

**COPY**

**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
MAGNOLIA TRACE PHASE II**

This Declaration made this 9 day of FEB, 2006, by CURY DEVELOPMENT, L.P., hereinafter called "Declarant" or "Developer".

**WITNESSETH**

WHEREAS, Declarant filed the Declaration of Covenants and Restrictions of Magnolia Trace, sometimes referred to as Magnolia Trace Section I and sometimes referred to as Magnolia Trace Phase I, on or about the 20<sup>th</sup> day of May, 2004, which are recorded in Book 2916 at Pages 750 through 776, inclusive, in the office of the County Clerk of Canadian County, Oklahoma, and hereafter called "Declaration", and

WHEREAS, in Section 2.2 of the Declaration Declarant reserved the right to plat additional property contained within the legal description shown on Exhibit "A" of the Declaration which was not part of Magnolia Trace, Section I, and the right to declare such additional platted property subject to all terms and conditions of the Declaration. Declarant further reserved the right to modify any of the provisions of the Declaration for the additional platted property.

NOW, THEREFORE, DECLARANT DECLARES that it is the owner of the real property described on Exhibit "A" attached hereto and made a part hereof, to be subdivided pursuant to the Real Estate Development Act of Oklahoma, 60 O.S. §851 et seq., into "Lots", "Streets", and "Common Areas" under the name Magnolia Trace Phase II, and does hereby dedicate to public use all of the utility easements as shown on the plat of Magnolia Trace Phase II for installation and maintenance of utilities to serve Declarant and/or owners of lots within the Property. Declarant further declares that in addition to the easements shown on the plat, the Common Areas may be used for drainage and detention of surface water runoff.

Declarant declares that the real property described on Exhibit "A" shall be held, transferred, sold, conveyed and occupied pursuant to the Covenants, Restrictions and Easements, Charges and Liens set forth in the Declaration, except as modified herein, which shall run with such property and shall be binding on all parties having or acquiring any right, title or interest therein, or any part thereof, and such owner's heirs, devisees, personal representatives, trustees, successors and assigns, and the covenants and restrictions contained in the Declaration referred to above are imposed on such real property, and every part thereof, except as modified herein, as a servitude in favor of each and every other part thereof as a dominant tenement.

Section 7.2.1 of the Declaration is amended in its entirety for Magnolia Trace Phase II to read as follows:

7.2.1 Minimum Residence Size for Magnolia Trace Section II. The minimum residence, exclusive of basement, open porches, attached carports, attached garages and overhangs to be built on the lot within Magnolia Trace Phase II shall be as follows:

<u>Lots</u>	<u>Minimum Residence Size</u>
Lots 2 through 7 inclusive, Block 3 and Lots 1 through 18 inclusive, Block 4	2500 square feet, with a minimum of 1,800 square feet for the ground floor of a 2 story structure
Lot 1, Block 3 and Lot 19, Block 4	3,000 square feet, with a minimum of 2,000 square feet for the ground floor of a 2 story structure


The minimum residence size for future sections shall be established at the time of platting by the Declarant but in no event shall the minimum residence size be less than, 2,200 square feet.

Except as modified above, all terms and conditions of the Declaration shall apply to Magnolia Trace Phase II, all as if the real property covered by Magnolia Trace Phase II was included in the original Declaration and plat.

A copy of the Declaration of Covenants and Restrictions of Magnolia Trace, a/k/a Magnolia Trace Section I, a/k/a Magnolia Trace Phase I, are attached hereto and made a part of this Declaration as Exhibit "B", all as if fully set forth herein.

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

CURY DEVELOPMENT, L.P.

By:   
Robert L. Crout, President  
Crout Development Company,  
General Partner

STATE OF OKLAHOMA |  
COUNTY OF CANADIAN | ss.

Before me, a Notary Public in and for said County and State, on this 4<sup>th</sup> day of February, 2006, personally appeared Crout Development Company, General Partner, by Robert L. Crout, President, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed and the voluntary act and deed of said general partnership, for the uses and purposes therein set forth.

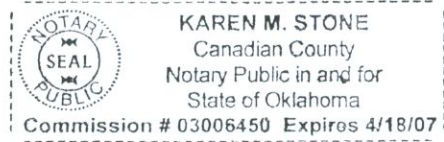
Given under my hand and seal the day and year last above written.

Karen M Stone  
Notary Public

(SEAL)

My Commission Expires:

