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HOLD FOR TEXAS AMERICAN TITLE COMPANY

**W010084**

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS

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COUNTY OF HARRIS

This Declaration, made on the date hereinafter set forth by Millers Landing, L.L.C., a Texas limited liability company, hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of that certain property known as MILLERS LANDING, an unrecorded subdivision in Harris County, Texas, and described as follows:

All the lots in Millers Landing, a subdivision in Harris County, Texas, according to the Map or Plat thereof, recorded in under County Clerk's film code 518164 in the Map Records of Harris County.

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WHEREAS, it is the desire of Declarant to place certain restrictions, covenants, conditions, stipulations and reservations upon and against the said subdivision in order to establish a uniform plan for the development, improvement and sale of such property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in the said subdivision:

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon those above described lots in the said subdivision, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the land, which reservation shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to MILLERS LANDING HOMEOWNERS ASSOCIATION, a non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and those having only an interest in the mineral estate.

Section 3. "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described and called the said subdivision, subject to the Reservations set forth herein and/or in the said subdivision Plats, and/or Replats, if any, and any additional properties made subject to the terms hereof pursuant to the provision set forth herein.

Section 4. "Lot" and/or "Lots" shall mean and refer to any plot of land as described above or as described in any replat thereof, and all plats or lots annexed pursuant to Section 9 of Article VI hereof.

Section 5. "Common Area" shall mean all property owned by the Association for the common use and benefit of the owners, if any.

Section 6. "Declarant" shall mean and refer to Millers Landing, L.L.C., a Texas limited liability company and its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development or are so designated in writing by Declarant as the successors and assigns of all Declarant's rights hereunder.

Section 7. "Subdivision" shall mean and refer to the Properties and any additional properties which may hereafter be brought within the scheme of this Declaration pursuant to the provision set forth herein and hereafter brought within the jurisdiction of the Association.

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Section 8. "Architectural Control Committee" shall mean and refer to Millers Landing Architectural Control Committee provided for in Article IV hereof.

## ARTICLE II

### Reservations, Exceptions and Dedications

Section 1. Recorded subdivision maps of the Properties. The recorded subdivision maps of the Properties dedicate for use as such, subject to the limitations as set forth therein, the streets and easements shown thereon, and such recorded subdivision maps of the Properties further establish certain restrictions applicable to the Properties including without limitations certain minimum setback lines, and all dedications, limitations, restrictions and reservations are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property or any part thereof, whether specifically referred to therein or not.

Declarant shall have the right, but shall never be obligated, to re-subdivide into Lots, by recorded plat or in any other lawful manner, all or any part of the property contained within the outer boundaries of the Subdivision Plat and such Lots as replatted shall be subject to these restrictions as if such Lots were originally included herein. Any such replat must comply with all local, state, other applicable ordinances, statutes, regulations and requirements.

Section 2. Easements. Declarant reserves for the public use the recorded easements and rights-of-way for the purpose of constructing, maintaining and repairing a system of electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, and any other utility Declarant sees fit to install in, across and/or under the Properties. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Neither

Declarant nor any utility company using the easements herein referred to shall be liable for any damage done by them or their assigns, their agents, employees, or servants, to fences, shrubbery, trees or flowers or any other property of the Owner of the land covered by said easements.

Section 3. Title subject to easements. It is expressly agreed and understood that the title conveyed by Declarant to any of the Properties by Contract, Deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, storm sewer, electric lighting, electric power, telephone, telegraph or other utility purposes. The owners of the respective lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property which are utilized for or service other lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for use, maintenance and enjoyment of his Lot.

Section 4. Reservation of Right to Contract and Power-of-Attorney. Declarant hereby reserves the right to hereafter enter into non-exclusive franchise agreement(s) with one or more cable television companies, together with the right to obtain and retain all income, revenue and other things of value paid or to be paid by such cable television companies to Declarant pursuant to any such agreement(s) between Declarant and such cable television companies.

Declarant hereby makes, constitutes and appoints the Association, its true and lawful attorney for it, and in its name, place and stead, to negotiate, contract and execute non-exclusive agreements for cable television services with cable television providers for a price and under terms and conditions which, in the sole judgment of the Association to be in the best interest of the homeowners who now or in the future reside in the Subdivision.

Giving and granting unto said Attorney full power and authority to do and perform every act necessary and proper to be done in the exercise of the foregoing special power as

fully as Declarant might or could do, hereby ratifying and confirming all that its said Attorney shall lawfully do or cause to be done by virtue hereof.

