



1305505-W/M

DECLARATION

OF

COVENANTS, CONDITIONS, AND RESTRICTIONS

THE STATE OF TEXAS §
 §
COUNTY OF COMAL §

KNOW ALL PERSONS BY THESE PRESENTS:

THAT effective the 21st day of March, 2013, **MARIE SHELLY HOLM, AS TRUSTEE OF THE FLORIAN A. HOLM FAMILY TRUST, ESTABLISHED IN THE PROBATED WILL UNDER CAUSE NO. 2003-PC-0265, COMAL COUNTY PROBATE RECORDS OF COMAL COUNTY, TEXAS,** as "Declarant" hereunder of the following described land in Comal County, Texas, to-wit:

Being 184.16 acre tract of land, more or less, in the Maria Ampara Survey No. 3, Abstract No. 5, Comal County, Texas, conveyed in an Exchange Warranty Deed to Marie Shelly Holm, Trustee of the Florian A. Holm Family Trust created under the Will of Florian A. Holm, dated the 12th day of September, 2002, and as admitted to probate under Cause No. 2003PC0265 on October 29, 2003; said Deed recorded under Comal County Clerk's File No. 201206044415, Official Public Records of Comal County, Texas and being more particularly described by metes and bounds on the attached **Exhibit A** (the "Declarant Property").

THAT in consideration of the premises set forth herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees that the following covenants, conditions, and restrictions are hereby established for the Declarant Property and only those portions of the Holm Ranch Tract, as defined herein, which uses the Dedicated Easement as defined herein (collectively, the "Property").

NOW THEREFORE, it is hereby covenanted and agreed that all parties holding title to any part of the Property shall do so subject to the following covenants, conditions, and restrictions which are imposed on the Property as covenants running with the land, and are binding upon all parties holding title to any part of the Property, and are in favor of and enforceable by Declarant, or Declarant's heirs, successors, or assigns that own any of Declarant's remaining property. Declarant's remaining property is identified as the Holm Ranch, being the remaining portion of that certain 651 acres in the Maria Ampara Survey No. 3, Abstract No. 5, described in Volume 259, Page 760 of the Deed Records of Comal County, Texas (the "Holm Ranch Tract").

ARTICLE ONE

GENERAL COVENANTS

1.01 **Owners Defined.** The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest of any portion of the

Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) herein referred to as a Tract, and their successors and assigns.

1.02 Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Declaration shall entitle the Owners to cancel, rescind or otherwise terminate this Declaration, but such limitations shall not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Declaration.

ARTICLE TWO

USE RESTRICTIONS

2.01 Type of Use Permitted. The Property shall be used for single-family residential purposes only.

2.02 Prohibited Residential Uses. No structure of a temporary character, house trailer, mobile home, manufactured housing unit, trailer, tent (excluding tents for recreational purposes), shack, garage without living quarters, or other outbuilding may be used on the Property at any time as a residence, either temporarily or permanently. A one time exemption to this restriction will be permitted for the sole purpose of allowing the property owner to live on the Property in a temporary residence for a period of not longer than eighteen (18) months during the construction of their permanent residence.

2.03 Subdivision. None of the Property shall be subdivided into less than five (5.0) acre lots, with no more than one (1) residence per five (5) acre lot (a "Tract").

2.04 Building Setbacks. No building shall be constructed any nearer than fifty feet (50') from the street side of the Property, nor nearer than twenty-five feet (25') from the rear of the Property if the rear of the Property is adjacent to other Property, nor nearer than twenty feet (20') from either side of the Property if the side line is adjacent to other Property.

2.05 Minimum Floor Area of Residences. The minimum floor area of the main structure, measured to the outside of the exterior walls, exclusive of garages, open porches, patios, and detached accessory buildings, shall not be less than 1,200 square feet.

2.06 Prohibited Activities. The following activities are prohibited on the Property:

- a. Professional, business, or commercial activity to which the general public is invited.
- b. Camping for any period exceeding thirty (30) consecutive calendar days.
- c. Activities involving or using firearms and the discharge of firearms, other than recreational hunting during normal hunting season in compliance with the

regulations of Comal County, Texas and the Texas Parks and Wildlife Department. No bullets or other form of ammunition may leave the Property. Any shooting towards Shellyholm Road is strictly prohibited.

d. Drilling, mining, quarrying, or other operations in connection therewith for the removal or production of oil, gas and/or other minerals, including but not limited to drilling activities, the commercial excavation of stone, sand, gravel, sandstone, limestone, caliche, rock, clay, or similar solid materials that may be located on or under the Property, and/or explosive or blasting activities; provided however, nothing herein contained shall be construed to prevent an Owner or its heirs, successors, assigns or legal representatives from developing or producing the oil, gas and other minerals in and under their Tract by pooling or by directional drilling so long as such directional drilling is at least 200 feet or more below the surface of the Property from well sites located on tracts other than the Property.

e. Activities that create strong, unusual or offensive odors, fumes, dust, or vapors, emit noise or sounds which are objectionable due to frequency, shrillness or loudness.

f. Emission or discharge onto or into any spring, stream, creek, lake, or body of water if such emission or discharge may adversely affect the health, safety or comfort of fish, animals, or humans on the Property or the Holm Ranch Tract, or in the vicinity of the Property.

g. No junk yard or wrecking yard shall be located on the Property and no wrecked or junked vehicles, appliances, machinery, or other items that do not operate will be permitted to remain on the Property.