4/18/07



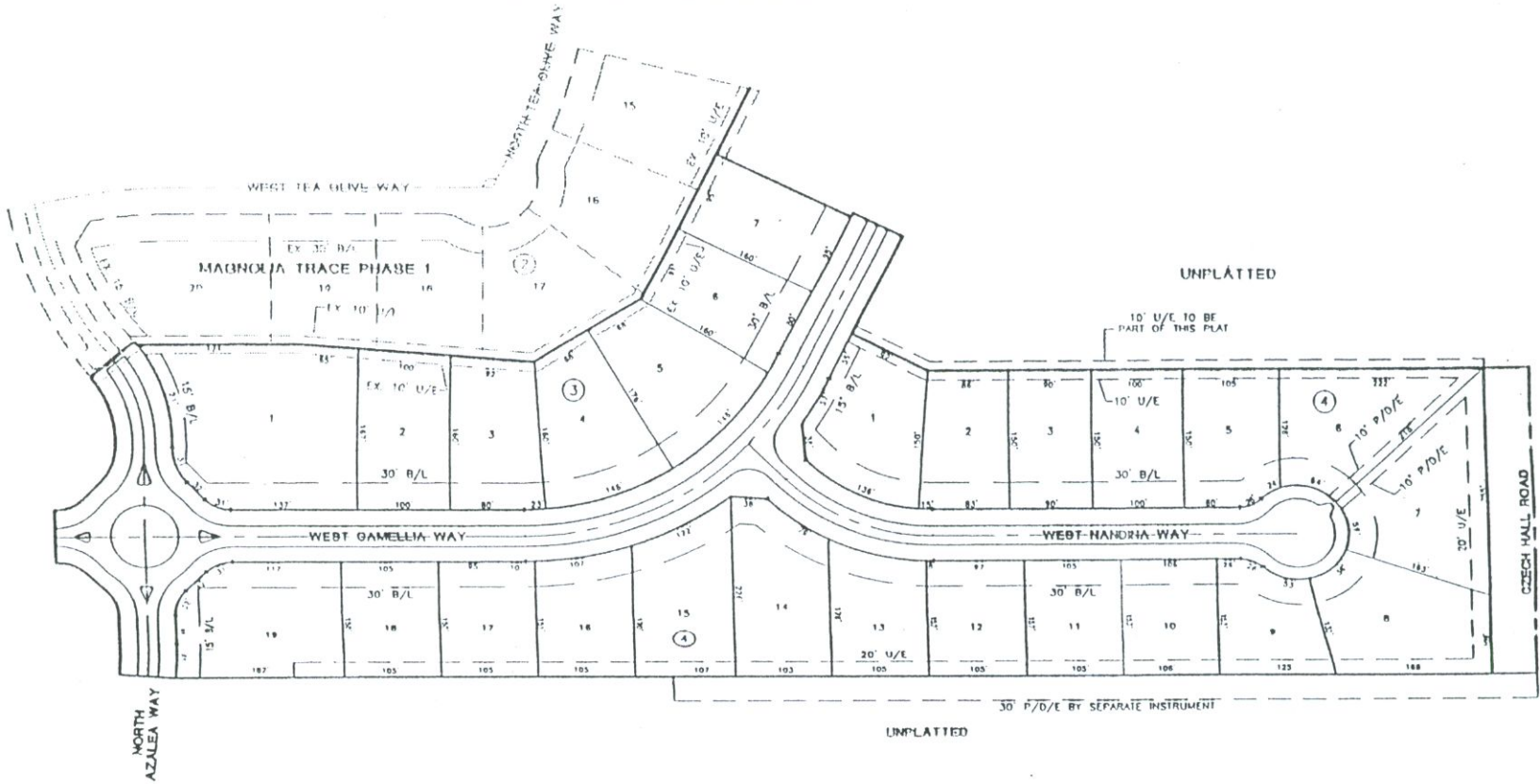


Magnolia Trace Phase II Plat

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER (NE/4) OF SECTION TWENTY-NINE (29), TOWNSHIP ELEVEN NORTH (1-11-N), RANGE FIVE WEST (R-5-W), OF THE INDIAN MERIDIAN (I.M.), CITY OF MUSTANG, CANADIAN COUNTY, OKLAHOMA, SAID TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NE/4;  
 THENCE S00°13'40"E ALONG THE EAST LINE OF SAID NE/4 A DISTANCE OF 964.13 FEET TO THE POINT OF BEGINNING;  
 THENCE S00°13'40"E ALONG SAID EAST LINE A DISTANCE OF 364.12 FEET;  
 THENCE S89°57'02"W A DISTANCE OF 1,323.32 FEET;  
 THENCE S89°46'20"W A DISTANCE OF 147.31 FEET;  
 THENCE N85°12'33"W A DISTANCE OF 60.00 FEET TO A POINT ON A CURVE, SAID CURVE HAVING A RADIUS OF 476.20 FEET, A CHORD BEARING OF N02°16'53"E, A CHORD DISTANCE OF 41.70 FEET;  
 THENCE ALONG SAID CURVE A DISTANCE OF 41.71 FEET;  
 THENCE N00°13'40"W A DISTANCE OF 40.34 FEET TO A POINT ON A CURVE, SAID CURVE HAVING A RADIUS OF 40.00 FEET, A CHORD BEARING OF N22°34'35"W, A CHORD DISTANCE OF 30.42 FEET;  
 THENCE ALONG SAID CURVE A DISTANCE OF 31.20 FEET;  
 THENCE N44°55'30"W A DISTANCE OF 32.01 FEET TO A POINT ON A CURVE, SAID CURVE HAVING A RADIUS OF 40.00 FEET, A CHORD BEARING OF N67°34'35"W, A CHORD DISTANCE OF 30.81 FEET;  
 THENCE ALONG SAID CURVE A DISTANCE OF 31.63 FEET;  
 THENCE S89°46'20"W A DISTANCE OF 2.48 FEET;  
 THENCE N00°13'40"W A DISTANCE OF 60.00 FEET;  
 THENCE N89°46'20"E A DISTANCE OF 2.36 FEET TO A POINT ON A CURVE, SAID CURVE HAVING A RADIUS OF 40.00 FEET, A CHORD BEARING OF N67°16'20"E, A CHORD DISTANCE OF 30.61 FEET;  
 THENCE ALONG SAID CURVE A DISTANCE OF 31.42 FEET;  
 THENCE N44°46'20"E A DISTANCE OF 26.64 FEET TO A POINT ON A CURVE, SAID CURVE HAVING A RADIUS OF 52.95 FEET, A CHORD BEARING OF N22°16'20"E, A CHORD DISTANCE OF 40.53 FEET;  
 THENCE ALONG SAID CURVE A DISTANCE OF 41.59 FEET TO A POINT ON A CURVE, SAID CURVE HAVING A RADIUS OF 120.00 FEET, A CHORD BEARING OF N20°08'06"W, A CHORD DISTANCE OF 81.72 FEET;  
 THENCE ALONG SAID CURVE A DISTANCE OF 83.39 FEET;  
 THENCE N49°57'28"E A DISTANCE OF 60.00 FEET TO A POINT ON A CURVE, SAID CURVE HAVING A RADIUS OF 180.00 FEET, A CHORD BEARING OF N39°22'27"W, A CHORD DISTANCE OF 4.20 FEET;  
 THENCE ALONG SAID CURVE A DISTANCE OF 4.20 FEET;  
 THENCE N89°46'20"E A DISTANCE OF 173.99 FEET;  
 THENCE S85°46'07"E A DISTANCE OF 257.24 FEET;  
 THENCE N58°11'24"E A DISTANCE OF 135.54 FEET;  
 THENCE N26°32'33"E A DISTANCE OF 186.09 FEET;  
 THENCE S63°27'27"E A DISTANCE OF 160.00 FEET;  
 THENCE N26°32'33"E A DISTANCE OF 5.41 FEET;  
 THENCE S63°27'27"E A DISTANCE OF 60.00 FEET;  
 THENCE S26°32'33"W A DISTANCE OF 125.00 FEET;  
 THENCE S63°27'27"E A DISTANCE OF 91.63 FEET;  
 THENCE N89°46'20"E A DISTANCE OF 653.56 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 14.36 ACRES, MORE OR LESS.





JA13/m.tb/bh  
2784-09  
magnoliadec

DECLARATION OF COVENANTS AND RESTRICTIONS OF  
MAGNOLIA TRACE

27  
I

THIS DECLARATION made this 9th day of March, 2004, by CURY DEVELOPMENT, L.P., hereinafter called "Declarant" or "Developer".

WITNESSETH

WHEREAS, Declarant is the Owner of the real property included on Exhibit "A" attached hereto and desires to create within said real property a residential community with common areas for the benefit of said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in such community and for the maintenance of the common areas, and further to provide for the development of the community in accordance with a General Plan; and to this end, Declarant desires to subject a portion of the real property described on Exhibit "A" which has or will be platted as Magnolia Trace Section I, together with the "Martin" and "Ingram" tracts which are identified and described on Exhibit "B" to the covenants, restrictions, easements, charges and liens herein set forth, each and all of which are for the benefit of such property and each Owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create a property owner's association to which should be delegated and assigned the powers of maintaining and administering the common elements, administering and enforcing the covenants and restrictions, collecting and disbursing the assessment and charges hereinafter set forth, and in exercising such additional authority as is herein granted; and

WHEREAS, Declarant has or will incorporate under the laws of the State of Oklahoma a non-profit corporation to be known as Magnolia Trace Property Owner's Association, Inc. for the purpose of exercising the functions described in the preceding paragraph.

NOW, THEREFORE, DECLARANT DECLARES that it is the owner of the real property described on Exhibit "A" to be subdivided pursuant to the Real Estate Development Act of Oklahoma, 60 O.S. Section 851 et seq., into "Lots", "Streets" and "Common Areas" under the name Magnolia Trace (whether in one or more sections, as hereinafter provided), and does hereby dedicate to public use all of the utility easements as shown on any recorded plat, including all or part of the Property (Exhibit "A") for the installation and maintenance of utilities to serve Declarant and/or Owners of Lots within the Property. Declarant further declares that in addition to the easements shown on any recorded plat, the Common Areas may be used for drainage and detention of surface water runoff.

AND DECLARANT FURTHER DECLARES that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens ("Covenants and Restrictions") herein set forth, which shall run with such real property and shall be binding on all parties having or acquiring any right, title or interest therein, or any part thereof, and such Owner's heirs, devisees, personal representatives, trustees, successors and assigns, and such Covenants and Restrictions being hereby imposed on such real property, and every part thereof as a servitude in favor of each and every other part thereof as the dominant tenement.

Num. Index

B. & P.N. Index

Margin

*Rel to: Cury Development LP  
464 N. Financial Dr. Ren.  
Mustang, OK 73064*

Doc # 2004013787  
Bk 2916  
Pg 750-776  
DATE 05/20/04 13:47:43  
Filing Fee \$65.00  
Documentary Tax \$0.00  
State of Oklahoma  
County of CANADIAN  
CANADIAN County Clerk  
PHYLLIS BLAIR



ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

1.1 "Architectural Committee" shall mean either the Declarant, the Board, or a designated architectural committee of the Board, at the time and for the purposes specified in Section 6.1, below.

1.2 "Articles" shall mean the Articles of Incorporation of the Association filed or to be filed in the office of the Secretary of State of the State of Oklahoma, as such Articles may from time to time be amended.

1.3 "Association" shall mean and refer to the Magnolia Trace Property Owner's Association, Inc.

1.4 "Board" shall mean the Board of Directors of the Association.

1.5 "Building Limit Lines" shall mean the lines so provided for by Section 7.2.7, hereof.

1.6 "By-Laws" shall mean the By-Laws of the Association which are or shall be adopted by the Board, as such By-Laws may from time to time be amended.

1.7 "Common Elements" mean and include:

1.7.1 All of the area on the Plat of Magnolia Trace Section I and any subsequent plat filed pursuant to Section 2.2 which is not included within the numerically identified Lots on such plat(s) and which may be designed as "Common Area" on said plat(s) (sometimes referred to herein as "Common Area");

1.7.2 The Maintained Area(s), streets, gate(s) at entrance(s), entrance(s) improvements and entrance(s) island(s), other island area(s), together with improvements located on said island area(s), landscaping, park, water detention pond, other ponds, creeks or areas designed to hold or drain surface water, dams, trails, improvements located within the Common Area, including, but not limited to, recreational amenities, utilities in or associated with the Common Elements, water sprinkler system, lamps and posts, whether or not graphically shown on Exhibit "C" hereto; and

1.7.3 Any perimeter fence installed by Developer.

1.7.4 Any easements or right of ways granted to the Developer or Association.

1.8 "Common Expenses" means and includes:

1.8.1 Expenses of administration, maintenance, repair or replacement of the Common Elements;

1.8.2 Expenses agreed upon as Common Expenses by the Board;



1.8.3 Expenses declared Common Expenses by the provisions of this Declaration or the By-Laws;

1.8.4 Expenses for maintenance of all fences within the Common Area and other fences maintained by the Association.

1.8.5 All expenses associated with maintenance, repair, replacement, improvement or otherwise related to the streets, gates and entrances.

1.9 "Corner Lot" shall mean any Lot which abuts, other than at its rear line, upon more than one Street.

1.10 "Declarant" or "Developer" shall mean Cury Development, L.P., with its principal place of business in Mustang, Oklahoma.

1.11 "Declaration" shall mean the entirety of this instrument entitled Declaration of Covenants and Restrictions of Magnolia Trace, including all Exhibits hereto.

1.12 "Detached Structure" shall mean any covered or enclosed structure on a Lot not attached to the main residence which it serves, and shall include, but not be limited to, outbuildings, tool sheds, kennels, cabanas, greenhouses and any temporary structures.

1.13 "General Plan" shall mean the General Plan of Development for Magnolia Trace as delineated by this Declaration, the recorded subdivision plat and subsequently recorded plats and the Master Plan.

1.14 "Landscape Committee" also referred to as "Garden Club" shall mean either the Declarant, the Board or a designated committee of the Board to supervise all maintenance within any Common Area and/or Maintained Area.

1.15 "Lot" shall mean a tract of land so designated upon any now or hereafter recorded subdivision plat of The Property. The "Martin" tract and the "Ingram" tract are each considered to be a "Lot".

1.16 "Maintained Area" shall mean any part of any Lot that Declarant or Association determines should be maintained by Declarant or Association for that part of a Lot which is adjacent to a Street for the purpose of continuity in the esthetic appearance of The Property. Declarant has determined that initially Maintained Areas are to be located on part of Lot 5 of Block 1 and part of Lot 1 of Block 2 of Magnolia Trace Section 1, with Declarant and Association reserving the right to designate other additional Maintained Areas hereafter.

1.17 "Master Plan" shall mean The Master Development Plan and Design Statement, final plats, this document, engineering plans and specifications, surveys, this Declaration and any amendments or additions hereto, the By-Laws, and any amendments or additions thereto, and any other formal documents relating to the development of the properties, all of which are subject to the applicable PUD ordinance(s) for the City of Mustang.

1.18 "Member" shall mean those persons so defined in Section 3.1 and 3.2, below.



1.19 "Normal Waterline" shall have the meaning set out in Article XI, and as delineated within the Master Plan.

1.20 "Occupancy" of any Lot shall mean that point in time when the first Member of the Owner's family or anyone authorized by the Owner moves into the residential unit located thereon.

1.21 "Owner" shall mean the record owner, whether one or more persons, of the fee simple title to any Lot, including contract sellers, but shall not include a mortgagee unless such mortgagee has acquired title pursuant to foreclosure; nor shall such term include any other who has an interest merely as security for the performance of any obligation.

1.22 "Person" shall mean an individual, corporation, partnership, association, trust or other legal entity, or any combination thereof.