For value received, receipt of which is hereby acknowledged, Declarant does hereby grant said attorney-in-fact the right to contract for, collect, obtain, retain and use for its own benefit all income, revenue and other things of value paid or to be paid any cable television provider which the Association contracts with for cable television services within the Subdivision. Declarant herein releases all rights to contract for, collect, obtain, retain and use for its own benefit all income, revenue and other things of value paid or to be paid by any cable television provider which the Association contracts with for cable television services within the Subdivision, and by such grant, Declarant intends that this Power of Attorney to be irrevocable by it, its successors or assigns, renouncing all right to revoke this power or to appoint any other person or entity to perform any of the acts enumerated herein.

### ARTICLE III

#### Use Restrictions

Section 1. Single family residential construction. No building shall be erected, altered, or permitted to remain on any Lot other than one detached single family dwelling used for residential purposes only, and not to exceed three (3) stories in height. Each such dwelling on a Lot shall have a parking area for two (2) or more cars. As used herein, the term "residential purposes" shall be construed to prohibit the use of said Lots for garage apartments, or apartment houses; and no Lot shall be used for business or professional purposes, nor for any commercial or manufacturing purposes. 100% of the exterior wall area, exclusive of openings, shall be of masonry, masonry veneer, masonry siding, vinyl siding or stucco construction unless otherwise approved in writing by the Architectural Control Committee. The roof of any building (including any garage or servant's quarters) shall be constructed or covered with asphalt or composition type shingles comparable in

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color to wood shingles, with a typical life of 25 years. The decision of such comparison or variation shall rest exclusively with the Architectural Control Committee. Any other type of roofing material shall be permitted only at the sole discretion of the Architectural Control Committee upon written request.

Section 2. Minimum square footage within improvements. The Lots are restricted to a dwelling with a minimum of nine hundred (900) square feet of livable area, exclusive of open porches and garages or carports, for a one-story dwelling. The total living area for a multi-story dwelling shall be not less than one thousand two hundred (1,200) square feet.

Section 3. Location of the improvements upon the Lot. Upon Lots One (1), Twelve (12), Thirty (30) and Thirty-Three (33), no structure shall be located on any Lot nearer than fifty (50) feet from the front property line. Upon all other Lots, no structure shall be located on any Lot nearer than one hundred (100) feet from the front property line. No structure shall be located on any Lot located nearer than Fifty (50) feet to Miller Road 2, unless approved in writing by the Architectural Control Committee. The main residential structure shall not be located on any lot nearer than ten (10) feet from the rear property line. Subject to the provisions of Section 5 below, no part of any house, building, carport or garage shall be located nearer than ten (10) feet to an interior side lot line or twenty (20) feet to any exterior lot line on a corner lot. For the purpose of this section, eaves, steps and unroofed terraces shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of the building on any lot to encroach upon another lot.

Section 4. Composite building site. Subject to the approval of the Architectural Control Committee, any owner of one or more adjoining Lots or portions thereof may consolidate or redivide such Lots or portions into one or more building sites with the privilege of placing or constructing improvements on such resulting sites, in which case the front

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footage at the building setback lines shall be measured from the resulting side property line rather than from the Lot lines as indicated on the recorded plats. Any such resulting building site must have a frontage at the building setback line of not less than eighty (80) feet and shall contain more than 0.5 acres of land.

In an event an owner of one or more lots consolidates two lots or less into one composite building site, each composite building site so constituted shall be considered one lot for purposes of all restrictions, covenants and conditions imposed against the property, including, but not limited to maintenance assessments, membership in the Association and voting rights as set forth in Articles VI and V, respectively. In the event of a consolidation of more than two lots into one composite building site, each lot or portion thereof over two lots shall be considered as an additional lot or lots for purposes of maintenance assessments as set forth in Article VI, but the composite building site shall be considered as one lot for all other purposes.

Section 5. Prohibition of offensive activities. No activity, whether for profit or not, shall be carried on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be, or may become an annoyance or a nuisance to the neighborhood. This restriction is waived in regard to the normal sales activities required to sell homes in the subdivision and the lighting effects utilized to display the model homes. Notwithstanding the foregoing prohibition, the Owner of a residence may have a "home office" if the activities of the Owner is totally maintained within the residential structure, the Owner does not advertise the location of such home office and the Owner does not allow deliveries, customers, invitees or any other third-party traffic to enter upon the Lot for business purposes. The Board of Directors hereby reserves the right to prohibit such a home office if the Board determines, in it's sole discretion, that the Owner has violated such home office privilege.

