

Wise County
HONORABLE Sherry Parker-Lemon
COUNTY CLERK
Decatur, Texas 76234



70 2009 00045460

Instrument Number: 2009-45460

Recorded On: August 10, 2009 As Official Records

Parties: SOUTH MARTIN BRANCH DEV LP ET AL
To SOUTH MARTIN BRANCH SUBDIVISION

Billable Pages: 22
Number of Pages: 23

Comment: DECL OF COVENANTS

(Parties listed above are for Clerks reference only)

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

Official Records 100.00
Total Recording: 100.00

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

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

File Information:

Document Number: 2009-45460
Receipt Number: 213891
Recorded Date/Time: August 10, 2009 04:05:22P
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User / Station: V Gaona - Middle Counter

Record and Return To:

SOUTH MARTIN BRANCH DEVELOPMENT LP
2111 HWY 287 SOUTH
DECATUR TX 76234



I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the volume and page of the named records of Wise County.

Sherry Parker-Lemon
Wise County Clerk

Sherry Parker-Lemon



A CERTIFIED COPY: Pg 1 of 23
Attest: 06/25/2015 11:41:10 AM
SHERRY LEMON, COUNTY CLERK
Wise County, Texas

By: *John N. Curry*, Deputy



Declaration of Covenants, Conditions and Restrictions
of
the South Martin Branch Subdivision
City of Decatur, Wise County, Texas
[with Property Owners Association]

Date: August 10, 2009

Declarant: South Martin Branch Development, L.P.
Address: 2111 Hwy. 287 South
Decatur, Texas 76234
[Wise County, Texas]

Association: South Martin Branch Homeowners Association, a Texas nonprofit
corporation
Address: 2111 Hwy. 287 South
Decatur, Texas 76234
[Wise County, Texas]

Property: The Property which is, and shall be held, Transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Decatur, Wise County, Texas, and is more particularly described on the Plat of South Martin Branch Subdivision, to the City of Decatur, Wise County, Texas as recorded in Volume 2071, Pages 635 thru 637, of the Real Property Records of Wise County, Texas, said Plat being incorporated herein by reference for all purposes, together with any replat of or amendment to the Plat made in accordance with this Declaration.

Definitions

“ACC” means the Architectural Control Committee established in this Declaration.

“Assessment” means any amount due to the Association by an Owner or levied against an Owner by the Association under this Declaration.

“Association” means South Martin Branch Homeowners Association, Inc., a Texas nonprofit corporation.

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

“Builder” means any Owner of a Lot who intends to, or is the process of, constructing a Residence on the Lot for the purpose of sale to a consumer.

“Bylaws” mean the Bylaws of the Association adopted by the Board.

“City” means the City of Decatur, Wise County, Texas.



A CERTIFIED COPY: Pg 2 of 23
Attest: 06/25/2015 11:41:10 AM
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By: John M. Curry, Deputy
John M. Curry



“Common Area” means all property within the Subdivision designated as “Green Space” and “Open Space” as shown on the Plat. Declarant will convey the Green Space and Open Space to the Association. The Common Area also includes the entrance area into the Subdivision at the intersection of Martin Branch Road and F.M. Highway 730.

“Covenants” means the covenants, conditions, and restrictions contained in this Declaration.

“Declarant” means South Martin Branch Development, L.P. a Texas limited partnership and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

“Easements” means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

“Governing Documents” means this Declaration and the Certificate of Formation and Bylaws of the Association, and standards of the ACC, as amended.

“Lot” means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property recorded in Volume 1960, Pages 262 thru 268, of the Real Property Records of Wise County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Residence” means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

“Start of Construction” and “Commencement of Construction” means the date foundation forms are set.

“Single Family” means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

“Structure” means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, mailbox, tennis court, swimming pool, outbuilding, or recreational equipment.

“Subdivision” means the Property covered by the Plat and any additional property made subject to this Declaration.

“Townhome Lot” means those lots included in Lots 26 -36, Block F.



A CERTIFIED COPY: Pg 3 of 23
Attest: 06/25/2015 11:41:10 AM
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“Vehicle” means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

Property Subject to this Declaration

Description. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is described above. Declarant shall have the right, in its sole discretion, to change the boundaries of the Subdivision and to annex additional land within the Subdivision, in each case by recording an amendment, correction or supplement to this Declaration and (if applicable) by recording a new or amended plat for the Subdivision, including land to be included as a new phase of the Subdivision. On the recording of any amendment, correction or supplement to this Declaration, or on the recording of any new or amended plat for the Subdivision, the number of Lots shall automatically be changed, based on the amended, corrected or supplemental Declaration and/or the new or amended plat.

Mineral Exception. Declarant intends to not convey any Mineral Rights to the Association or to any purchaser of any Lot in the Subdivision. Accordingly, there is hereby excepted from the Property, and Declarant expressly excepts and reserves from all sales and conveyances of the property in the Subdivision, including all Lots and Common Areas, all oil, gas, and other minerals in, on and under, and that may be produced from the Property.