1.23 "Planned Unit Development" or "PUD" shall mean all documents filed and approved by the City of Mustang, together with Mustang's ordinances related thereto involving The Property.

1.24 "Rules" shall mean the rules of the Association adopted by the Board, as they may be in effect from time to time.

1.25 "Streets" shall mean all streets shown on any now or hereafter recorded plat of The Property. All Streets, unless otherwise designated on the plat, shall be private and maintained by the Association. The City of Mustang has not agreed to pay any of the costs of maintaining the Streets.

1.26 "The Property" shall mean the real property described on Exhibit "A".

1.27 "Unplatted Property" shall mean that portion of The Property for which no plat has been filed. Upon filing of a plat for any portion of unplatted property, that portion shall no longer be considered unplatted property.

1.28 "Visible From Neighboring Property" shall mean, as to any given object, that such object is visible to a person six feet tall, standing on any part of such neighboring property at an elevation of the base of the object being viewed.

## ARTICLE II

### Property Subject to this Declaration and Additions Thereto

Section 2.1 Initial Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Mustang, Oklahoma, and shall be that portion of the Property which is platted as Magnolia Trace, Section I (Exhibit "C"), together with the "Martin" and "Ingram" tracts identified and described on Exhibit "B", which property is initially subject hereto and referred to as "Initial Property".

Section 2.2 Intent for Future Plats Within Existing Property. The Declarant reserves the right to plat additional property contained within the legal description on Exhibit "A", which is not part of Magnolia Trace, Section I. When such additional property is platted, Declarant reserves the right to declare such additional platted property subject to all terms and conditions of this Declaration. Declarant reserves the right to modify any of the provisions hereof for such additional



platted property, or to at Declarant's option, use that portion of the property which is not part of Magnolia Trace, Section I, in any manner Declarant might choose, subject only to compliance with applicable law and the ordinances, rules and regulations of the City of Mustang.

Section 2.3 Modification of PUD. As long as Declarant owns any interest in The Property, Declarant retains the right to modify, change or amend the PUD without approval of any other Owner or any other Party, except the City of Mustang.

Section 2.4 City of Mustang. The use and enjoyment of the property covered by this Declaration is subject to all ordinances of the City of Mustang, Canadian County, Oklahoma. Accordingly, in order that the public interest may be protected, the City of Mustang shall be considered a beneficiary of the Covenants and Restrictions herein pertaining to such matters as location of uses, height of structures, setbacks, screening, maintenance of common facilities and access. The City of Mustang shall have the right to enforce compliance therewith. Further, the private streets within The Property shall always be open to police, fire and other official vehicles and all state, federal, county and city agencies and subject to all traffic regulations of these agencies. Provided, the Association may take action to abate any nuisance or address any minor traffic issues. The City of Mustang Police has limited enforcement authority of municipal traffic codes within The Property. Law enforcement officials, including, but not limited to, the City of Mustang Police Department, are specifically invited into the Property for law enforcement investigation purposes, including, but not limited to, public inspection.

### ARTICLE III

#### Membership and Voting Rights in Association Powers and Duties

Section 3.1 Membership. Membership in the Association shall be restricted to Lot Owners, and each Lot Owner shall be a Member of the Association. Membership shall become effective on the day an individual or entity becomes a Lot Owner. The Declarant's membership shall become effective upon creation of the Association. The "Martin" tract and the "Ingram" tract identified and described on Exhibit "B" shall be treated the same as a platted Lot and they shall be considered Members upon ratification and approval of this Declaration.

Section 3.2 Effective Date of Subsequent Membership. When some or all of The Property which is not platted as part of Magnolia Trace, Section I, is platted, and if Declarant subjects that property to this Declaration, each Lot Owner with respect to each Lot therein shall become a Member of the Association. Such membership shall become effective on the day an individual or entity becomes a Lot Owner. The Declarant's membership shall become effective upon the final plat of any such area being filed.

Section 3.3 Voting Rights. Members shall be entitled to one vote for each Lot in which they hold an interest. When more than one person holds such interest or interests in a Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. Declarant shall have one vote for each Lot owned by Declarant.

Section 3.4 Powers and Duties. The Association shall have the hereto powers and duties contained in the "By-Laws" as attached. In addition the Association shall have the following Powers and Duties:

- (a) The Association shall acquire and pay out of the assessments levied and collected in accordance herewith, for all Common Expenses.
- (b) Except as otherwise provided herein, the Association shall maintain or cause the Common Elements and the landscaping, improvements, facilities, and structure thereof to be maintained and kept in a good state of repair, and acquire for the Association and pay from assessments for such services, equipment, maintenance, and repair as it may determine are necessary in order to keep and at all times maintain the Common Elements and the landscaping,



improvements, and facilities thereon in a good and sanitary state of condition and repair.

- (c) Except as to the taxes, levies or assessments levied separately against an individual Lot and/or the Owner thereof, the Association shall pay all taxes, real and personal, and assessment, bonds and levies which are or would become a lien on the Common Elements.
- (d) The Association, at any time, and from time to time, may establish, in accordance with the By-Laws, such uniform rules and regulations as the Association may deem reasonable in connection with the use, occupancy and maintenance of the Common Elements by Owners, their guests, invitees and licensees, and the conduct of such persons with respect to vehicles, parking, bicycle use, use and parking of trucks and vans, facilities constructed on the Common Elements and other activities which if not so regulated, might detract from the appearance of the Common Elements or be offensive to or cause inconvenience, noise or damage to persons residing in The Property or visiting the Common Elements. The Association shall send a copy of such rules and regulations, together with amendments and additions thereto, to each Owner upon receiving written notice of his status as an Owner.
- (e) The Association may contract for a security service, and cause such service to be maintained as a Common Expense, provided that the decision to provide for a security service be at the sole option and discretion of the Association.
- (f) No common area can be mortgaged or conveyed without the consent of at least two-thirds (2/3rds) of the Lot Owners, excluding the Developer.

Section 3.5 Enforcement. The Association and Declarant shall each have the right, summarily, to abate and remove any breach or violation by any Owner at the cost and expense of the Owner. Further, each Owner shall be entitled to enforce the provisions of this Declaration to the extent authorized and permitted by 60 O.S. §856.

#### ARTICLE IV

##### Property Rights in Common Elements and Description of Easements

Section 4.1 Members' Easements of Enjoyment. Subject to the provisions of Section 4.4, every Member shall have a right and easement of enjoyment in and to the Common Elements and such easement shall be appurtenant to and shall pass with the title to every Lot. Provided, there shall be no access to the Common Area located between the north pond and the northwest boundaries of Lots 3, 4 and 5, Block 1 (to be identified on Exhibit "D" and Exhibit "D-1" as "No Common Access"). Access to this area shall be restricted to the Owners of Lots 3, 4 and 5, Block 1, the "Martin" tract and "Ingram" tract consistent with their respective boundary lines. Further, the Owners of Lots 3, 4 and 5 of Block 1, the "Martin" tract and "Ingram" tract shall each be responsible for maintaining this Common Area which is adjacent to their respective lots, with such maintenance to be consistent with the maintenance of the other Common Areas within the Property. Exhibit "D" indicates an area designated as Common Area "A" which will be eventually dedicated and/or platted and dedicated to the Association. The right and easement of the Members with respect to Common Area "A" may be limited, restricted or suspended by the Declarant during any time construction or maintenance is occurring within Common Area "A".

Section 4.2 Conveyance of Common Elements. Subject to the HUD requirement that the Common Elements or Common Areas shall be conveyed to the Association free and clear of all encumbrances before HUD insures a first mortgage within The Property, Declarant shall have the discretion to determine when to convey to the Association the Common Elements. Declarant shall have the discretion to make such conveyance(s) by one or more instruments at various times. Provided, if not sooner conveyed, the Common Elements shall be conveyed to the Association



when Declarant no longer owns an interest in The Property. Provided, Declarant shall be responsible for the maintenance of Common Area A as shown on Exhibit "D" until the final plat of Magnolia Trace Section II is recorded in the office of the County Clerk of Canadian County, Oklahoma.

Section 4.3 Easements for Utilities, Maintenance and Drainage. Easements over and under The Property for the installation, repair and maintenance of sanitary sewer, water, electric, gas and telephone lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the Plat of The Property or as may be dedicated by Developer to the Association, the City of Mustang and franchised utility companies, for the purposes of ingress and egress and the repair and maintenance of utilities and drainage facilities. However, each Owner whose Lot is traversed by the Utility and Drainage Easement located on the Plat, shall have the right to use of the Property traversed by said easement, subject to the side building limit line as described in Section 7.2.7 herein; provided, said Owners shall not be permitted to deposit grass cuttings, brush, deadwood or any other debris on or in said Utility and Drainage Easement(s) or Common Area; provided further, said Owners shall not be permitted to fence said Drainage Easement(s). The Association and its designated agents and contractors shall have the obligation to maintain, repair and improve the Utility and Drainage Easement within all Common Areas which maintenance, repair and improvements shall be a Common Expense. Each Lot Owner shall be responsible for the maintenance and repair of the Utility and Drainage Easements within their respective Lot. Provided, if an Owner fails to maintain and repair the Utility and Drainage Easement within their Lot then the Association or its designated agents and contractors shall have the right to enter upon that Lot for the purpose of maintaining, repairing and/or improving such Utility and Drainage Easement, and the cost of such maintenance, repair and improvements shall be charged against that Owner.

Section 4.4 Limitations Upon Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

4.4.1 The right of the Association, as provided in its Articles and By-Laws, to suspend the rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed ninety (90) days for any infraction of its published Rules; and

4.4.2 The right of the Declarant, so long as it holds legal title thereto, or the Association, to convey to any public agency, authority, or utility, easements for drainage or underground utility purposes across any part of the Common Area, provided that the proposed design and location of each such drainage and underground facility be first submitted in writing to and approved by the Architectural Committee and further provided that the Architectural Committee's approval shall be in writing, and may be qualified upon the satisfaction of specified conditions, but further provided that in the event the Architectural Committee fails to approve or disapprove such design and location within thirty (30) days after said plans have been submitted to it, or in any case, if no suit to enjoin the construction of the proposed facility has been commenced prior to the completion thereof, approval will not be required and this condition will be deemed satisfied; and

4.4.3 The right of the Association to dedicate or convey all or any part of the Common Area, to which it has acquired legal title, to any public agency, authority, or utility for such purposes other than those specified in Section 4.4.2, above, and subject to such conditions as may be agreed to by the Members, provided, that no such dedication or conveyance by the Association, as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded agreeing to such dedication, conveyance, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.