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Section 6. Use of temporary structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, with the exception of lawn storage or children's playhouses which have received Architectural Control Committee approval; provided, however, that Declarant reserves unto itself, its successors and assigns and Builders, the right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include, but not necessarily be limited to sales and construction offices, storage areas, model units, signs, and portable toilet facilities.

Section 7. Storage of automobiles, boats, trailers, recreational vehicles and other vehicles. No motor vehicle may be parked or stored on any part of any Lot, easement, right-of-way or common area, easement, right-of-way or common area unless such vehicle does not exceed either seven feet in height, and/or eight feet six inches in width and/or twenty-one feet in length and is concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans (the term "passenger vans" specifically excludes motor homes and recreation vehicles), motorcycles, pick-up trucks, or pick-up trucks with attached-bed campers, that are in operating condition, having current license plates and inspection stickers, and are in daily use as motor vehicles on the streets and highways of the State of Texas and which do not exceed either seven feet in height, and/or eight feet six inches in width and/or twenty-one feet in length. No motor vehicle may be parked or stored in the street adjacent to any Lot, with the exception of temporary parking of motor vehicles.

No non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment in any kind may be parked or stored, on any part of any lot, easement, right-of-

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way, or common area unless such object is concealed from public view inside a garage or other approved enclosure. The phrase "approved enclosure" as used in this paragraph shall mean any fence, structure or other improvement approved by the Architectural Control Committee. No unlicensed, or uninspected motor vehicles shall be allowed to be operated on the Lots or in the private or public right-of-ways which infringes upon any other Owners right to enjoyment of their Lot. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted in the street right-of-way or upon any Lot in view from any other Lot or any private or public right-of-way. If a complaint is received about a violation of any part of this Section, the Architectural Control Committee will be the final authority on the matter. This restriction shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity.

Section 8. Mineral operation. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot. No derrick or other structures designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 9. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other common household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No more than two (2) of each species of pet will be permitted on each Lot. If common household pets are kept, they must be confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from Lot, pet must be on a leash at all times. It is the pet owner's responsibility to keep the Lot clean and free of pet debris.

Section 10. Walls, fences and hedges. No hedge in excess of three (3) feet in height, walls or fence shall be erected or maintained nearer than ten (10) feet from the front Lot line. No side or rear fence, wall, or hedge shall be more than eight (8) feet high. All fences must be constructed of ornamental iron, wood, or masonry at least six (6) feet in height, and no chain link fences shall be placed on any lot without the express prior approval in writing of the Architectural Control Committee. Ownership of any wall, fence or hedge erected on a Lot by Declarant, home builder, Owner or any other party, shall pass with title to the Lots and it shall be Owner's responsibility to maintain said wall, fence or hedge thereafter.

Section 11. Visual obstruction at the intersections of public streets. No object or thing which obstructs site lines at elevations between two (2) feet and eight (8) feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points fifteen (15) feet from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner lots.

Section 12. Lot maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereof cut in a sanitary, healthful and attractive manner, edge grass and weeds where the vegetation meets the road that runs along the property lines and the drainage areas in front of their Lot up to the road, and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements as incident to construction of improvements thereon as herein permitted. All fences, if any, which have been erected on any Lot by Declarant or otherwise shall be maintained in good repair by Owner, and Owner shall promptly repair or replace the same in the event of partial or total destruction. The drying of clothes in full public view is prohibited and the owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to public view shall construct and maintain a drying yard or other suitable enclosure to screen the following from public view the

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drying of clothes, yard equipment, or storage piles, which are incident to the normal residential requirements of a typical family. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Containers for the storage of trash, garbage and other waste materials must be stored out of public view. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition and shall be stored out of public view. New building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. No trees with a diameter greater than 24" shall be removed from any Lot unless it is in danger of falling, diseased, is located within an area twenty (20) feet from any structure approved for construction by the Architectural Control Committee, or Owner has received prior written approval of the Architectural Control Committee.