Clauses and Covenants

A. Imposition of Covenants

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

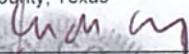
3. Each Owner and occupant of a Lot agrees to comply with the Governing Documents and agrees that failure to comply may subject him to a fine, an action for amounts due to the Association (including, but not limited to, foreclosure of the Association’s Assessment Lien), damages, or injunctive relief.

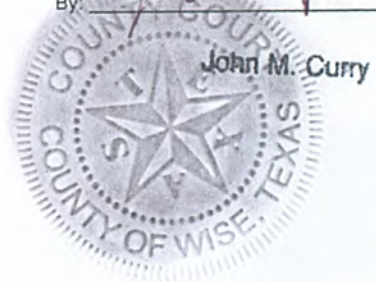
B. Plat and Easements

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.



A CERTIFIED COPY: Pg 4 of 23
Attest: 06/25/2015 11:41:10 AM
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Wise County, Texas

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2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

C. Use and Activities

1. *General.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family. No use shall be permitted on any Lot which is not allowed under the Governing Documents and under applicable public orders, ordinances and other laws and regulations currently in effect or as may be amended by the City or other controlling governmental authorities. Each Owner, occupant or other user of any Lot, shall at all times comply with the Governing Documents and with any and all laws, ordinances, policies, rules, regulations and orders of all governmental bodies having jurisdictional control over the Lots and this Subdivision ("Governmental Requirements"). In the event a conflict exists between the Governmental Requirements and the Governing Documents, the most restrictive requirements shall prevail, unless such would result in a violation of a Governmental Requirement, in which case the Governmental Requirement will control, and in that case, compliance with such Governmental Requirement will not be a violation of the Governing Documents.

2. *Prohibited Activities.* The following activities are prohibited on all Lots, Common Areas, and public streets of the Subdivision—

- a. any activity that is prohibited by Paragraph C. 1. above;
- b. any illegal activity;
- c. any nuisance or noxious or offensive activity or anything which may be or become an annoyance to other Owners. The Board of Directors of the Association shall have the sole and exclusive discretion and authority to determine what constitutes a nuisance or annoyance.
- d. any dumping, collection, or storage of rubbish, trash, garbage, refuse, or other waste material, except those confined and contained in appropriate garbage containers located in appropriate area of the rear yard of the Lot, and screened from view from the street or adjoining Lots or Common Areas. No order shall be permitted to arise therefrom so as to render the Lot, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot or Common Area, in the vicinity thereof, or to the occupants or users thereof. Such garbage containers shall be exposed to



A CERTIFIED COPY: Pg 5 of 23
Attest: 06/25/2015 11:41:10 AM
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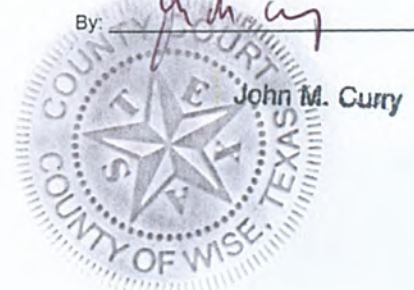
view only when set out for a reasonable time for trash collection, not to exceed twelve (12) hours before and after scheduled trash collection times;

- e. any storage of—
 - i. building materials except during the construction or renovation of a Residence or a Structure;
 - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; the parking of a vehicle that does not have a current license registration or state inspection in the driveway of, or in the street adjacent to a Lot, is presumed to be storage of the vehicle; or
 - iii. unsightly objects, including, but not limited to, lumber, grass, shrub or tree clippings, or plant waste, metals, bulk material, or scrap material, unless completely shielded within a Structure or screened from view from the street, other Lots, and the Common Areas;
- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry, except for common domesticated household pets, such as dogs and cats, not to exceed four (4) total, confined to a fenced yard or within the Residence; all pets shall be controlled at all times to prevent disturbance of other Lot Owners or their tenants, guests and invitees. The Owner responsible for the presence of any animal in the Subdivision, whether that presence is due to the action, inaction, or consent of that Owner, a member of that Owner's family, or that Owner's guests, invitees or tenants, shall (1) be liable for the acts of the animal that disturb or cause damage to any other Owner, a member of their family, their guests, invitees, or tenants, or their person or property; and, (2) be responsible to clean up after such animal when the animal uses, soils, or defaces any other Lot, the Common Areas, public right of way or easement.
- h. any use of the Lot, Residence and Structures, directly or indirectly, for business, commercial, manufacturing, mercantile, storage, vending or other nonresidential uses; except Declarant, its successors and assigns, may use any portion of its Lots, or of the Common Areas, for a display and sales office in connection with the marketing and sale of Lots in the Subdivision; and further excepting the use of the Lot, Residence and Structures for professional and administrative occupations, conducted in conformity with all governmental laws, regulations and ordinances, as