Section 4.5 Damage or Destruction of the Common Elements by Owners. In the event any part of the Common Elements is damaged or destroyed by an Owner, a Member of an Owner's family or any of an Owner's invitees, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repair shall be promptly paid by such Owner, upon demand, to the Association, and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments. For the purpose of this provision, the term "Owner's Invitee" is intended to be interpreted broadly and shall include, but not be limited to, the guests of an Owner, the guests of an Owner's family Members, lessees and the guests and invitees of any lessee.

Section 4.6 Additional Common Area. The Declarant reserves the right to determine additional Common Area(s) subsequent to the filing of any plat on any portion of the platted property the ownership of which is retained by Declarant, including, but not limited to, a Common Area of pond and surrounding park area created by the construction of a dam on the creek within the subject property.

Section 4.7 Easement for Perimeter Fence. Declarant hereby reserves an easement for the installation and maintenance of a perimeter fence along any Lot or Common Area boundary line. Declarant shall have the right, but not obligation, to install and maintain such fence at such locations as Declarant determines. Declarant further reserves the right to assign the responsibility for maintenance of such fence, in whole or in part, to Association. In such event Association shall be deemed to have an easement for the maintenance of such fence. The easement created by this section shall include a reasonable area on either side of such fence for the purpose of exercising the rights granted by this section.

Section 4.8 Easement for Maintenance and Improvements: The Association and Declarant are hereby granted an easement as necessary to install and/or maintain the improvements, including landscaping, located or to be located at the entrance to The Property and located or to be located within 30 feet of the Common Areas B and C, located or to be located within 40 feet of the street right of way of Lots 2 and 5, Block 1 and Lots 1 and 2, Block 2, Magnolia Trace, Section I and the Maintained Areas. Provided, nothing herein shall be deemed to require Association or Declarant to install and/or maintain said improvements, including landscaping.

Section 4.9 Golf Area Easements: There is hereby reserved for the benefit of Declarant, the Association and all Lot Owners, an easement over and across each Lot adjacent to or in the proximity of Common Area A for golf balls, including the right of reasonable access to reclaim or recover such golf balls. Common Area A is intended to be used for golf activities and every person or entity acquiring an interest in any Lot within the Property acknowledges and recognizes the potential effect of stray golf balls, including the potential for personal injury, death or damage to personal property from golf area activity. Each Lot Owner assumes the risk of any property damage, personal injury or death and/or creation or maintenance of a trespass or nuisance created by or arising in connection with the golf area activity. Each Lot Owner further covenants not to sue and agrees to indemnify and hold harmless Declarant and the Association, their successors and assigns, from any and all liability for any losses, costs, including, but not limited to, attorney fees, claims, demands, suits, judgments or other obligations arising out of or connected with any risk associated with the golf area activity.

Section 4.10 Easement for Future Development: Declarant hereby reserves an easement for ingress and egress over and across all common elements and common areas, including, but not limited to, Streets for development of property adjacent to Magnolia Trace Section I.

## ARTICLE V

### Covenant for Assessment

Section 5.1 Creation of the Lien and Personal Obligation of Assessments.

5.1.1 The Declarant, for each Lot owned by it within The Properties, hereby covenants, and, except as provided in Section 5.12



below, the Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual maintenance assessments; (2) special assessments for capital improvements, both of which assessments are to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Such lien shall be paramount and superior to any homestead or other exemption provided by law. Each such assessment, together with such interest thereon and cost of collection thereof as is hereafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment became due.

5.1.2 No assessments shall be payable by a Lot Owner within Magnolia Trace Section I until such time that at least 50% of the Lots in Section I are transferred to someone other than the Declarant. Assessments shall be payable by a Lot Owner of any additional portions of The Property subsequently platted upon transfer of title to such Lot, to be paid at closing prorated to the end of that calendar year. At no time shall Declarant be responsible for the payment of any assessment of any Lot or unplatted property.

5.1.3 Unless otherwise paid pursuant to terms hereof, when assessments become payable the Association or Declarant shall give notice to the Lot Owner thereof, and such assessment shall be paid within thirty (30) days of receipt of said notice, with such payment to be prorated to the end of that annual assessment period.

Section 5.2 Purpose of Assessments.

5.2.1 The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties and in particular for the payment of Common Expenses including, but not limited to, the improvement, maintenance, repair and operation of the Common Elements and related to the use and enjoyment of the Common Elements.

5.2.2 Only the Declarant, or its agents, representatives, or contractors, shall be authorized to maintain or improve those parts of the Common Elements to which the Declarant still holds legal title.

Section 5.3 Basis for Annual Assessments. The initial annual maintenance assessment shall be \$480.00 per Lot. The annual maintenance assessment may be increased by a vote of the Members as hereinafter provided in Section 5.5. The Board may, after consideration of current maintenance costs and future needs of the Association, fix the actual maintenance assessments at a lesser amount. Declarant shall not be assessed any annual or special assessment whatsoever.

Section 5.4 Special Assessments for Capital Improvements. In addition to the annual maintenance and assessments authorized by Section 5.3 hereof, the Association may levy in any assessment 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, repair or replacement of a described capital improvement within the Common Elements, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the vote of the 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 at least fifteen (15) days in advance and which shall set forth the purpose of the meeting, and subject to the quorum provisions of Section 5.6, below, and provided further, that the maximum amount of any special assessment which may be assessed against any Member in any assessment year shall not exceed an amount equal to twice the maximum annual maintenance assessment for the same year.



Section 5.5 Change in Basis and Annual Assessments. The Association may change the annual maintenance assessment fixed by Section 5.3 hereof, prospectively for any one year period and at the end of such one year period, for each succeeding period of one year, provided that any such change shall have the assent of two-thirds (2/3) of the vote of the 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 at least fifteen (15) days in advance and which shall set forth the purpose of the meeting, and subject to the quorum provisions of Section 5.6, below.

Section 5.6 Quorum for Any Action Authorized Under Section 5.4 and 5.5. The presence at the meeting of Members, or of proxies, entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum.

Section 5.7 Uniformity of Assessments. Every annual maintenance and special assessment established under this Article V shall be fixed at a uniform rate for all Lots.

Section 5.8 Date of Commencement of Annual Maintenance Assessments: Due Dates.

5.8.1 For Magnolia Trace Section I the annual maintenance assessment shall commence on the first day of the month following the sale of at least 50% of the Lots in Section I. Maintenance assessments shall be on a calendar year basis, with the first payment prorated to the end of that calendar year.

5.8.2 Subsequent annual maintenance assessments shall become due and payable on the first day of each calendar year.

5.8.3 The due date of any special assessment provided for in Section 5.4 hereof shall be fixed in the resolution authorizing such assessments.

Section 5.9 Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of the Association.

5.9.1 If any assessment is not paid on or before the due date (being a date specified in Section 5.8 hereof), then such assessment shall be delinquent and until paid shall be a lien on the Lot. The personal obligation of the Lot Owner to pay such assessment shall continue until paid and shall pass to the successor in title.

5.9.2 If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at 18% per annum. The Association may bring legal action against all Lot Owners personally obligated to pay the same and/or an action to foreclose the lien against the Lot. There shall be added to the amount of such assessment the costs 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.

Section 5.10 Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Lot subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not, however, relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. Mortgagees are not required to collect assessments. The failure to pay assessments does not constitute a default under any government insured mortgage.

Section 5.11 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:



5.11.1 All property acquired by a governmental agency for public use, provided that so long as a Lot may be used for residential purposes which comply with the minimum building requirements of this Declaration, such Lot shall receive no exemption from said assessments, charges and liens.

5.11.2 All Common Elements.

5.11.3 All property retained by Declarant.

## ARTICLE VI

### Architectural Control

Section 6.1 Review. No construction of any type, including but not limited to, any building, fence, walk, driveway, wall or other structure or improvements shall be commenced, erected or maintained upon The Property, including the Common Area, nor shall any exterior addition to or change or alteration be made, or any alteration to the topography, until the plans and specifications, including a plot plan showing the location of the proposed improvement(s) with respect to topography, finished ground elevations, and in relation to front building and side Lot setback lines, and showing the nature, kind, shape, heights, materials, elevation and location of the same shall have been submitted to and approved in writing as to harmony of external design and locations in relation to surrounding structures and topography by the "Architectural Committee", which shall, as used herein, mean either (a) the Declarant so long as the Declarant owns any interest in The Property or (b) thereafter the Board, or a committee composed of three (3) or more representatives approved by the Board, shall become the "Architectural Committee". With respect to all such submissions, the judgment of the Architectural Committee shall be conclusive. All approvals shall be in writing, and may be qualified upon the satisfaction of specified conditions, provided, however, that in the event the Architectural Committee fails to approve or disapprove any such design and location within thirty (30) days after the required plans and specifications have been submitted to it, or in any case, if no suit to enjoin the construction, addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this condition will be deemed to have been fully satisfied. Any such decision by the Architectural Committee approving or disapproving any structures or any builder shall be final and binding on all parties.

Section 6.2 Fees. A fee may be charged by the Architectural Committee for the review specified in Section 6.1 or for any waiver or consent provided for herein. Before any fee is charged a fee schedule shall be approved by the Board.

Section 6.3 Proceeding With Work. Upon receipt of approval as provided in Section 6.1, the Owner shall, as soon as practicable, satisfy all conditions thereof and proceed with the approved work. Unless such work commences within one year from the date of approval, such approval shall be deemed revoked, and the Owner must again seek approval pursuant to all of the provisions of Section 6.1.