In the event of violation by the Owner or occupant of any Lot or any covenant, condition or restriction imposed upon the Owner of the Lot in this Article III and the continuance of such violation after ten (10) days written notice thereof, or in the event the Owner or occupant has not proceeded with due diligence to complete the appropriate repairs and maintenance after such notice, the Association shall have the right (but not the obligation), through its agents or employees, to repair, maintain or restore the Lot, the exterior or the residence, the fence and any other improvement located thereon. To the extent necessary to prevent rat infestation, diminish fire hazards and accomplish any of the above needed repairs, maintenance and/or restoration, the Association shall have the right, through its agents and employees, to enter any residence or improvements located upon

such Lot. The Association may enter onto any Lot and/or improvement and cut the weeds and grass, edge the lawn around the street, cause to be removed garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions. The Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. The Owner and occupant agree by the purchase and occupation of the Lot to pay such statement immediately upon receipt. The cost of such work, plus interest thereon at the maximum rate permitted under the laws of the State of Texas shall become a part of the assessment payable by said Owners and payment thereof shall be secured by the maintenance lien hereinafter retained. The Association, its agents and employees shall not be liable, and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized herein.

Section 13. Signs, advertisements, billboards. Except for signs owned by Declarant or by builders advertising their model homes during the period of original construction and home sales, no sign, poster, advertisement or billboard or advertising structure of any kind other than a normal "For Sale" sign not to exceed five (5) square feet in total size may be erected or maintained on any Lot in the Subdivision. Declarant, or its assigns, will have the right to remove any sign, advertisement, billboard, or advertising structure that does not comply with the above, and in so doing shall not be subject to any liability of trespass or other tort in connection therewith or arising out of such removal. The Declarant and the Association shall have the right to erect identifying signs at each entrance to the Property.

Section 14. Maximum height of antenna. No radio or television aerial wires, radio or television antenna, shall be maintained on any portion of any Lot that is visible from the front side of said Lot; nor shall any antenna of any style be permitted to extend above the roof line of the main residential structure on said Lot, nor be located behind the back building

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line of said Lot. No antenna of any style, or antenna wires shall be visible from the street which runs in front of said Lot or the street which runs on the side of any corner Lot. No satellite dish of any kind which is visible from any ground location off of the Lot shall be maintained on any portion of any Lot unless such satellite dish is adequately screened from view. Any screened enclosure must have prior approval from the Architectural Control Committee.

Section 15. Private Utility lines. All electrical, telephone, and other utility lines and facilities which are located on a Lot and are not owned by a governmental entity or a public utility company shall be installed in underground conduits unless otherwise approved in writing by the Architectural Control Committee.

Section 16. Electrical Distribution System. These restrictions do hereby require that individual electrical service drops be installed to each dwelling. The Owners of each Lot will therefore comply with the Reliant Energy Company's policy regarding such service installations, and the Owners do hereby agree to pay any charges which might be incurred for the installation of the service as set forth in the Company policy. The Reliant Energy Company's policy is subject to change from time to time without notice.

The Owners shall ascertain the location of said service drops and keep the area over the route of said service drops free of excavations and clear of structures, trees and other obstructions; and Reliant Energy may install, maintain, repair, replace and remove said service drops, and open the ground for any such purpose or purposes; and no payment will be due or made by any utility for such use or activity.

Section 17. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 18. Home Maintenance. All components of homes and other structures must be kept in good repair, including without limitation, exterior walls, roofs, storage sheds,

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garage doors and gutters. All components of homes and other structures must be maintained so as to preserve the attractiveness thereof. Exterior wall coverings must be approved by the Architectural Control Committee prior to the use of such wall coverings. Exterior paint colors must be approved by the Architectural Control Committee prior to any exterior painting or repainting. In the event of default on the part of the Owner or occupants of any Lot in observing the above requirements or any of them, such default continuing after ten (10) days' written notice thereof, Declarant, its assigns or the Association, may, without being under any obligation or duty to so do, in trespass or otherwise, enter upon said Lot, to cure such default in a manner necessary to secure compliance with these restrictions and to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work, plus interest at the highest rate allowed by law, if the charge remains unpaid for more than 30 days from the date of notification to Owner or occupant. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof.

Section 19. Landscaping. Each homesite shall, at a minimum, have the following landscape improvements installed within 30 days after the completion of the home construction or installation:

Seeded or sodded front yard from the street right of way to the front of the home.

10 – 5 gallon sized shrubs and 2 – 10 gallon shrubs.

2 trees - 3 inch caliper or greater.