A CERTIFIED COPY: Pg 6 of 23
Attest: 06/25/2015 11:41:10 AM
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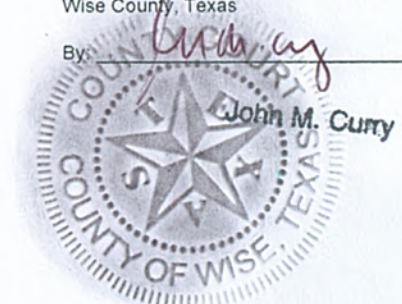
long as such professional and administrative occupations are merely incidental to the use of the Lot as a Residence;

- i. clotheslines and the drying of clothes in a manner that is visible from any street;
- j. the display of any sign except—
 - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale;
 - ii. political signage not prohibited by law or the Governing Documents; and,
 - iii. Declarant's signs used to advertize the property during development, construction and sale of Lots.
- k. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- l. moving a previously constructed house onto a Lot;
- m. changing, altering, interrupting, or interfering with a drainage pattern without ACC approval;
- n. hunting and shooting;
- o. occupying a Structure that does not comply with the Governing Documents or the construction standards of the City for a Residence;
- p. placing or installation of any aluminum foil, reflective film or similar treatment on any window or doors; Unless prior approval of the ACC is obtained, no highly reflective finish shall be used on exterior surfaces of any Residence or Structure, including without limitation, roofs, projections above roofs, retaining wall, doors, trim, reflective or shiny aluminum windows, fences, pipes and equipment, and paving. Glass which is not mirrored is acceptable.
- q. placing or installation of any sports equipment or structure in the front yard area of a Lot; all such equipment or structure must be located in the enclosed year yard and not be visible from the street(s), adjoining Residences, or the Common Areas;
- r. exterior fires or burning of any kind, except as contained in appropriate equipment designed for that purpose (e.g., charcoal and gas cooking grills,



A CERTIFIED COPY: Pg 7 of 23
Attest: 06/25/2015 11:41:10 AM
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Wise County, Texas

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chimineas, fire pits, fireplaces, etc.) and conducted in such a manner as to not create a fire hazard.

- s. placing or installing any tent, shack, shed, or other temporary building, Structure or improvement of any kind on a Lot, for more than 24 hours, excepting only those approved by the ACC to be used in connection with construction on the Lot;
- t. allowing any garage, or portion thereof, trailer, camper, motor home, recreational or other type of vehicle to be used as a residence, either temporarily or permanently; and,
- u. installing or placing of wind turbines on a Lot.
- v. installing or placing of solar panels on any Residence, Structure or Lot, except as approved by the ACC.

D. Construction and Maintenance Standards

1. *Lots*

- a. *Consolidation of Lots.* An Owner may own more than one Lot, but can not consolidate adjoining Lots into one site for the construction of a Residence.
- b. *Subdivision Prohibited.* No Lot may be further subdivided; provided however, the Declarant shall have, and reserves the right, at any time, and from time to time, upon the consent of the City and with the joinder and consent of the directly affected Lot Owners, to file a replat of any Lots then owned by Declarant and the affected Lot Owners, so long as such replat results in each replatted Lot containing not less than the minimum area required for each affected Lot prior to the replat. Owners of the affected Lots, and Owners of non-affected Lots, if required by the City, shall not unreasonably withhold or delay their consent and joinder to such replat. This right to replat under this section shall be exercisable only by the Declarant, for so long as Declarant owns one Lot.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition. Each Owner consents to the ACC authority to determine and define the requirement of "neat, well-maintained, and attractive condition" and to set forth the remedial actions needed to conform to this requirement.



A CERTIFIED COPY: Pg 8 of 23
Attest: 06/25/2015 11:41:10 AM
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By _____, Deputy



John M. Curry

2. *Residences and Structures*

- a. *Single Family Detached.* All Lots shall be used and occupied for single family residential purposes only. No Residence or Structure shall be erected, altered, placed, or permitted to remain on any Lot other than a private single family detached residence. No duplex or other multiple family type Structure shall be permitted on any Lot.
- b. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC. No houses with like elevations shall be constructed adjacent to each other. There shall be a minimum of seven (7) Lots skipped on the same side of the street, and four (4) Lots skipped on the opposite side of the street, between houses with the same elevation.
- c. *Maximum Height.* The maximum height of a Residence is two (2) stories, not to exceed the maximum height limit of the City ordinance or regulation.
- e. *Required Area.* The minimum lot size (area) for the respective Lot is shown below:

Lots 26 – 36, Block F.....	3000 sq. ft.
Lots 1 – 25, Block F }	
Lots 1 – 7, Block D }	
Lots 1 – 46, Block E }.....	5000 sq. ft.
Lots 1 – 5, Block A.....	6000 sq. ft.
Lots 65 – 69, Block E }	
Lots 16 – 20, Block B }.....	7000 sq. ft.

- f. *Minimum Floor Space.* All floor space (“main living area”) referenced below is for air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the Residence. The minimum square footage for the main living area required for the respective Lot is set forth below:

Lots 26 – 36, Block F.....	1000 sq. ft.
Lots 1 – 25, Block F }	
Lots 1 – 7, Block D }	
Lots 1 – 46, Block E }.....	1200 sq. ft.



