

DECLARATION OF COVENANTS AND RESTRICTIONS

for the CHIMNEY HILL ADDITION, Part Five
to the City of Waco, McLennan County, Texas

THIS DECLARATION, made this 25th day of May, 1984,
by GERRY B. ROGERS and JAMES L. SIRBASKU, JR., hereinafter called
Developer.

W I T N E S S E T H:

WHEREAS, Developer is the owner of the Chimney Hill Addition, Part Five, to the City of Waco, McLennan County, Texas, and desires to create thereon a residential community with open spaces and other common facilities for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and to this end, desires to subject the said real property to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Texas, as a non-profit corporation, the CHIMNEY HILLS NORTH HOMEOWNERS ASSOCIATION, for the purpose of exercising the functions aforesaid;

NOW THEREFORE, the Developer declares that the above described property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I DEFINITIONS

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

(a) "Association" shall mean and refer to the Chimney Hills North Homeowners Association.

(b) "The Properties" shall mean and refer to the Chimney Hill Addition, Part Five, to the City of Waco, McLennan County, Texas.

(c) "Common Properties" shall mean and refer to those areas of land so shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.

(e) "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

ARTICLE II POWERS IN DEVELOPER

Temporary Administration. Until such time as Developer has sold and conveyed sixty-five percent (65%) of the Lots in the Properties, as hereinabove defined and described, or the expiration of sixty (60) months after the date this declaration is filed for record, whichever occurs first, Developer shall have the right, but shall not have the duty, to act as the sole administrator for the government and administration of the affairs of the Association, and during such period of Temporary Administration Developer shall have the right to exclusively exercise and perform all of the right, powers, authority, functions and duties of the Association if Developer shall elect to exercise or perform all or any of the same.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one (1) vote for each lot in which they hold the interests required for membership by Section 1. When more than one (1) person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B members shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Section 1 owned by him until such Lot is first sold or leased, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier, but neither of the following shall affect the provisions of Article II hereof.

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

(b) on May 1, 1989.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one (1) vote for each Lot in which he holds the interest required for membership under Section 1.

Section 3. Members Meeting.

(a) There shall be an annual meeting of the members of the Association. The first annual meeting will be held on the first Tuesday in June, 1985, and Developer will notify all members at least one (1) week in advance of the exact time and place. Subsequent annual meetings will be determined by the Board of Directors, and provided for in the bylaws.

(b) The initial Board of Directors shall serve until said annual meeting, at which time a new Board will be elected by majority vote of members voting. The Board of Directors shall consist of at least three (3) persons, and not more than nine (9), as will be determined by members voting

at the first annual meeting, and subsequently, as will be provided in the bylaws.

(c) The Board of Directors shall be responsible for the affairs of the Association and shall adopt such bylaws and regulations as necessary to carry out its functions, but cannot adopt bylaws or regulations which are contrary to provisions as set out herein.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Properties and such easements shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as he has completed improvements hereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any provisions herein, the Developer hereby covenants for himself, his successors and assigns, that he shall convey the Common Properties to the Association not later than May 1, 1989.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer for each lot owned by him 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 any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The monthly and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, 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 such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the property and in particular, for the improvements and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the homes situated on the Properties and to the use and enjoyment of the Common Properties, including, but not limited to, the exterior maintenance of the homes as provided for in Article VII, and as to the Common Properties the payment of taxes and insurance thereon and the repair, replacement and additions thereto, and for the costs of labor, equipment, materials, management and supervisions thereof.

Section 3. Basis and Maximum of Monthly Assessments. Until the year beginning January 1, 1985, the maximum monthly assessments on each Lot belonging to a member other than Developer, shall be \$35.00 plus the pro-rata share of the master insurance policy as provided for in Article XII, Section 1, beginning on the first day of the month following the date of purchase of June 1, 1984⁴ whichever is later.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) 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 above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Association may, after consideration of current maintenance costs and further needs of the Association, fix the actual assessment for any period year at a lesser amount.

Section 4. Special Assessment for Capital Improvements. In addition to the monthly assessments authorized by Section 3 thereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least fifteen (15) days in advance and shall set forth the purpose of the meeting.

Section 5. Quorum for Any Action Authorized Under Section 4. The quorum required for any action authorized by Section 4 hereof shall be as follows:

At the first meeting called, as provided in Section 4, the presence at the meeting of members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Special Assessment. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 7. Duties of the Board of Directors. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 3 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten (10) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing

the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest of the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon The Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) All Common Properties as defined in Article I, Section 1, hereof. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VI MAINTENANCE BY AND SERVICES OF THE ASSOCIATION

Section 1. Common Area. The Association shall maintain the lands and improvements of all Common Areas as provided in this Declaration.