Section 20. Decks And Porches. All decks and porches shall be constructed on-site out of concrete or wood. No pre-formed stairs, porches or decks shall be permitted.

Section 21. Driveways. Each residence shall have a concrete, asphalt, limestone or crushed concrete driveway. If the street is cracked, chipped, creating ponding and/or broken on the street front or street side of all Lots due to construction activity by Owner, or Owner's agents and contractors, these damaged areas are to be repaired or replaced by the Builder or Owner of the dwelling on each Lot prior to occupancy of the dwelling on said Lots. Any paving material other than those specified is hereby prohibited, unless approved in writing by the Architectural Control Committee.

Section 22. Non-Site Built Homes. Structures that are not constructed on the Property shall not be placed or maintained on a Lot until the Architectural Control Committee has approved the design, color, appearance and condition of same and has issued a written letter of approval. Any modular, mobile or manufactured home must be manufactured by a commercial manufacturer, in good repair and of an attractive design and appearance. Modular, mobile or manufactured homes shall be 1997 models or newer and shall be no less than a double wide unit. All exterior walls must be painted or stained, unless they are constructed of an approved commercial exterior material other than metal. Within thirty (30) days of approval, each modular, mobile or manufactured home structure shall be tied down and fully enclosed around the bottom in a manner and with materials approved by the Architectural Control Committee. Further, a recent photograph of said modular, mobile or manufactured home shall be submitted to the Architectural Control Committee for approval prior to the installation of said home on a Lot. Any building, structure or improvement commenced on any Lot shall be completed as to exterior finish and appearance within ninety (90) days from the setting of forms for the foundation of said building or structure. Each modular, mobile or manufactured home must have the tongue and axles removed therefrom immediately upon being placed upon a Lot. All modular, mobile or manufactured homes and foundations shall conform with the minimum existing governmental regulations for homes

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and foundation design. Each modular, mobile or manufactured home must be entirely skirted with brick or materials which match the outside of the building approved by the Architectural Control Committee.

#### ARTICLE IV

##### Architectural Control Committee

Section 1. Approval of building plans. No building, fence, wall, structure, improvement, exterior appurtenance, or exterior corporeal hereditament, except landscaping (as defined below), shall be commenced, erected, placed, or altered on any Lot, nor shall any exterior addition to or change or alteration, other than landscaping, be made to the Lot, improvements, appurtenances, or corporeal hereditaments until the construction plans and specifications describing the nature, kind, shape, height, materials and a plot plan showing the location of same, have been approved in writing as to harmony of exterior design and color with existing structures, as to location with respect to topography and finished ground elevation, and as to compliance with minimum construction standards by the Architectural Control Committee of the Millers Landing subdivision. Landscaping shall mean living plants, trees, shrubs, flowers, etc., and utilization of non-living material necessary for growth, i.e., bark mulch, etc.; however, trellises, window boxes, arbors, and permanent brick borders must have Architectural Control Committee approval. Landscape timbers, and bricks which are same color as the bricks on the dwelling and without mortar do not need Architectural Control Committee approval unless they exceed a height of two (2) feet. Nothing herein shall be construed as requiring Architectural Control Committee approval for the interior of any building, structure or improvement. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee, or its designated representative prior to commencement of construction. The Architectural Control Committee may require the submission of such

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plans, specifications, and plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect at its entire discretion. The Architectural Control Committee shall have full and complete authority to approve construction of any improvement on any Lot, and its judgment shall be final and conclusive. The approval or lack of approval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by such Committee including, without limitation, any warranty or representation to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations.

Section 2. Committee Membership. The Architectural Control Committee members shall be initially composed of Brad Dill, Dennis Reilly and Mary Daily, who by majority vote may designate a representative to act for them. Declarant hereby retains its rights to assign the duties, powers and responsibilities of the Architectural Control Committee to the Association at any time, but not later than when one hundred percent (100%) of all lots and all subsequent sections of Millers Landing, if any, are occupied by residents, and the term "Architectural Control Committee" herein shall include the Association, as such assignee. At any time, the then record owners of a majority of the Lots shall have the power through a duly recorded instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties. The address of the committee is 450 North Sam Houston Parkway East, Suite 152, Houston, Texas 77060, or as may be changed from time-to-time, without notice.

Section 3. Replacement. In the event of death or resignation of any member or members of said committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve plans, specifications, and plot plans submitted or to designate a representative with like authority.