A CERTIFIED COPY: Pg 9 of 23
 Attest: 06/25/2015 11:41:10 AM
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 Wise County, Texas

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Lots 1 – 5, Block A..... 1400 sq. ft.

Lots 65 – 69, Block E }
Lots 16 – 20, Block B }..... 1600 sq. ft.

For Residences of more than one story in height, the first floor living area must meet the above minimum living area requirement for the respective Lot.

- g. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All Structures and other outbuildings, except garages, must not be visible from any street. No Residence or Structure of any type, except fences, shall encroach into any easement on the Lot, or into adjoining Lots or the Common Areas.
- h. *Utility connection.* Each Residence must be connected to water and sewer utility service as soon as practical and before the Residence is occupied.
- i. *Garages.* Each Residence must have an attached two-car garage accessed by a driveway. The garage may not be a separate structure. Car ports are not allowed. The garage shall face the street to the front of the Lot. Garage doors shall remain closed except when in use. All garages shall be equipped with remote control automatic garage door openers. Vehicles owned, operated or within the control of Owner shall be parked in the garage at night, to the extent space is available. Owner shall maintain Owner's garage in a manner to ensure two (2) vehicles can be parked therein. Garage doors must match the exterior trim color of the Residence.
- j. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within thirty (30) days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within sixty (60) days and the Lot restored to a clean and attractive condition.
- k. *Fences, Walls, and Hedges.* Privacy fences of a minimum height of six (6') feet are required on each Lot. Fences must be made of masonry, wood, or architectural metal. Chain link fencing is prohibited, except for uses interior to the rear fenced yard (e.g., dog runs) as approved by the ACC. All rear yard fencing adjacent to dedicated park land or to designated open space shall be of architectural metal as approved by the



A CERTIFIED COPY: Pg 10 of 23
Attest: 06/25/2015 11:41:10 AM
SHERRY LEMON, COUNTY CLERK
Wise County, Texas

By: John M. Cury, Deputy

John M. Cury



ACC. No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC.

- l. *Buffering.* Declarant shall construct a six (6') foot high screening wall at the rear of Lots 33-36, and the "Green Space" adjacent to Lot 33, all in Block F, in between the proposed retail and residential uses, The screening wall shall be constructed of brick, pre-fabricated masonry (thin wall), or wood stockade fence. The maintenance of this screening wall shall be an expense of the Association.
- m. *Antennae.* No antenna, satellite dish, or associated wires may be visible from the street or be located in or encroach into the rear setback line of any Lot.
- n. *Flagpoles.* No flagpole may be permanently placed on any Lot unless previously approved by the ACC.
- o. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- p. *Sidewalks.* When the Residence is constructed, the Lot must be improved with broom finish concrete sidewalks connecting with the sidewalks on adjacent Lots. Sidewalks shall be a minimum of four (4') feet wide and comply with Section 106 of the City of Decatur Design Standards.
- q. *Landscaping.* Landscaping for any Lot must be installed prior to the initial occupancy of the Residence. Landscape materials shall be kept in healthy, growing condition at all times. Prior to initial occupancy the Lot must be landscaped to the following minimum standards:

(1) Trees- a minimum of six (6") inches in total diameter (caliper) shall be installed. This may be accomplished by one 6-inch caliper tree or multiple trees with a minimum caliper of 2-inches each to total the 6-inch requirement. At least one of the trees shall be of a large canopy variety as indicated within the City of Decatur approved plant material list.

(2) Shrubs- shall be planted every two to four feet along the house front, except that portion which abuts the driveway. Ninety (90%) percent of the shrubs shall be evergreen type, and shall consist of a minimum of five (5) different species of different size and texture arranged to compliment the architecture of the house. No selected shrub shall exceed five (5%) percent of the total required. Ornamental grasses and ground cover may be allowed to satisfy one shrub species. Shrubs shall be maintained to a maximum height of 30-inches.



A CERTIFIED COPY: Pg 11 of 23
Attest: 06/25/2015 11:41:10 AM
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(3) Grass- All turf areas within the front yard, side yards in front of the rear yard fence, or adjacent to public right-of-way shall be solid turf sod.

(4) Sprinkler system- All areas of a Lot landscaped with grass sod and living plants shall be irrigated by a sprinkler system sufficient to provide water to that entire landscaped area.

(5) The Owner shall have the responsibility to maintain the landscaping on the Owner's Lot at all times to the minimum standards set forth. Owner shall keep the grass mowed and attractive. In the event any landscaping material should die, or cease to be in healthy, growing condition, the Owner shall replace that landscaping material with suitable replacement materials as approved by the ACC. If Owner fails to perform any of the above requirements, and such failure continues for ten (10) days after written notice is sent to Owner by Declarant or the Association, then Declarant, or the Association, or their agent, may, without liability to Owner or Owner's occupants in trespass or otherwise, enter upon the Lot and cause the actions to be taken to satisfy the requirement(s). The Owner shall be responsible for the costs associated with such actions, and agrees (by the purchase of the Lot) to pay such costs within five (5) days after receipt of a statement for same from Declarant or the Association. The costs reflected in the statement, together with interest thereon at the rate of ten (10%) percent per annum from the date of the statement until paid, together with all costs of collection, shall also be a charge secured by a lien on the Lot, and be the continuing personal obligation of Owner. The lien securing those charges shall be subordinate and inferior to all liens, present and future, given, granted and created by, or at the instance or request of Owner, to secure payment of monies advanced to Owner for purchase monies for and/or improvements to the Lot.