Section 2. Easement. The Association is hereby granted an easement of use and right-of-way on all Lots in order to comply with the terms of this Article and entry on a Lot for such purpose shall not be deemed trespass.

Section 3. Willful or Negligent Acts. In the event the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, guests or invitees, the Association shall add cost of such maintenance or repairs, as a Special Assessment, to the normal Assessment of such Owner.

ARTICLE VII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon The Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful facts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes the

party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE IX ADDITIONAL COVENANTS AND RESTRICTIONS

Section 1. Covenants and Restrictions on Lots.

(a) Signs: No sign of any kind shall be displayed, erected or maintained on any Lot or Common Properties except one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by builder to advertise the property during the construction and sales, or signs used by Developer in connection with the development of the Chimney Hill Addition, Part Five.

(b) Animals: No animals, livestock or poultry of any kind shall be bred, raised or kept on any lot or Common Properties, except dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

(c) Antennae: No television or radio antennae shall be erected or maintained at the front of any dwelling nor shall they be placed upon the roof of any dwelling so as to stand or be supported by that portion of the roof which slopes toward the front lot line. No radio, aerial wires, nor guy wires for antennae shall be maintained on any portion of a lot forward of the front building line of said lot. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of television or radio signals of any other Lot.

(d) Yards: All yards of a dwelling shall be maintained so as to be an aesthetical asset to the dwelling.

(e) Maintenance of Lots: No owner of any Lot, either vacant or improved, shall be permitted to let such Lot go unmaintained, and no weeds or grass shall be permitted upon any Lot in excess of twelve (12) inches in height.

(f) Easements: The use of easements as shown on the plat is granted to the City of Waco and the various utility companies franchised in the City

of Waco for the purpose of drainage; the location of sanitary and storm sewer lines; the location of gas, water, electrical and telephone lines and conduits, and the maintenance thereof.

(g) Garbage Cans: No garbage cans or refuse containers shall be placed or permitted to remain at the front of a dwelling either within the street or upon the Lot or on common area, except upon those days scheduled for garbage and refuse collection by the City of Waco or a privately contracted collector, subsurface garbage containers shall be permitted if approved by the Architectural Control Committee. Except on days for collection as set out above, said cans or containers will be kept in a place that is not subject to public view.

(h) Trailers, Boats and Motor Vehicles. No mobile home, trailer of any kind, truck, truck camper, boat or inoperable motor vehicle of any type shall be kept upon the Common Property, or any dedicated street within The Properties. In addition no motor vehicle of any type, whether operable or inoperable, may be constructed, reconstructed, repaired or stored upon a lot unless it is concealed from public view nor can they be constructed, reconstructed, repaired or stored upon the Common Property, or any dedicated street within The Properties.

ARTICLE X GENERAL OBLIGATIONS OF OWNER

Section 1. Complaints of Owner. If any Owner believes any other Owner is in violation of this Declaration, he may so notify such Owner in writing, explaining his reasons for such complaint.

If the Owner fails to remedy the alleged violation in ten (10) days after delivery of such notice, a complaint may be transmitted in writing to the Chairman of the Board of Directors of the Association, who shall thereupon choose, within no more than ten (10) days a neutral party to arbitrate the dispute in such a manner as the arbitrator deems best, but the arbitrator shall in all cases announce his decision within thirty (30) days after the transmittal of the complaint to the Chairman of the Board of Directors of the Association. If the Chairman of the Board of Directors of the Association or the arbitrator fails to act, the complaint will be considered denied.

The arbitrator shall be paid his reasonable expenses, the cost of which shall be borne by the losing party.

Section 2. Complaints by Association. If the Association believes any Owner is in violation of these Restrictive Covenants, it shall so notify such Owner in writing, explaining its reason for such complaint.

If the Owner fails to remedy the alleged violation within ten (10) days following delivery of such notice, then the Association shall have the right to (i) institute appropriate legal action or (ii) submit the dispute to arbitration, such arbitration to be held in accordance with the rules of the American Arbitration Association by the action of a majority of the Arbitrators chosen as follows: (a) one arbitrator shall be chosen by the Association; (b) one arbitrator shall be chosen by Owner (c) one arbitrator shall be chosen by the two (2) arbitrators previously chosen. If either party fails to choose an arbitrator within fifteen (15) days after the transmission of the complaint to the Owner, the other party may choose the second arbitrator. The decision of the arbitrators shall be made within thirty (30) days after the transmission of the complaint to the Owner. If the arbitrators fail to act within ninety (90) days, the complaint will be considered dismissed. The prevailing party in any such litigation or arbitration shall be entitled to recover from the other party all costs and expenses thereof, including attorney's fees, in connection therewith.