Section 6.4 Approval of Builder/Contractor. No construction of any type, including any construction described in Section 6.1 above, shall occur upon any Lot until the builder/contractor has been approved in writing by the Architectural Committee.

## SECTION VII

### Land Classification, Permitted Uses and Restrictions

Section 7.1 Land Classification. All Lots in Magnolia Trace are hereby classified as detached Single Family dwelling Lots for the exclusive use and benefit of the Owner thereof, unless otherwise designated on the Master Plan. No gainful occupation, profession, business, trade or other non-residential activity shall be conducted on any Lot or in any residence or detached structure located thereon, except for Declarant's office. Nothing herein shall be deemed to prevent the leasing of any Lot from time to time by the Owner thereof subject to all the terms and provisions hereto, and to the Rules.



7.2.1 Minimum Residence Size for Magnolia Trace Section I. The minimum residence, exclusive of basement, open porches, attached carports, attached garages and overhangs to be built on the Lots within Magnolia Trace Section I shall be as follows:

<u>Lots</u>	<u>Minimum Residence Size</u>
Lots 4 through 19 inclusive, Block 2	2,500 square feet, with a minimum of 1,800 square feet for the ground floor of a 2 story structure
Lots 3, 4 and 5, Block 1 and the "Martin" tract and "Ingram" tract	4,000 square feet, with a minimum of 3,000 square feet for the ground floor of a 2 story structure
Remaining Lots in Magnolia Trace, Section I	3,000 square feet, with a minimum of 2,000 square feet for the ground floor of a 2 story structure

The minimum residence size for future sections shall be established at the time of platting by the Declarant but in no event shall the minimum residence size be less than 2,200 square feet.

7.2.2 Maximum Height. No building shall exceed 2 ½ stories or 43 feet in height.

7.2.3 Exterior Building Materials. A minimum of eighty five percent (85%) of the actual exterior walls of the residential building and garage (excluding all exterior doors, windows, and garage doors), must be constructed of brick, brick veneer, stone, stone veneer or other masonry. Notwithstanding the proceeding sentence, 100% of the exterior of any fireplace shall be constructed of brick, brick veneer, stone, stone veneer or other masonry. However, a majority of the Architectural Committee may, in its discretion, waive in whole or in part the restrictions in this paragraph, provided such waiver is obtained in writing in advance of construction.

7.2.4 (Intentionally left blank.)

7.2.5 Garages and Carports. All garages must be side or rear entry and must be at least two cars wide and attached to the residence. Por'cheros and/or covered porticos (carports) must have a solid or semi-solid wall on the street side and must be constructed and located entirely behind the front building limit line. No garage door shall face the street from any Lot, including corner Lots, unless approved by the Architectural Committee. Detached carports are prohibited. Converting a garage to a living area is prohibited. Notwithstanding any other restrictions of this section any garage, other than the two car primary garage, may face the street provided the front of the garage is at least 20 feet behind the front of the main residential structure.

7.2.6 Roofs. In addition to approval of plans and specifications for the construction of a residence, all proposed roofs must be approved. Plans and specifications must be submitted to the Architectural Committee and approved prior to the construction of the residence or the installation of any roof material. Acceptable roofing materials include but may not be permanently limited to: composition roofs with a 40 year warranty and 300 pound minimum weight of weathered wood or similar appearance; slate



shingles; clay or concrete shingles. All roofs must be in approved colors only. All roofs must have either copper or prepainted "w" formed valleys with felt underlayment of not less than 30 lbs. In addition, all roofs must have at least a 10/12 pitch.

7.2.7 Building Limit Lines. No building shall be located on any Lot in violation of the setback building limit lines reflected on the recorded Plat. In addition, the rear yard for the main residence shall not be less than 20 feet. There shall be a side yard on each side of each residence of not less than 10 feet.

7.2.8 Signs. No signs or billboards will be permitted on the Common Area or upon any Lot except signs advertising the sale or rental of a Lot or Lots which do not exceed five square feet in area; provided, however, that this restriction shall not apply to the Declarant.

7.2.9 Detached Structures. No detached structure shall be allowed on any Lot except for greenhouses and small tool or storage sheds pursuant to the following restrictions:

- a. No greenhouse or small tool or storage shed shall exceed one story in height.
- b. No greenhouse or small tool or storage shed shall be located within 70 feet of Common Area "A", "B" or "C".
- c. No small tool or storage shed shall exceed 121 square feet of floor area.
- d. All small tool or storage sheds shall have a maximum 6 foot 6 inch eave height and shall be maintained within rear yard areas enclosed with an approved 6 foot high site proof fence, if Visible from Neighboring Property. The roof of any small tool or storage shed shall be of the same type roofing material that is used on the main residence, if Visible from Neighboring Property.
- e. No small tool or storage shed shall be located on the following Lots: "Ingram" tract, "Martin" tract, Lots 1, 3, 4 and 5, Block 1.

7.2.10 Lawns and Sprinkler Systems. Lawn sodding must be completed for all yards on any Lot on or before occupancy, weather and growing season permitting. If installation of a lawn is delayed due to the dormant season, such installation must be undertaken as soon as is reasonably possible with the beginning of the growing season. A sprinkler system is required for all yards of each Lot to provide adequate irrigation for lawns, flower beds and shrubbery.

7.2.11 Landscaping. A landscape plan, showing the location of planting beds or other areas and a description of the plant material, including size and species, must be presented to the Architectural Committee along with any building plans at time of initial approval. Such landscape plan must provide for a substantial amount of adequately sized plant material that represents at least two percent (2%) of the total cost of construction, exclusive of the cost of the lawns and sprinkler system. Landscape plans must also contain hardscape elements to compliment the finished exterior appearance of the residence and grounds. Examples are brick or stone retaining walls around planting areas, brick, stone or stamped concrete walkways or patio areas and other such landscape features as appropriate to an overall landscape design.



7.2.12 Trees. Prior to occupancy each Lot must include at least two (2) trees at least 3 inches caliper measured six inches from the ground level (either existing or to be planted) in the area between the front building line and the street right of way. Corner Lots must have at least three (3) trees at least 3 inches caliper measured 6 inches from the ground level (either existing or to be planted) with at least 1 of these trees between the residence and each street right of way. Trees may be of either deciduous or evergreen variety. The Magnolia tree is suggested. If any tree dies, it must be replaced within thirty (30) days by the Owner. Provided, if the Owner does not replace the tree within thirty (30) days, the Declarant may replace the tree and the Owner shall reimburse the Declarant for all its costs related thereto. The Declarant shall have the right to enter onto the Lot for the purpose of replacing any tree. If the Declarant is not reimbursed, the amount of the reimbursement shall become an additional assessment against the subject Lot and shall be a lien against that Lot to be foreclosed as allowed by law for the foreclosure of mechanic's and materialman's liens. Declarant may transfer the rights and obligations of this section to the Association in Declarant's discretion.

7.2.13 Treehouses and Playground Equipment. No treehouses or platform in trees, playtowers or other similar structures or equipment shall be located in front of any structure located on any Lot or within 15 feet of any Lot boundary.

7.2.14 Waste. No waste shall be committed on the Common Elements. Any damage or waste to Property within the Common Elements, including landscaping damage, shall be the responsibility of any Owner who causes, or whose children, guests or tenants cause any such waste or damage, and shall be assessed against that Owner's Lot and collected in the same manner as other assessments herein.

7.2.15 Grading Excavation. No building or other structure shall be constructed or maintained upon any Lot which would in any way impede natural drainage. No grading, scraping, excavation or other rearranging or puncturing of the surface of any Lot shall be commenced which will or may tend to interfere with, encroach upon or alter, disturb or damage any surface or subsurface utility line, pipe, wire or easement, or which will or may tend to disturb the adjacent property and/or the minimum or maximum subsurface depth requirement of any utility line, pipe, wire or easement. Any such interference, encroachment, alteration, disturbance or damage due to the negligence of an Owner or his agents, contractors, or representatives will be the responsibility of such Owner, and the Owner of the line, pipe, wire, or easement may affect all necessary repairs and charge the cost of the same to such Owner.

7.2.16 Moving Existing Buildings Onto a Lot Prohibited. No mobile homes, manufactured housing or existing structures may be moved onto any Lot from another location.

7.2.17 Completion of Construction. Upon commencement of excavation for the construction of a residence, the work must thereafter be continuous, unless a delay is approved by the Architectural Committee in writing, and must be completed within one year. If not so completed, the Declarant (unless the Declarant is no longer an Owner and then the Association) may, but shall not be obligated to, complete such construction, at the Owner's sole cost and expense. Whether the completion of such construction shall be performed by the Declarant or by the Association, a lien for the amount of costs necessary to complete such construction shall be imposed against the subject Lot in the same manner as if such lien arose by reason of delinquent assessments, and such costs shall constitute a personal obligation of the record owner of said Lot at the time such completion expenditures are made.



7.2.18 Utilities. No Owner shall demand or require the furnishings of such services through or from overhead wiring facilities so long as underground distribution systems are available.

7.2.19 Mailboxes. The location and style of all mailboxes placed at the curb of any Lot must be approved by the Architectural Committee. In the event the postal authorities will only deliver mail curbside to one side of the street, mailboxes may be located at curbside for other Lots, provided, no more than two mailboxes will be located on any one Lot. Each home shall have a cast stone "address block" placed either on the mailbox or front of the home. All mailboxes shall be constructed with the same materials as the residence to which it is appurtenant.

7.2.20 A. Fences. All fence construction must be approved by the Architectural Committee. Except as set forth in the next paragraph, no fence shall ever be constructed, erected, placed or maintained forward of the front building limit or setback line, on each Lot, as shown on the recorded plat, except masonry walls no higher than three feet or wrought iron fences no higher than four feet which are clearly decorative in nature. Barbed wire, chain link or similar fencing material is specifically prohibited except as described herein.

Fences, walls and hedges are permitted on the following Lots along the edge of any yard, including the yard in front of the front building line, provided that no wall, hedge or fence on the following Lots shall exceed six (6) feet in height.