Section 4. Minimum construction standards. The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and such Architectural Control Committee shall not be bound thereby.

Section 5. Term. The duties and powers of the Architectural Control Committee and of the designated representative shall cease on and after ten (10) years from the date of this instrument. Thereafter, the Board of Directors of the Association shall have all of the rights, benefits and powers provided herein for the Architectural Control Committee.

Section 6. Variances. Article III of this Declaration contains a number of provisions wherein the Architectural Control Committee is expressly granted the authority, in its sole discretion, to permit variances from the effect of a particular restrictive covenant. The Architectural Control Committee may require the submission to it of such documents and items (including as examples but without limitation, written request for and description of the variances requested, plans, and specifications, plot plans and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for a variance. If the Architectural Control Committee shall approve such request for a variance, the Architectural Control Committee will evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Architectural Control Committee to approve the variance (including, as examples but without limitation, the type of alternate materials to be permitted, the alternate fence height approved or specifying the location, plans and specifications applicable to an approved garage), and signed by a majority of the then members of the Architectural Control Committee (or by the Committee's designated representative if one has been designated under the authority contained in Section 2 above).

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Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from Architectural Control Committee; or (b) failure by the Architectural Control Committee to respond to the request for variance within thirty (30) days of the submission requesting such approval. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning, and/or the terms of the Architectural Control Committee shall have expired and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted, it being the intention of Declarant that no variances be available except in the discretion of the Architectural Control Committee or, if it shall have succeeded to the authority of the Architectural Control Committee in the manner provided herein, the Board of Directors of the Association.

## ARTICLE V

### MILLERS LANDING HOMEOWNERS ASSOCIATION

Section 1. Membership and voting rights. Every owner of a lot subject to maintenance charge assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be Owners as defined in Section 1 of Article V, with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. 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 Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happenings of either of the following events, whichever occurs earlier:

- a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- b) on January 1, 2011.

The Class A and Class B members shall have no rights as such to vote as a class, except as required by the Texas Non-Profit Corporation Act, and both classes shall vote together upon all matters as one group.

Section 3. Non-Profit Corporation. MILLERS LANDING HOMEOWNER'S ASSOCIATION will be formed as a non-profit corporation; and it shall be governed by the Articles of Incorporation of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 4. By-Laws. The Association may make whatever rules or by-laws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof.

Section 5. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours.

## ARTICLE VI

### Maintenance Assessments

Section 1. Creation of the lien and personal obligation of assessments. Each Lot in

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the Properties is hereby subjected to an annual maintenance charge, and the Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interests, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them.

Section 2. Purpose of assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of common areas, if any. The responsibilities of the Association shall include, by way of example but without limitation, at its sole discretion, and any and all of the following: maintaining parkways, entry areas, or fountain areas, if any; maintaining rights-of-way, easements, esplanades and other public areas, if any; construction and operation of all street lights, if any; purchase and/or operating expenses of recreation areas, if any; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Properties to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment, employing peace officers and watchmen; if desired, caring for vacant Lots and doing any other thing necessary

or desirable in the opinion of the Association to keep the properties in the Subdivision neat and in good order, or which is considered of general benefit to the owners or occupants of the Properties. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 3. Rate of assessment. The annual and special assessments shall be fixed at a uniform rate as follows:

- a) Owners (excluding Declarant, its successors or assigns and Builders), as defined herein, shall pay one hundred percent (100%) of both annual and special assessments; and
- b) The Declarant, its successors or assigns and Builders, as defined herein, shall pay fifty percent (50%) of annual and special assessments attributable to their Lots.

The annual maintenance charge for a Lot shall commence to accrue on the later of (i) the date these Covenants, Conditions and Restrictions are recorded, (ii) written acceptance of these Covenants, Conditions and Restrictions by the Board of Directors of the Association, or (iii) the date of substantial completion of the Lot as certified in writing by the Declarant's engineer; and shall continue to accrue annually. The maintenance charge for the year of commencement shall be Prorated from the commencement date until the last day of the year of commencement, and said portion shall be due and payable on January 1 of the succeeding year. After the year of such recording, the maintenance charge will be collected annually in the amount of the annual assessment, payable on January 1 of the same year as the annual assessment. The rate at which each Lot will be assessed will be determined annually, and may be adjusted from year to year by the Board of Directors of the Association as the needs of the Subdivision may, in the judgment of the Board of Directors of the Association, require; provided that such assessment will be uniform and in no event will such

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assessment or charge exceed \$10.00 per Lot per month, or \$120.00 per Lot per year, unless increased as provided below. The Association can collect special assessments as well as annual charges above described whenever the members so vote.