(6) The Association shall mow the front lawn and side yard lawn to the front of the rear yard fence of Townhome Lots. However, the Owner of a Townhome Lot shall have the duty to otherwise comply with the Landscaping requirements under this Section 2.1., including the duty to maintain the rear yard.

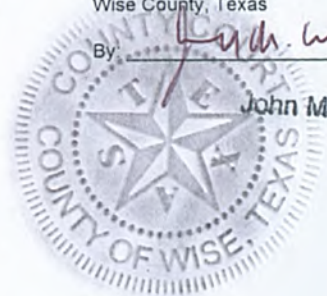
- r. *Retaining Walls.* The Association shall maintain all retaining walls located in the Common Areas. Retaining walls located in the interior of any Lot or located on the property line between a Lot and a common area intended to retain soil on the Lot, shall be maintained by the Owner of the Lot. Retaining walls located along the property line of more than one Lot shall be maintained by the Owner of the Lot for which the soil is being retained. Unless installed by Declarant, all retaining walls require prior approval of the ACC. No railroad tie or landscape timber retaining walls shall be permitted.



A CERTIFIED COPY: Pg 12 of 23
Attest: 06/25/2015 11:41:10 AM
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- s. *Common Areas.* The Association shall maintain Common Area improvements and landscaping including, but not limited to, sidewalks, shrubs, landscaping, landscaping architecture, and irrigation (sprinkler) systems.
 - t. *Pools.* Swimming pools shall be located in the enclosed rear yard of a Lot, and require written approval from the ACC prior to the start of construction of the pool as to location of the pool, pool equipment, grade, accessory building, improvements, landscaping and Structures. Pool lighting shall be screened from direct view from adjacent Lots.
 - u. *Storage Buildings.* Detached storage buildings larger than 100 total square feet in size are prohibited on any Lot, unless approved by the ACC. No such storage building shall be more than one story in height. No more than one storage building shall be allowed on any Lot. Such Structures must be aesthetically compatible with the Residence on the Lot. The roof covering shall comply with Section 3.a. below.
 - v. *Exterior Lighting.* Unshielded exterior lights, lights which display excessive glare, mercury vapor lamps (and lamps that emit light of a similar character), neon lights, exposed florescent lamps, flashing lights, and colored lights are prohibited in the Subdivision.
3. *Building Materials for Residences and Structures*
- a. *Roofs.* Unless otherwise approved by the ACC, all Residences and Structures shall have roofs covered with matching composition material of a minimum of 230 pound composition or mid-grade, and have a minimum roof pitch of 8:12. All roof stacks must be painted to match the roof color. Roof color must be approved by the ACC. No exposed metal roofs are allowed. Metal shingles may be allowed as approved by the ACC.
 - b. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence.
 - c. *Exterior Walls.* The total exterior area of the exterior walls of all Residences, including exposed foundations, but excluding windows, doors, porches and patios, shall be at least eighty (80%) percent stone, split faced concrete block, or brick, unless otherwise approved by the ACC.
 - d. *Color.* The color of external materials must generally be subdued to enhance the colors of the natural landscape. Accent colors which are used judiciously and with restraint may be permitted. Siding without any color, finish, masonite or hardboard panels with battens, vinyl siding, and



A CERTIFIED COPY: Pg 13 of 23
 Attest: 06/25/2015 11:41:10 AM
 SHERRY LEMON, COUNTY CLERK
 Wise County, Texas

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 John M. Curry



exposed concrete blocks, including split block and textured or scored blocks, are prohibited. All projections from Residences or Structures, including, but not limited to chimney flues, vents, gutter, utility boxes, porches, railings, and exterior stairways, shall match the color of the surfaces from which they project.

- e. *Driveways.* Each Lot must be connected to, and accessible by, a driveway connecting the garage to the street fronting the Lot. All driveways must be constructed of concrete, unless otherwise approved by the ACC. Driveways may not be surfaced with dirt, gravel, shell, or crushed rock. Driveways shall be a minimum of eighteen (18') feet wide, and be constructed in compliance with City standards. No driveway may be constructed on any Lot to provide access to any other Lot, or to any other portion of the same Lot, or to any street other than the street fronting the Lot, without the prior approval of the ACC.
- f. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.
- g. *Mailboxes.* All mailboxes shall be located at the Lot's front street, in compliance with United State Postal System Regulations. The mailbox shall be constructed of, and match, the same materials as the exterior walls of the Residence.

E. Association

1. *Establishment and Governance.* The Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Association has the powers of a nonprofit corporation and the property owners association for the Subdivision under the Texas Business Organizations Code, the Texas Property Code, and the Governing Documents.