LOTS

Lots 1 through 5, Block 1  
Lots 1, 2, 3 and 20, Block 2  
"Ingram" tract  
"Martin" tract

B. Side Fences and Retaining Walls. All fences which project from a residence toward the side Lot line shall be constructed of brick, stone, or iron and must carry out the architectural scheme of the structure. Additionally, perimeter or exterior fencing adjacent to or facing the streets shall be constructed of brick, stone, or iron and must carry out the architectural scheme of the structure. Retaining walls must be faced on all sides visible from any street with brick, stone, or approved material. No fence or retaining wall shall be constructed or installed until the location, design, material and quality of same shall have been approved by the Architectural Committee.

C. Interior Lot Fencing. Fencing not visible from any street or Common Area may be constructed of wood using steel posts. All fences shall remain in good condition. The Property Owner's Association has the right to repair any fence and place a lien on that Lot for the cost.

D. Perimeter Fences: Perimeter security fences that separate Magnolia Trace from adjoining property may be of wood or chain link construction if installed by the Declarant. Fences along Common Areas B and C and perimeter fences along Common Area A, Southwest 59<sup>th</sup> Street and Czech Hall Road shall be maintained by the Association. All other fences shall be maintained by the abutting property owner.

E. Fences Abutting Common Area "A": Except for perimeter fences, as set forth in Section D above, fences abutting Common Area "A" or within 60 feet of Common Area "A" shall be constructed of ornamental iron, with the option to use masonry pillars which match the residence no



higher than five feet, with the plans and specifications to be approved by the Architectural Committee. The purpose of this provision is to provide an open area effect around the Common Area "A". On all Lots abutting Common Area "A" privacy walls or fences may be constructed near the rear of the residence if said privacy walls or fences do not obstruct the view of Common Area "A" by adjoining property owners.

7.2.21 Driveways. All driveways entering residential Lots or building sites must be of concrete not less than eighteen (18) feet in width at the entrance, with an adequate turning radius. Adequate drainage structures, if required, must be installed in the barrow ditch by individual Lot Owners prior to the construction of a driveway or entrance to a Lot or building site. This includes temporary driveways during construction. Such drainage structures must be in accordance with the predetermined standards by the City of Mustang. No driveway shall be constructed or altered without the prior written approval of the Architectural Committee, which shall consider the location, appearance, design and materials of said driveway and the effect the driveway may have on drainage affecting the Common Elements or any other Lot.

7.2.22 Parking of Vehicles. No vehicle of any kind shall be allowed on unpaved portions of the Common Areas or any unpaved portion of any Lot, except as necessary for maintenance purposes. "On-street" parking is prohibited.

7.2.23 Recreation Equipment. Basketball goals, or other related recreation equipment, must be free standing and positioned behind the front building line of the home. Basketball hoops and goals attached to the home or garage are prohibited.

7.2.24 Clothes Lines. No exterior clothes dryer or clothes drying line shall be erected, installed or maintained on any Lot or on any structure thereon.

7.2.25 Drainage Easement(s). No fence, structure, planting or other materials shall be placed or permitted to remain within any drainage easements shown on the plat or otherwise granted, which may damage or interfere with, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot. No conveyance by Declarant of any Lot, or any interest therein, shall be deemed to be, or construed as, a conveyance or release of these easements, or any of them, even though the conveyance purports to convey the Lot in fee simple, or by other language purports to convey Declarant's entire interest therein, but such effect shall only arise if the conveyance specifically recites it to be the intention of Declarant to thereby convey or release the easements.

7.2.26 Swimming Pools. Above ground swimming pools shall not be allowed, other than small, movable children's pools with a capacity of 150 gallons or less.

7.2.27 Exterior Lights. Outdoor lighting fixtures, including, but not limited to, flood lights, security lights, lampposts, directional lights, landscape lighting and any other yard lighting, must be approved by the Architectural Committee and must not be offensive to any adjoining Lot Owners. No public utility provided "bright lights" or "security lights" are permitted without approval of the Architectural Committee. Wooden light posts are prohibited.



7.2.28 Surface Drainage. Each Lot shall receive and drain in an unobstructed manner the storm and surface waters from Lots and drainage areas of higher elevation and from public streets, Common Areas and easements. No Lot Owner shall construct or permit to be constructed any fencing or other obstructions which would impair the drainage of storm and/or surface waters over and across that Lot. The Architectural Committee may, in its discretion, waive in whole or in part, the restrictions of this section.

7.2.29 Stemwalls. All houses must be constructed with dug footing foundations that permit brick to come all the way to the ground on all sides of the house without exposing the stemwall in any area.

7.2.30 Diseases and Insects. No Owner shall permit anything or condition to exist upon any Lot which shall include, breed or harbor infectious plant diseases or noxious insects.

7.2.31 Backyards. The rear yards and all Common Area between the Lot boundary and the edge of the water of Lots 3 through 5 inclusive of Block 1 and "Ingram" tract and "Martin" tract that abut Common Area "A" shall be maintained to the water's edge by the Owners of those Lots and not by the Association.

7.2.32 Declarant Business Office; Model Lots. Declarant and its employees and agents may maintain a business, construction and sales office, model homes and other sales facilities necessary or required until all Declarant's interest in The Property is sold. Declarant may allow approved builders to build and maintain one or more model homes.

7.2.33 Offensive or Noxious Use. The Owner of any Lot shall not use or allow the use of such Lot for any purpose which will be noxious, offensive or detrimental to the use of the other Lots or which will create or emit any objectionable or offensive noise, light, noxious odors, dusts, gases, fumes or other such material or which will in any manner violate any applicable zoning ordinance and/or regulations enacted by any duly constituted governmental authority. The Board shall have the authority to declare the existence of a nuisance and the decision of the Board in making such declaration shall be binding. Any Lot Owner shall have the right to file a complaint to abate any nuisance, in writing, with the Board. If the Board does not resolve the complaint within 30 days, the complainant may file an action in the District Court of Canadian County, Oklahoma, for abatement of such nuisance.

7.2.34 Exclusion of Developer. This article does not apply to the Developer. The Developer reserves the right to develop The Property in Developer's discretion.

7.2.35 Variiances. As to any Lot, the limitations and restrictions of Article VII inclusive, may be waived or modified by the Architectural Committee, upon written application made in advance by the Lot Owner seeking a variance, as to which the judgment of the Architectural Committee shall be conclusive; provided, however, that if the Architectural Committee fails to approve or disapprove such application within thirty (30) days after its receipt, the application shall be deemed approved.

## ARTICLE VIII

### General Restrictions

Section 8.1 Use of Lots. Each Lot in Magnolia Trace, with the exception of the Common Areas, shall be used exclusively for Single Family residential purposes. No business, trade or other such activity shall be permitted within The Property, except as set forth in Section



7.1 and Section 7.2.32 above. Notwithstanding anything contained within this Declaration to the contrary, the Association may maintain such offices or other facilities as are necessary for the conduct of the Association's business and the upkeep and maintenance of Common Elements.

Section 8.2 Animals. No animals, fish, reptiles, or fowl, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot, and then only if kept solely as household pets or yard pets and not kept, bred or raised for commercial purposes. No pet or pets shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. Upon the request of any Owner, the Board shall determine, in its sole discretion, whether for the purposes of this Section 8.2 a particular animal, fish, reptile or fowl shall be considered to be a house or yard pet, a nuisance, or whether the number of pets on any Lot is unreasonable, provided, however, that horses, mules, donkeys, cattle, pigs, goats, fowl (except small birds kept in cages within a residence) and sheep shall not be considered as house or yard pets hereunder.

Section 8.3 Storage of Building Materials. No building material of any kind or character shall be placed or stored upon the property line of the Lot upon which the improvements are to be erected and shall not be placed in the Streets or between the street and the property line.

Section 8.4 Vacant Lots. No trash, ashes, brush, clippings or other refuse may be thrown or dumped on any vacant Lot or Common Area. Each Owner of a vacant Lot is required to keep such Lot in presentable condition or the Association may, at its discretion, mow such Lot, trim trees, remove trash or refuse and, if necessary, levy any assessments upon such Lot for the cost involved, which shall constitute a lien upon such Lot to the same extent as is provided elsewhere herein with respect to other assessments.

Section 8.5 Storage Tanks. No tank for the storage of oil or other fluids may be maintained about the ground and outside an authorized structure on any of the Lots.

Section 8.6 Drilling. No drilling or puncturing of the surface for oil, gas other hydrocarbons, or other minerals, shall be permitted without the prior written consent of the Architectural Committee. Owners may drill water wells for their irrigation.

Section 8.7 Boats, Trailers, etc. Boats, trailers, motor homes, or other recreational vehicles may not be parked, kept, or maintained on any street in said addition, but may be kept on the premises provided they are concealed within the residence garage or located totally on a concrete surface behind the front or side building limit lines and are totally concealed from the street and the Common Area and are not visible from neighboring property and are not blocking or obstructing the view of the Common Area by adjoining property owners. In addition, the above are not allowed in the front yard, or on a Corner Lot in the front or side yard. Automobiles and pickup trucks may be parked in driveway. Commercial vehicles, except for pickup trucks, are prohibited.

Section 8.8 Temporary Residences. Under no conditions may a trailer of any type be occupied, temporarily or permanently, as a residence except during the construction period, and then only by a workman or watchman and with the prior written approval of the Architectural Committee.

Section 8.9 Maintenance of Lawns and Plantings on Lots. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Provided, if, in the opinion of the Architectural Committee, any Lot is not maintained pursuant to the provisions hereof, the Committee may cause said Lot be so maintained, and may charge the Lot Owner thereof with the cost of such maintenance, which cost shall become a lien against said Lot the same as the assessment lien provided for in Section 5.9 hereof.

Section 8.10 Repair of Buildings and Improvements. No building or improvement upon any Lot shall be permitted to fall into disrepair, but shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Section 8.11 Garbage, Trash Containers and Collections. All refuse, including lawn and garden clippings and trash, shall be kept in containers of types which shall be approved by the Architectural Committee. In no event shall such containers be maintained so as to be visible from



the street or neighboring property except to make them available for collection, and then only for the shortest time reasonably necessary to effect such collection.