Section 4. Maximum annual assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$10.00 per Lot, per month. From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership. The maximum annual assessment may be increased above the ten percent (10%) increase described above only by approval of two-thirds (2/3) of each class of Members in the Association present and voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, and shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the annual assessment period, which shall begin on the first day of January of each year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The dates shall be established by the Board of Directors.

Section 5. Special Assessments. In addition to the annual assessments authorized above, 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, reconstruction, repair or replacement of an improvement upon the Common Area, including but not limited to the landscaping, fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

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Section 6. Effect of nonpayment of assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate set by the Board of Directors of the Association, provided that such interest rate is not greater than the maximum rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the facilities or services provided by the Association or by abandonment of his Lot.

Section 7. Subordination of the lien to mortgages. To secure the payment of the maintenance fund and all annual and special assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each Deed (whether specifically stated therein or not) by which the Declarant shall convey such lots, a Vendor's Lien for benefit of the Association, said lien to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that each such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the instance and request of the Declarant and the Owner of any such Lot to secure the payment of monies advanced on account the purchase price and/or the construction of improvements on any such lot to the extent of any such maintenance fund charge or annual or special assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further provided that as a condition precedent to any proceeding by the Association to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes, the Association shall give the holder of such first mortgage lien at least thirty (30) days written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage holder by prepaid U.S. Registered Mail, and shall contain a statement of the delinquent maintenance charges or annual or special

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assessments upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Lot covered by such mortgage lien to the holder thereof. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment 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.

Section 8. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Association Common Areas, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a) The right of the Association to charge reasonable admission and other fees for the use of designated recreational facility situated upon the Association Common Area, if any. Failure of Owner to pay such fees after having made such election shall give rise to the same liability and lien rights as set forth above, and shall be subject to the same subordination as set forth herein in the case of assessments.
- b) The right of the Association to suspend the voting rights and right to use the Common Area, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and to publish rates and regulations for the use of the common areas including the right of suspension of the right and easement for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations.
- c) The right of the Association to dedicate or transfer all or any part of the Common Area, if any, to any public agency, authority or utility for such

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purposes and subject to such conditions as may be placed upon the Association or any portion of the Common Area, if any, to the Association. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each Class of members agreeing to such dedication or transfer has been recorded. Notwithstanding the foregoing, the Association shall have the right to grant an easement for public utility purposes without concurrence or approval of the membership.

Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area, if any, and the facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 9. Additions to Existing Property. Additional lands may become subject to the scheme of this Declaration in the following manner:

- a) Additions by Owners. Upon the approval of the Board of Directors of the Association, in its sole discretion, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record an Annexation Agreement and Declaration of Covenants and Restrictions upon the satisfaction of the following conditions. Any additions authorized under this and the succeeding subsections, shall be made by filing of-record a Declaration of Covenants and Restrictions and Annexation Agreement with respect to the additional property or properties which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Such Declaration must impose an annual maintenance charge assessment on the property covered thereby, on a uniform, per

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Lot basis, substantially equivalent to the maintenance charge and assessment imposed by this Declaration, and may contain such complimentary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands. Notwithstanding the foregoing, additional stages of development may be annexed by Declarant (whether or not Declarant owns title to the land constituting the additional stage of development at the time of annexation) without such approval of the membership, but such annexation may require government approvals as stated herein and such annexation shall not be effective until such time as all approvals have been obtained.

b) Mergers. Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration and all Supplemental Declarations, together with the covenants and restrictions applicable to the properties of the other association as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration or any Supplemental Declaration.

Section 10. Notice and Quorum for any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose taking any action authorized under Sections 3 and 4 of this Article IV, shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) percent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present at any such meeting, the meeting shall be adjourned but another meeting may be called subject to the same notice requirement, but the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum applicable in the case of the preceding meeting to each class of membership. The subsequent meeting shall be held not more than sixty (60) days following the preceding meeting.