Section 3. Remedy of Violations. If the arbitrator(s) as provided in Section 1 or Section 2 above uphold the complaint, the Owner shall be so notified in writing and shall promptly remedy the violation of this Declaration, and if he fails to remedy such violation within thirty (30) days after the date of such notice or in the time specified in any such proceeding, as

appropriate, the Association may (but shall not be obligated to) make the appropriate repairs and add the cost of such repairs, as a Special Assessment to the normal assessment of such Owner. The Association, and its designees, shall have the right of entry upon the Lot owned by such Owner for such purpose.

ARTICLE XI

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association may provide exterior maintenance upon each lot which is subject to assessment under Article V hereof as follows: replace and care of roofs, gutters and downspouts and paint and repair exterior building surfaces, the cost of such exterior maintenance shall be assessed as ~~provided for in Section 13~~ of Article V hereof.

Section 2. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day except Saturday or Sunday.

ARTICLE XII INSURANCE

Section 1. The Association shall carry a master policy of fire and extended coverage, and such other coverages necessary including, but not limited to, liability insurance covering the improvements on each Lot in the Properties. The master policy shall be purchased by the Association for the Owners and their Mortgagees as their interests may appear and provision shall be made for the issuance of appropriate mortgagee endorsements to the Mortgagees of the Owners. Each Owner shall pay his pro rata share of the premium due on such master policy based on a fraction, the numerator of which is the amount of coverage which the Owner desires on the improvements on his Lot and the denominator of which is the total amount of coverage on all Lots covered by the master policy. Each Owner shall obtain insurance coverage upon his own personal property in such amounts as he deems necessary. On each renewal date of the master policy, each Owner shall have the right to set the amount of coverage which he desires on the improvements on his Lot and the master policy shall be issued in an amount sufficient to include the total amount of coverage as requested by all Owners. The amount due by each Owner for his share of the premium on the master policy shall be paid by each Owner no later than ten (10) days after the effective date of the master policy or any renewal thereof. The amount owed by each Owner shall be a personal obligation of the Owner and nonpayment thereof may be enforced in the same manner as the nonpayment of an assessment as provided for in Section 8 of Article V hereof.

ARTICLE XIII EASEMENT AND RIGHTS

Section 1. Encroachment Easement. If any structure erected or reconstructed by Developer or by an Owner with the approval of the Architectural Control Committee shall encroach on the Lot of an adjoining Owner, the latter grants to such Owner an easement permitting the persistence of such encroachment. In addition, an overhang easement is granted to any Owner whose eaves, gutters or similar items overhang a reasonable distance or abut the Lot of another Owner.

Section 2. Drainage Easement. Each Owner covenants to provide such easements for drainage and waterflow as the contours of the land and arrangement of buildings by Developer thereon requires.

Section . Easement to Accouterment. Developer in constructing single-family residences and associated accouterments on the Lots may place certain portions of such residences and accouterments consisting primarily of (but not limited to) air conditioning equipment, fences, walls, walkways and patios on the Common Areas.

ARTICLE XIV

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then-owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

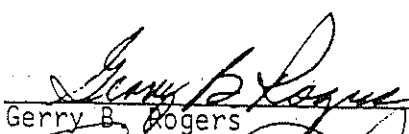
Section 2. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or owner on the records of the Association at the time of such mailing.

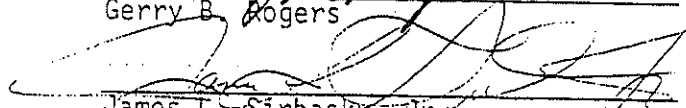
Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant and restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

ARTICLE XV

Any provision contained herein can be changed by a vote of sixty-six (66%) percent of the members of the Association.

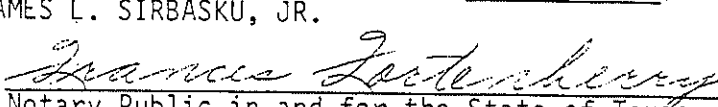

Gerry B. Rogers


James L. Sirbasku, Jr.

THE STATE OF TEXAS I

COUNTY OF MCLENNAN I

This instrument was acknowledged before me on May 25th, 1984, by GERRY B. ROGERS and JAMES L. SIRBASKU, JR.


Notary Public in and for the State of Texas

My Commission expires: 9-30-84
FRANCES FORTENBERRY