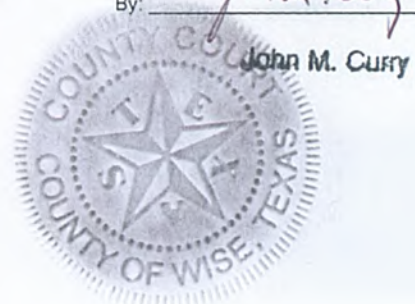
2. *Rules.* The Board may adopt rules that do not conflict with law or the other Governing Documents. On request, Owners will be provided a copy of any rules.

3. *Membership.* Every Owner is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Lot. A Member shall remain a Member for as long as the member owns a Lot. When the member ceases to own a Lot, the membership is automatically transferred to the new Owner without the necessity of any documentation of the transfer of membership. The unsatisfied accrued obligations of the prior Owner, to the date of transfer of ownership, continue as a personal obligation of the prior Owner. If a Lot is owned by more than one person or entity, the Owners collectively shall constitute only one Member of the Association, and shall be counted as only one Membership for the purposes of the Association.



A CERTIFIED COPY: Pg 14 of 23
Attest: 06/25/2015 11:41:10 AM
SHERRY LEMON, COUNTY CLERK
Wise County, Texas

By: John M. Curry, Deputy



4. *Voting Rights.* The Association has two classes of voting Members:
- a. *Class A.* Class A Members are all Owners, other than Declarant and Builders. Class A Members have one vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.
 - b. *Class B.* The Class B Members are Declarant and Builders. Class B Members have four (4) votes for each Lot owned. All Class B Members votes shall be exercised by Declarant. The Class B Membership ceases and converts to Class A Membership on the earlier of—
 - i. when the Class A Members' own more than 80% of the total number of Lots in the Subdivision. All Additional Property annexed or added under Section J.8. shall be included for the purpose of calculating the total number of Lots; or,
 - ii. Declarant no longer owns any Lot in the Subdivision; or,
 - iii. the expiration of ten (10) years after the date this Declaration is recorded in the Real Property Records of Wise County, Texas.
 - c. *Count of Vote.* In determining the result of any vote of Members, the calculation of the final vote shall be counted on the weighted basis set forth above for Class A and Class B Members. The vote of any Member delinquent in the payment of any Assessment (Delinquent Member) shall not be counted as a vote.

F. Architectural Control Committee ("ACC").

1. *Establishment*

- a. *Purpose.* The ACC is established as a committee of the Association to assist the Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Governing Documents.
- b. *Members.* The ACC shall initially consist of at least three (3) persons appointed by Declarant.
- c. *Term.* Declarant shall have the sole right to appoint and remove members of the ACC, until Declarant elects to assign those rights as provided below. ACC members serve until removed by the Declarant or they resign. Upon such removal or death, Declarant shall appoint a successor to fill the vacancy.



A CERTIFIED COPY: Pg 15 of 23
Attest: 06/25/2015 11:41:10 AM
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- d. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Governing Documents to carry out its purpose. On request, Owners will be provided a copy of any standards.
- e. *Business days.* The term "business days" as it applies to the ACC Procedures, shall mean Monday through Friday, excluding holidays recognized and observed (offices closed) by the City.
- f. *Votes Necessary for Action.* The actions of the ACC shall be by majority vote of the ACC members.
- g. *Transfer of Authority.* Declarant may assign to the Board of Directors of the Association, at any time and at Declarant's sole discretion, the right to appoint and remove members of the ACC. Such Assignment shall be evidenced by a written document executed by Declarant and recorded in the records of the Association and in the Real Property Records of Wise County, Texas.

2. *Plan Review*

- a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require. Declarant is exempt from this requirement for any improvement constructed or placed by Declarant in the Common Areas.
- b. *Procedures*
 - i. *Complete Submission.* Within seven (7) business days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.
 - ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within ten (10) business days after complete submission, the submitted plans and specifications are deemed approved.
 - iii. *Construction Time.* Once ACC approval has been granted to an Owner, construction shall be commenced within ninety (90) days



A CERTIFIED COPY: Pg 16 of 23
 Attest: 06/25/2015 11:41:10 AM
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 Wise County, Texas

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after the date of approval. Construction shall be completed within nine (9) months after commence of construction. Completion of construction shall be deemed to occur on the (i) the day the City issues a final Certificate of Occupancy; or (ii) the completion date set forth in a Completion Affidavit, executed by the Owner, and filed for record in the Real Property Records of Wise County, Texas.

- iv. *Authority to Deny.* The ACC shall have full power and authority to deny or reject, in whole or in part, any application, plans, and specifications that do not comply with the Governing Documents, or are not compatible with the overall character and aesthetics of the Subdivision.

- c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within three (3) business days after the ACC's action. The Board shall determine the appeal within ten (10) business days after timely notice of appeal is given. The determination by the Board is final.