Section 8.12 Antennae and Satellite Dishes. Other than television antennae and television satellite dishes, no antennae of any type, including, but not limited to, transmitting antennae or radio antennae, are permitted.

Section 8.13 Prohibition of Splitting or Subdivision of Lots. No Lot shall be subdivided, divided, or split, without the approval of the Architectural Committee. Two or more Lots may be combined for construction of a single residence with the approval of the Architectural Committee.

Section 8.14 Security. Law enforcement officials, including, but not limited to the City of Mustang Police Department, are specifically invited into The Property for law enforcement and investigation purposes, including, but not limited to public inspection. The Association and Owners are not prohibited from contracting separately for private security.

## ARTICLE IX

### General Provisions

Section 9.1 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, and their respective legal representatives, heirs, devisees, personal representatives, trustees, successors and assigns, for a term of twenty-one (21) 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 signed by the then-Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided that no such agreement to change shall be effective unless made and recorded six (6) months in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 9.2 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 deposited in the United States mails, 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 9.3 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity by the Association or any Lot Owner against any person or persons violating or attempting to violate any covenant or restrictions, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, provided, that failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any suit brought hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees.

The commencement, construction or placement of any dwelling, building, fence, wall, other improvement or structure without the approval of the Architectural Committee shall be in violation of the Declaration. Upon written notice from the Architectural Committee, such dwelling, building, fence, wall or other structure or improvements shall be promptly removed. In the event the same is not removed, or the violation is not otherwise terminated, within fifteen (15) days after notice of such violation is delivered to the Owner of the Lot upon which such violation exists, then the Association shall have the right, through its agents and employees, to enter upon such Lots and to take such steps as may be necessary to remove or otherwise terminate such violation, and the costs thereof shall be assessed against the Lot upon which such violation occurred. A statement for the amount thereof shall be rendered to the Owner of said Lot, at which time the assessment shall become due and payable and a continuing lien upon said Lot and an obligation of the Owner, and may be enforced as provided herein. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any Lot at any reasonable daylight hour for the purpose of ascertaining whether any violation of the provisions or requirements herein, exist on such Lot; however, no such entry and inspection shall be taken without a resolution of the Architectural Committee or the Board of Directors, and after reasonable notice to the Owner of



such Lot. Neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 9.4 Right to Assign. The Declarant by appropriate instrument may assign or convey to any person any or all of the rights, reservations, easements and privileges herein reserved by it, and upon such assignment or conveyance being made, its assignees or grantees may at their sole option exercise, transfer or assign such rights, reservations, easements, and privilege or any one or more of them, at any time or times in the same way and manner as though directly reserved by them or it in this instrument.

Section 9.5 Invalidity of Any Provision. Should any provision of this document be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

Section 9.6 Amendments. To the extent not inconsistent with 60 Okla. Stat. §851, et seq., as same is now or may hereafter be amended, an amendment of the Covenants, Conditions and Restrictions herein may be enacted by the vote or written assent of two-thirds (2/3rds) of the Owners; provided, however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for an action to be taken under that clause. Any amendment must be recorded and shall become effective upon being recorded in the office of the County Clerk of Canadian County, Oklahoma.

Section 9.7 Conflict of Project Documents. If there is any conflict among or between the Project documents, the provisions of this Covenants, Conditions and Restrictions shall prevail; thereafter, priority shall be given to Project documents in the following order: Plat, By-Laws and rules and regulations of the Owner's Association.

Section 9.8 No Warranty of Enforceability. While the Developer has no reason to believe that any of the restrictive covenants of this Article 9 or elsewhere in these Covenants, Conditions and Restrictions are or may be invalid or unenforceable for any reason or to any extent, it makes no warranty or representations to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold the maker hereof harmless therefrom.

Section 9.9 Acknowledgment of Security Gates and Controlled Access – Release of Liability. The Owner of each Lot, on their own behalf, and on behalf of their families, guests, tenants, invitees, successors and assigns, does acknowledge that the Developer, Association and/or the Board of Directors will install and maintain security gates controlling access to the Property by Owners and the public and that such security gates may affect and delay or prevent the timely response of police, ambulance, fire or other emergency personnel and services to locations within the project. In consideration of the privacy and security afforded by the security gates, each Owner, for himself, his family, guests, lessees, invitees, heirs, successors and assigns, covenants and agrees, concurrent with acquisition of an equitable or legal interest in a Lot, to release and hold harmless the Developer, Association, Board of Directors, and the individual Owners, from any and all injuries, claims, causes of action, liabilities or other losses incurred by such Owner, his family, guests, tenants or invitees, arising from or associated with the security gates and/or the proper functioning of the security gates. In addition, it is the intent of the Developer that at least until all Lots are sold by the Developer, that the gates will not be manned.

## ARTICLE X

### Common Elements Rules

Section 10.1 Declarant until such time as Declarant conveys all Common Areas and Elements to Association, and Association thereafter, shall have the power and authority to adopt and enforce rules related to the use of Common Elements. These rules shall include but not be limited to the following:

- A. The Association shall keep and maintain in good order the dams situated upon and within any Common Area. Declarant retains the right, but not the obligation, to maintain the dams.



- B. Except in areas designated by the Board, no internal combustion engine or motorized vehicles shall be permitted within any Common Area except maintenance equipment and golf cars. Golf Cars are permitted within the Property.
- C. No Owner shall erect any pier, boathouse or boat dock on the water.
- D. No internal combustion engine or motorized boats shall be permitted on the water.
- E. No fishing by means of trot lines, jug fishing, seines or trapping shall be permitted.
- F. No hunting or use of firearms shall be permitted.
- G. No tree houses, forts or tents shall be allowed in any Common Area for more than three consecutive days.

## ARTICLE XI

### Special Creek and Lakes Provisions

Section 11.1 General Provisions Regarding Creeks and Lakes. A portion of the Common Area, platted property and unplatted property is covered by a Creek and Lake area. The normal waterline of such Lake area is depicted on Exhibit "D", referred to as the "Normal Waterline". Exhibit "D" also depicts the area within the Normal Waterline. The actual body of water itself will at times exceed the Normal Waterline and the Creek Area, and at other times will recede from the Normal Waterline and the Creek area. The actual area covered by water at a given time and constituting the referenced body of water is herein called a "Lake" (there are two of such Lakes shown on Exhibit "D"). The boundaries of each Lake will fluctuate, while the limits of the Normal Waterline will remain constant.

Section 11.2 General Regulation of Creek and Lakes. Neither the Association nor any Lot Owner shall take any action or permit any action to be taken which has as its result any significant alteration of the Creek and Lakes. No fill dirt or fill of any sort shall be placed so as to alter these. Additionally, no retaining walls shall be constructed along or adjacent to the Normal Waterline, except with permission of the Architectural Committee. Notwithstanding the foregoing, the Declarant is authorized to add fill dirt or fill of other sorts and to construct retaining walls along or adjacent to the Drainage Easement(s) and/or Normal Waterline.

Section 11.3 Fluctuating of Creek and Lakes with Respect to Normal Waterline. Phenomenon existing in nature will result in a fluctuation of the level of the Creek and Lakes to levels above and below the Normal Waterline. To the extent that the water exceeds the boundaries of the Normal Waterline so that the water covers portions of Lots, a license and easement shall automatically come into existence in favor of the Association permitting the presence of such water on individual Lots, and the presence of such water shall not constitute a trespass. However this license permitting water on Lots shall not permit the Association, any Member of the Association, or any third party to trespass, by vessel or otherwise, upon such portion of a Lot covered with water. In no case shall the Declarant or the Association be liable for damages caused by fluctuations in the level of the Lakes and, in no case shall either Lot Owners or the Association be required to pay any additional compensation for the license granted based on such fluctuation in the level of the Lakes.

Section 11.4 Drainage Easements. There is hereby granted in favor of all Owners of Lots within the properties easements for drainage purposes as shown on the recorded plat and any subsequently recorded plat. Nothing shall be done by an Owner, or any person on the Owner's behalf, to change or modify the flow and/or drainage of water within said easement as the same crosses any Lot or Common Area of the properties.



IN WITNESS WHEREOF, THIS DECLARATION is executed by the Declarant this 9<sup>th</sup> day of March, 2004.

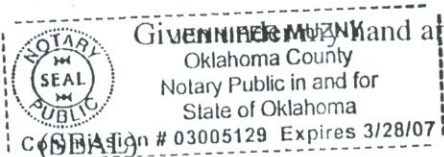
CURY DEVELOPMENT, L.P.

By: *Robert L. Crout*  
Robert L. Crout, President  
Crout Development Company, General Partner

STATE OF OKLAHOMA  
COUNTY OF CANADIAN | ss.

Before me, a Notary Public in and for said County and State, on this 9th day of March, 2004, personally appeared Crout Development Company, General Partner, by Robert L. Crout President, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed and the voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.



*Jennifer Muzny*  
Notary Public

My Commission Expires:  
3/28/07



**Magnolia Trace Legal**

A tract of land located in the Northeast Quarter (NE/4) of Section Twenty-nine (29), Township Eleven North (T-11-N), Range Five West (R-5-W) of Indian Meridian, City of Mustang, Canadian County, Oklahoma, more particularly described as follows:

BEGINNING at the Northeast Corner of said NE/4;  
Thence S 00°13'40" E on the East line of said NE/4 a distance of 1328.25 feet;  
Thence S 89°57'02" W a distance of 1323.32 feet;  
Thence S 00°18'31" E a distance of 1332.46 feet to a point on the South line of said NE/4;  
Thence S 89°47'07" W on the south line of said NE/4 a distance of 1319.75 feet to a point being the Southwest Corner of said NE/4;  
Thence N 00°25'31" W on the West line of said NE/4 a distance of 2176.84 feet;  
Thence N 78°27'50" E a distance of 175.00 feet;  
Thence East a distance of 291.28 feet;  
Thence N 20°00'08" E a distance of 484.20 feet to a point being on the North line of said NE/4;  
Thence East on the North line of said NE/4 a distance of 2018.40 feet to the Point of Beginning; said tract containing 115.50 acres, more or less.



