the intention of constructing a residence thereon, the monthly assessment shall be five(\$5.00) dollars, beginning on the first day of the month following the date of conveyance to said third party and continuing at such monthly rate until the earliest of the following events occur:

(a) The first day of the month following completion of a residence on said lot; or

(b) The first day of the month following the expiration of one year from the date of conveyance from the developer to the said third party; at which time the monthly assessment shall be the same as that hereinabove set forth for a lot on which a residence has been completed and is available for occupancy. For the purpose of this section, the determination of when a residence has been completed and is available for occupancy shall rest solely with the developer.

ARTICLE VII, Additional Covenants and Restrictions,  
SECTION 1. Covenants and Restrictions on Lots,

(b) Building Size and Garages. No building shall be erected other than one single-family dwelling on all lots zoned R-2 "PD". The floor area (that enclosed for heating and/or air conditioning) of any single family dwelling shall not be less than one thousand six hundred (1,600) square feet. Each dwelling shall have a two (2) car enclosed garage. All garages must be set back at least twenty (20) feet from the street the resident faces or common drive area. Lots zoned MF-1 "PD" shall be constructed in parcel 3 and shall be one to four family dwellings. These buildings shall not be less than one thousand two hundred (1,200) square feet of floor space per side or single unit or dwelling. Two thousand five hundred (2,500) square feet of floor space or more for all dwellings larger than a single family dwelling. Multi-family dwellings on MF-1 "PD" zoned lots shall be permitted to have a single car enclosed garage subject to approval of the Architectural Control Committee. The minimum floor area (that enclosed for heating and/or air conditioning) shall not be less than two thousand (2,000) square feet for all residences constructed on lots: 36, 37, 38, 39, 40, & 41 of UNIT I, and shall be single family residences.

(v) Fences. All fences must be approved by the Architectural Control Committee prior to construction. Requirements shall be different of single dwelling detached lots than of cluster home lots that share a common driveway.

EXECURED this 8<sup>TH</sup> day of JULY, A.D. 1991.

CANAAN LAND DEVELOPMENT CORPORATION

BY: Stephen E. Conaway, Pres.  
STEPHEN E. CONAWAY, PRESIDENT

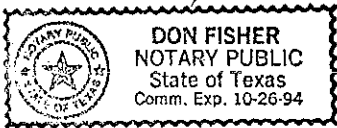
ATTEST:

BY: Janet Conaway, Secretary  
JANET CONAWAY, SECRETARY

(ACKNOWLEDGEMENT)

STATE OF TEXAS  
COUNTY OF SMITH

8<sup>th</sup> This instrument was acknowledged before me on the July day of July, 1991, by Stephen E. Conaway, President, and Janet Conaway, Secretary, Canaan Land Development Corporation.



Don Fisher  
Notary Public, State of Texas

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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 Land Records of Smith County, Texas.

JUL 10 1991  
MARY MORRIS  
COUNTY CLERK, Smith County, Texas  
Mary Morris Deputy