- d. *Right to Inspect.* The ACC, or its duly appointed representative, may enter upon any Lot and inspect the Lot and any Residence, Structure, or other improvement being constructed thereon, at any time during the construction, to ascertain whether such construction is being done in such a manner to: (1) comply with the Governing Documents; and (2) comply in all material respects with the construction and design requirements and with the plans and specifications as were approved by the ACC.

- e. *Enforcement for Violation.* If any Inspection under Section F.2.d. above discloses the construction does not comply, such construction will be a violation of the Governing Documents. In the event such violation is not cured, or remedial action to cure has not been commenced, within ten (10) days after written notice of the violation is given to the Owner by the ACC, the ACC shall have the right to take any necessary action provided by law or in equity to cause the violation to be cured. The costs of such action, including all costs of suit and reasonable attorney fees, shall be born by the Owner of the respective Lot.

- f. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.



A CERTIFIED COPY: Pg 17 of 23
Attest: 06/25/2015 11:41:10 AM
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Wise County, Texas

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John M. Curry



- g. *No Liability.* The Association, the Board, the ACC, and their members will not be liable to any Owner, or to any other person, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request, or for matters arising out of services performed as a member of the ACC.

G. Assessments

1. *Authority.* The Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Association, and to improve and maintain the Common Areas. Lots owned by Declarant are exempt from all Assessments.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by the Declarant and assigned to the Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Association to secure Assessments.

4. *Commencement.* A Lot becomes subject to Assessments ninety (90) days after the date of the conveyance of the Lot by Declarant. However, if construction has commenced within that ninety (90) day period, the Assessment shall not commence until ninety (90) days after the start of construction. The phrase "date of conveyance" shall mean the date the Deed conveying the Lot is signed by Declarant.

5. *Assessments Amounts.*

- a. *Regular Assessment.* Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Association. Until changed by the Board, the Regular Assessment is \$100.00 per Lot, per year. The Regular Assessment applies to all Lots in the Subdivision.
- b. *Townhome Assessment.* To fund the anticipated operating and maintenance expenses associated with the Association's obligation to mow the front lawn areas of the Townhomes in the Subdivision, the Association levies an additional Regular Assessment to the Owners of the Townhouse Lots. Until changed by the Board, the additional Regular Assessment is \$440.00 per Townhouse Lot per year, payable quarterly in the amount of \$109.98. This Assessment is in addition to the Regular Assessment set out in Section G.5.a. above.
- b. *Changes to Amount of Assessments.* Regular Assessments and Townhome Assessments may be changed annually by the Board. Written



notice of the changes, if any, will be sent to Owners at least thirty days before its effective date.

c. *Collections.*

Regular Assessments will be collected at the time of Commencement set forth in Section G.4. above, prorated for the remainder of time before the next Regular Assessment is due. Thereafter, Regular Assessments will be due and payable annually in advance, on the tenth (10th) day of the February of each year.

Townhome Assessments will be due and payable quarterly on the tenth (10th) day of January, April, July, and October each year. The first payment will be due and payable on the completion of construction of the respective Townhouse Residence in a prorated amount of the quarterly payment amount, based on the number of days between completion of construction and the date the next quarterly payment is due.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefiting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a vote of two-thirds (2/3rd) of the Members present and voting (in person or by legitimate proxy) at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Governing Documents as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Association's lien as to Assessments due before the foreclosure.

10. *Delinquent Assessments.* Any Assessment not paid within thirty (30) days after it is due is delinquent.

H. Remedial Rights



A CERTIFIED COPY: Pg 19 of 23
Attest: 06/25/2015 11:41:10 AM
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Wise County, Texas

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John M. Curry



1. *Late Charges and Interest.* A late charge of ten (10%) percent of the delinquent amount is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of six (6%) percent per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* The Owner is liable to the Association for all costs and reasonable attorney's fees incurred by the Association in collecting delinquent Assessments, foreclosing the Association's lien, and enforcing the Governing Documents.

3. *Non-judicial Foreclosure of Lien.* The Association may foreclose the Association's lien against a Lot by power of sale as permitted by law. The Association may designate a person to act as trustee or otherwise to exercise the power of sale on behalf of the Association.

4. *Judicial Enforcement.* The Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Association's lien, or enforce or enjoin a violation of the Governing Documents. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Governing Documents.

5. *Suspension of Voting.* An Owner delinquent in payment of any Assessment may not vote.

6. *Suspension of Other Rights.* If an Owner violates the Governing Documents, the Association may suspend the Owner's rights under the Governing Documents in accordance with law until the violation is cured.

7. *Damage to Property.* An Owner is liable to the Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

I. Common Area

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Association to—

- a. suspend an Owner's rights under the Governing Documents;
- b. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and
- c. dedicate or convey any of the Common Area for public purposes, on approval by a vote of two-thirds of the Members present and voting (in person or by legitimate proxy) at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Governing Documents.



A CERTIFIED COPY: Pg 20 of 23
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3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

J. General Provisions

1. *Term.* The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns is binding for a term of thirty (30) years from the date this Declaration is recorded in the Real Property Records of Wise County, Texas. Thereafter this Declaration automatically continues for successive terms of ten (10) years each, unless an instrument in writing, signed by the Owners owning at least eighty seven (87%) percent of the Lots and by the City of Decatur, Texas, has been recorded with the year preceding the beginning of a successive ten (10) year renewal period, agreeing to terminate the same. If the above terms are met, these Covenants shall be terminated by written instrument recorded in the Real Property Records of Wise County, Texas.