ARTICLE VII

General Provisions

Section 1. Term. These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the Lots has been recorded agreeing to change or terminate said covenants in whole or in part. The terms and provisions of these restrictions may be amended at any time when an instrument setting forth said changes and signed by those persons holding two-thirds (2/3) of votes in the Association is placed on record in the real property records of Harris County, Texas. Upon any violation or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other lot owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to

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violate any such covenant and either to prevent him or them from doing so or to recover damages or other dues for such violations. The Association or Lot Owner who successfully prosecutes an action in law or in equity shall be entitled to recover from the defendant any and all costs, fees and expenses, including attorney's fees, incurred by the Association and/or Lot Owner in compelling compliance with these Restrictions. Failure by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation of the Association and this Declaration of Covenants, Conditions and Restrictions, the Declaration of Covenants, Conditions and Restrictions shall control, and in the case of any conflict between the By-Laws of the Association and this Declaration of Covenants, Conditions and Restrictions the Declaration of Covenants, Conditions and Restrictions shall control.

Section 3. Severability. Invalidation of any one of these covenants by judgment or other court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 4. Delegation of Use. Any Owner may delegate in accordance with the By-Laws of the Association their right of enjoyment to the Common Area and facilities to the members of their family, their tenants or contract purchasers who reside on the property.

Section 5. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. If any term, clause, condition, restriction or covenant of this Declaration shall be in conflict with any statute or ordinance

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established by the State of Texas, County of Harris, or any other applicable governmental authority, such statute or ordinance shall take precedence.

Section 6. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 7. Lienholder approval. Houston Community Bank, with its business domicile located in Harris County, Texas, as Lienholder of the above described property joins in the execution hereof to evidence its consent hereto, and hereby subordinates its liens to the reservations, easements, covenants, restrictions, charges and conditions hereof.

Section 8. FHA/VA/HUD Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Department of Housing and Urban Development, and/or the Federal Housing Administration and/or the Veteran's Administration: annexation of additional property into the Association; dedication of Common Area; and, any amendment of this Declaration of Covenants, Conditions and Restrictions.

555-23-8489

EXECUTED this 8th day of August, A.D., 2002.

DECLARANT:

(3)

MILLERS LANDING, L.L.C., through it's manager,  
BD Realty Advisors, L.L.C.

*20*

By: *Brad Dill*

Brad Dill, President, BD Realty Advisors, L.L.C.

LIENHOLDER:

HOUSTON COMMUNITY BANK

*hr*

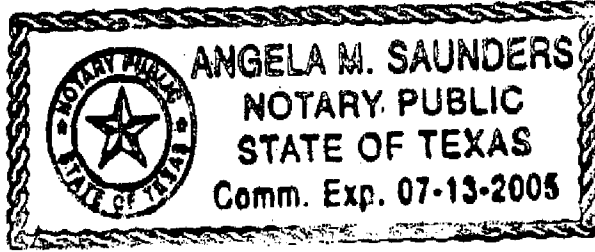
By: *A. McKellar*

Name: *Sheryl McKellar*

Title: *President*

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STATE OF TEXAS  
COUNTY OF HARRIS



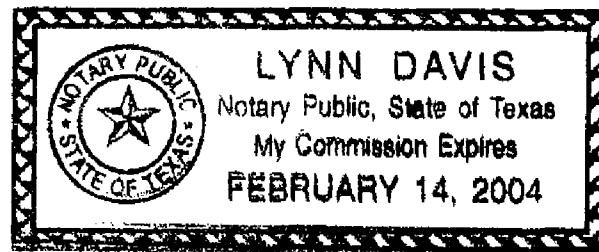
THIS INSTRUMENT was acknowledged before me on August 8, 2002 by Brad Dill, President of BD Realty Advisors, L.L.C., manager of Millers Landing, L.L.C., a Texas limited liability company, on behalf of said company.

*Angela M. Saunders*  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF HARRIS

THIS INSTRUMENT was acknowledged before me on August 13, 2002, by SHERYL MCKELLAR, PRESIDENT of Houston Community Bank, a banking association, on behalf of said bank.

*Lynn Davis*  
NOTARY PUBLIC, STATE OF TEXAS



AFTER RECORDING RETURN TO:  
Millers Landing, L.L.C.  
c/o BD Realty Advisors, L.L.C.  
480 North Sam Houston Parkway, East  
Suite 110  
Houston, Texas 77060

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED. In the Official Public Records of Real Property of Harris County, Texas on

AUG 14 2002



*Beverly B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

55-23-0411

FILED

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*Beverly B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