**Exhibit "B"**

BOOK

PAGE

**Martin & Ingram Legals**

2916

773

"Ingram" tract

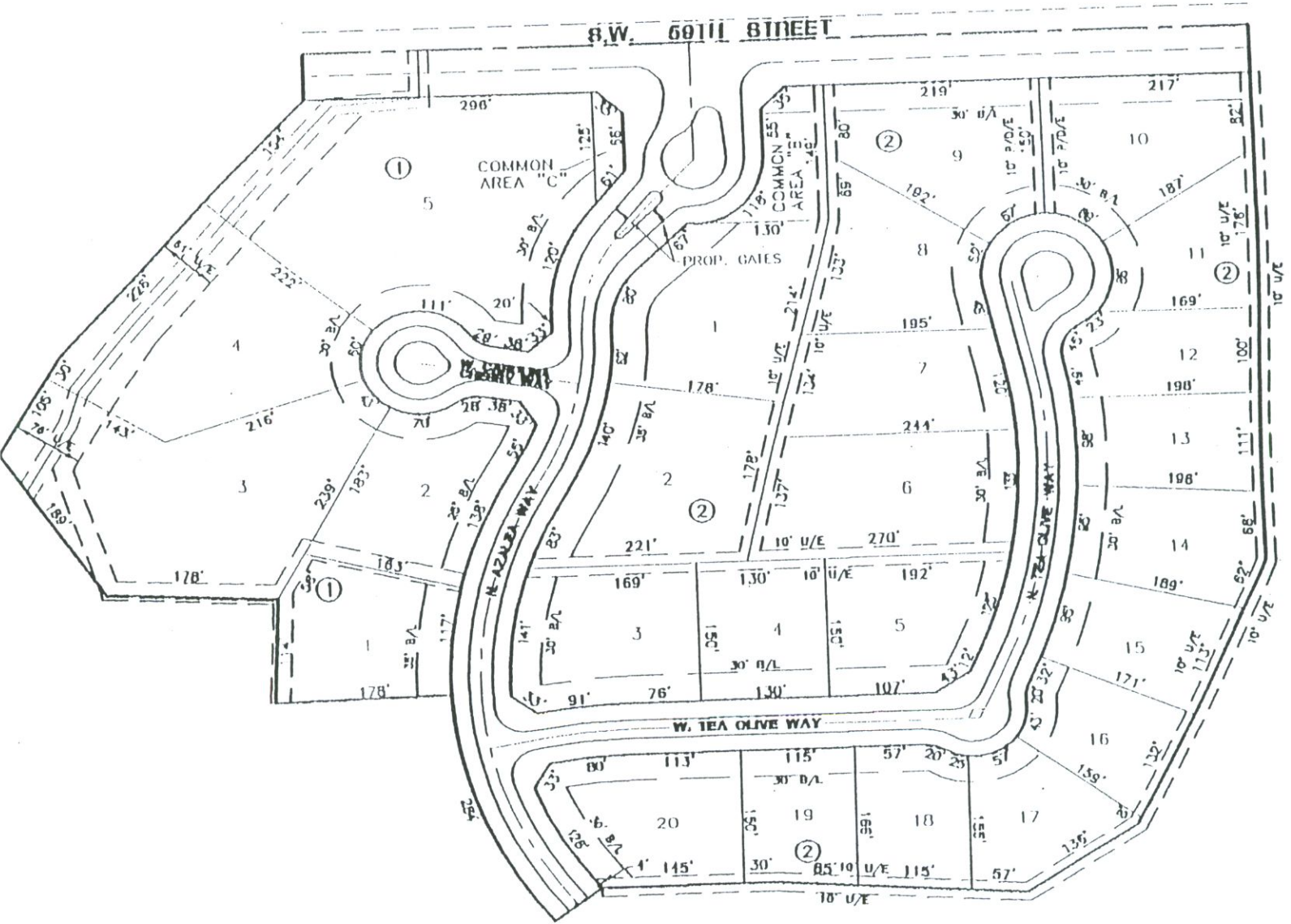
A tract of land located in the Northeast Quarter (NE/4) of Section Twenty-nine (29), Township Eleven (11) North, Range Five (5) West of Indian Meridian, City of Mustang, Canadian County, Oklahoma, more particularly described as follows: Commencing at the Northeast Comer of said NE/4; Thence West on the North line of said NE/4 a distance of 2424.40 feet to the Point of Beginning; Thence S05°00'31"E a distance of 456.73 feet; Thence West a distance of 90.77 feet; Thence S78°27'50"W a distance of 175.00 feet to a point on the West line of said NE/4, said point also being the East line of Quail Lake Estates, an addition to the City of Mustang, Canadian County Oklahoma; Thence N00°25'31"W on the West line of said NE/4 a distance of 490.00 feet to a point being the Northwest Comer of said NE/4; Thence East on the North line of said NE/4 a distance of 226.00 feet to the Point of Beginning, said tract containing 2.62 acres, more or less.

"Martin" tract

A tract of land located in the Northeast Quarter (NE/4) of Section Twenty-nine (29), Township Eleven (11) North, Range Five (5) West of the Indian Meridian, City of Mustang, Canadian County, more particularly described as follows: Commencing at the Northeast Comer of said NE/4; Thence West on the North line of said NE/4 a distance of 2018.40 feet to the Point of Beginning; Thence S20°00'08"W a distance of 484.20 feet; Thence West a distance of 200.50 feet; Thence N05°00'31"W a distance of 456.73 feet to a point on the North line of said NE/4; Thence East on the North Line of said NE/4 a distance of 406.00 feet to the Point of Beginning; Said Tract containing 3.17 acres, more or less.



Magnolia Trace Phase One Plat



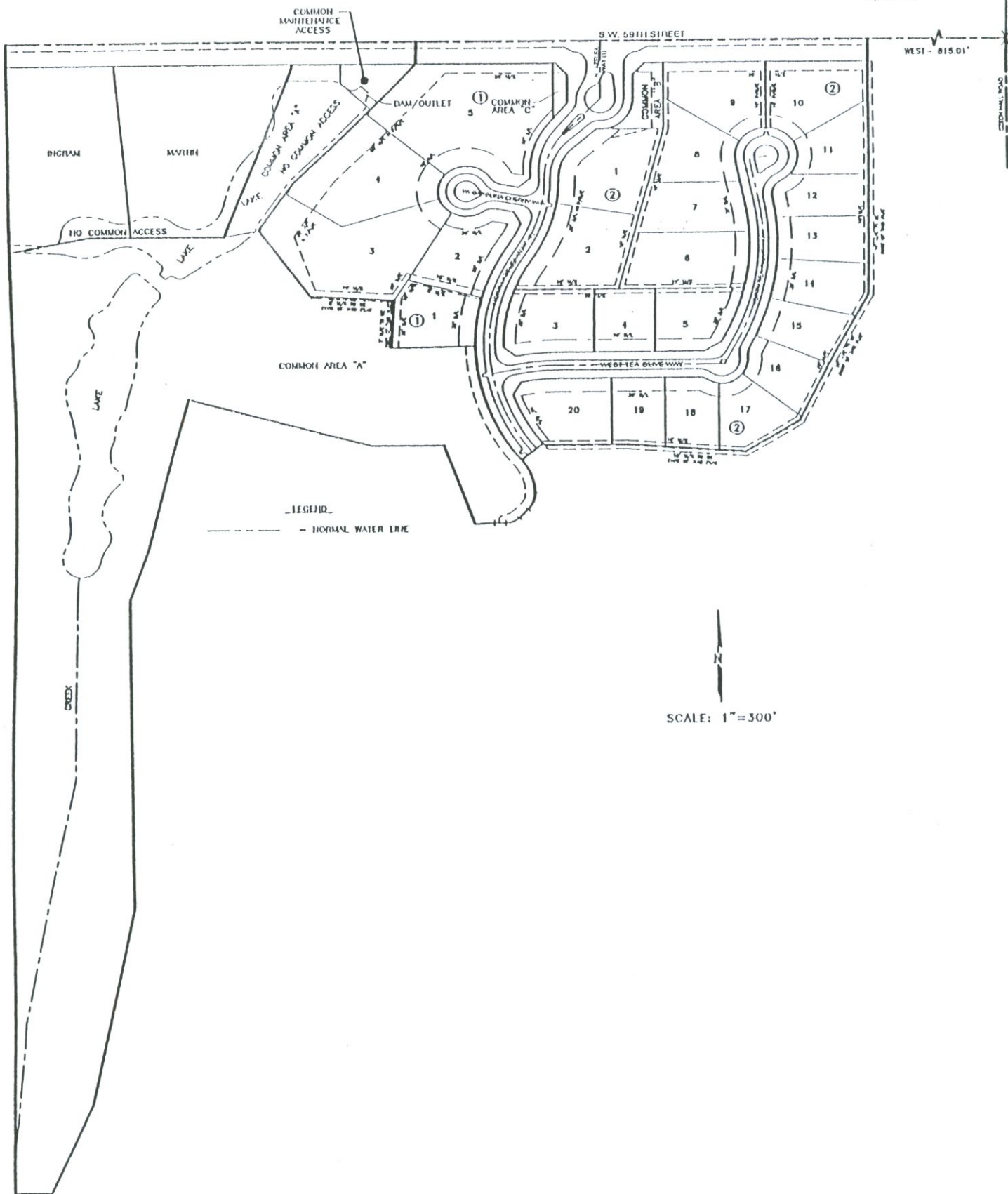
# Exhibit "D"

DECLARATION OF COVENANTS AND RESTRICTIONS  
OF MAGNOLIA TRACE

BOOK  
2916

PAGE  
775

P.O.C.  
R.E. CORNER OF NE 71  
SEC. 29, T-11-N, R-5-W, 1M  
FILED BY:  
L.S. 10  
11/02/1990





# Exhibit "D-1"

DECLARATION OF COVENANTS AND RESTRICTIONS  
OF MAGNOLIA TRACE

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SCALE: 1"=100'

P.O.C.  
N.E. CORNER OF N.E./4  
SEC. 29, T-11-N, R-5-W, I.M.  
FILED BY:  
L.S. 40  
11/02/1990