2. *No Waiver.* Failure by the Association or an Owner to enforce the Governing Documents is not a waiver.

3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended at any time by vote of sixty (60%) percent of the votes in the Association at a meeting in accordance with the Bylaws. An instrument containing the approved amendment will be signed by the Association and recorded. Provider however, Declarant shall have, and reserves the right to, at any time, and from time to time, without the joinder or consent of Owners, to amend this Declaration by written instrument signed and acknowledged by Declarant and filed for record in the Real property Records of Wise County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity, or inconsistency appearing in the Declaration, provided that such amendment shall be consistent with, and in furtherance of, the general plan and scheme of development and shall not impair or affect the vested property or other rights of any Owner, or lienholders.

5. *Conflict.* This Declaration controls over the other Governing Documents.

6. *Severability.* The provisions of this Declaration are severable. If any provision of this Declaration is invalidated or declared unenforceable, the other provisions remain valid and enforceable.

7. *Notices.* Any notice required or permitted by the Governing Documents must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member, at the Member's last known address according to the Association's records, and the Association, the Board, the ACC, or a managing agent at the



A CERTIFIED COPY: Pg 21 of 23
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Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.

8. *Annexation of Additional Property.*

- a. Declarant owns additional property ("Additional Property") adjoining the Property described herein. The Property described herein constitutes the first phase of the intended overall development. The Additional Property is described on the Preliminary Plat approved by and on file with the City. Declarant may add or annex such Additional Property to the scheme of development and this Declaration by filing of a Supplemental Declaration of Covenant, Conditions and Restrictions ("Supplemental Declaration") in the Real Property Records of Wise County, Texas. The Supplemental Declaration shall extend the scheme of the Covenants and Restrictions of this Declaration to such Additional Property. Such Supplemental Declaration may contain such complementary additions and modifications as may be necessary to reflect the different character of the Additional Property.
- b. If any other person or entity other than Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of not less than sixty (60%) percent of the of the Members of each voting class, at a meeting in accordance with the Bylaws. If so approved, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.
- c. Any additions or annexations under this Section, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the added property.

Declarant:

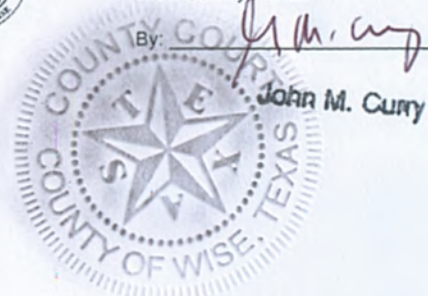
South Martin Branch Development, L.P.
by South Martin Branch GP, LLC

by James Wood
James Wood, Manager
and by C.L. Gage
C.L. Gage, Manager



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SHERRY LEMON, COUNTY CLERK
Wise County, Texas

By: John M. Curry Deputy



THE STATE OF TEXAS
COUNTY OF WISE

This instrument was acknowledged before me on the 10th day of August, 2009, by James Wood and C.L. Gage, each as Managers of South Martin Branch GP LLC, a Texas limited liability company, as the General Partner of South Martin Branch Development, L.P., a Texas limited partnership, on behalf of said limited partnership.



Brenda Scott
Notary Public, State of Texas

After recording, please return to:
South Martin Branch Development, L.P.
2111 Hwy. 287 South
Decatur, Texas 76234



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SHERRY LEMON, COUNTY CLERK
Wise County, Texas

By: John M. Curry, Deputy
John M. Curry



This is to certify that the foregoing instrument is a true and correct copy of the original instrument as recorded in vol. _____ page _____ records of Wise County, Texas.
Witness my hand and seal of office at Decatur, Texas, this _____ day of _____, 2009.
Sherry Lemon, County Clerk, Wise County, Texas
By: John M. Curry, Deputy

THE STATE OF TEXAS
COUNTY OF WISE

This instrument was acknowledged before me on the 15th day of August, 2015 by James Wood and C.L. Gage, each as Managers of South Martin Branch G.P.U.C. a Texas limited liability company, as the General Partner of South Martin Branch Development, L.P., a Texas limited partnership, on behalf of said limited partnership.

[Signature]
Notary Public, State of Texas



After recording, please return to:
South Martin Branch Development, L.P.
3111 Hwy. 387 South
Decatur, Texas 76234

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SHERRY LEMOND, COUNTY CLERK
WISE COUNTY, TEXAS

[Signature]
John M. Curry

This is to certify that the foregoing instrument is a true and correct copy of the original instrument as recorded in vol. 2075 page 173 Official Records of Wise County Texas.
Witness my hand and seal of office at Decatur, this 25th day of June, 2015

Sherry Lemond, County Clerk, Wise County, Texas
By [Signature] Deputy

John M. Curry