2.07 Animals. No portion of the Property may be used as a kennel or other facility for boarding dogs. No pigs shall be raised, bred, or kept on the Property.

2.08 Wildlife. Each Owner and its tenants, guests and invitees of any Owner acknowledges that the Property may include or is in the vicinity of streams, bodies of water, or other natural areas. Such areas may contain wildlife. The Declarant, or any successor to Declarant shall not be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Property. Each Owner and its tenants, guests and invitees shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Declarant or any successor to Declarant has made no representations or warranties, nor has any Owner, or its tenants, guests and invitees relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

2.09 Lighting. All outdoor lighting used at the Property must be installed to minimize light spillover onto the Holm Ranch Tract or any other Tract subject to this Declaration. No pole supporting light fixture(s) shall exceed 25 feet in height.

2.10 Fencing. Promptly following acquisition of a Tract and at no expense to Declarant, Owner shall construct and maintain a fence and gate(s) along all common boundaries lines of the purchased Tract and the Property. All fencing and gate(s) will be constructed of new materials and be adequate to prevent livestock, including horses and goats from entering onto the Tract.

2.11 Livestock Prior to Fencing. Each Owner and its tenants, guests and invitees of any Owner acknowledges that Declarant's livestock may enter onto the Tract prior to Owner's construction of a fence along all common boundary lines. Pursuant to this Declaration, it is the responsibility of Owner to fence all common boundary lines of the Tract and the remainder of the Property to prevent Declarant's livestock from entering Owner's Tract. The Declarant, or any successor to Declarant shall not be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such livestock on the Property. Each Owner and its tenants, guests and invitees shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such livestock and further acknowledges that the Declarant or any successor to Declarant has made no representations or warranties, nor has any Owner, or its tenants, guests and invitees relied upon any representations or warranties, expressed or implied, relative to the presence of such livestock.

2.12 Compliance with Laws and Regulations. No activity shall be conducted on the Property in violation of any law of the County of Comal, the State of Texas, or of the United States of America, and any owners shall at all times comply with all applicable laws and regulations regarding the use of the Property, imposed by any governmental regulatory body, including, without limitation all applicable health laws and regulations as may be imposed for sanitary control surrounding any water well site.

ARTICLE THREE

DURATION AND AMENDMENT

3.01 Duration. The covenants, conditions, and restrictions contained in this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by, Declarant and Owner, or any heirs, successors, or assigns of the Declarant that are record owners of any portion of the Property or the Holm Ranch Tract, and unless amended as provided herein, shall be effective until December 31, 2090.

3.02 Amendment. Declarant, or a majority of any of Declarant's heirs that are record owners of any portion of the Property or the Holm Ranch Tract, may amend this Declaration with the consent and agreement of a majority of the owners of the Property and the Holm Ranch Tract. No amendment of this Declaration shall be effective until recorded in the Official Public Records of Comal County, Texas.

ARTICLE FOUR

COVENANT FOR COUNTY ROAD

4.01 Shellyholm Road. Shellyholm Road is a private road as of the date of this Declaration. Declarant or Declarant's heirs, successors, or assigns desire that Shellyholm Road to become a county maintained, public road. Upon request by Declarant, each Owner agrees that within twenty (20) days of request by Declarant, any portion of the Property that lies within the sixty foot (60') right of way required for Shellyholm Road shall be donated by Owner to the County of Comal without payment of any compensation to Owner; provided however, unless otherwise agreed to in writing by such Owner, no Owner shall be responsible for any costs associated with the dedication, if any. Owner shall have no legal right to prohibit Shellyholm Road from becoming a county road. In the event any such Owner does not timely sign the document dedicating such portion of the sixty foot (60') right of way for Shellyholm Road within its Tract, then each Owner hereby irrevocably appoints Declarant as its true and lawful attorney-in-fact for such Owner and in its name, place, and stead, to represent the Owners in any proceedings, negotiations or agreements and to execute any documentation required by the County of Comal in order to dedicate the sixty foot (60') right of way for Shellyholm Road to the County of Comal, Texas.

ARTICLE FIVE

GENERAL PROVISIONS

5.01 Enforcement. Declarant, her heirs, successors and assigns or any Owner, its heirs, successors and assigns, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations contained in this Declaration. Failure to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter. Any dispute between Declarant and an Owner or between two Owners of any of the Property related to this Declaration which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This provision does not preclude a party from seeking equitable relief from a court of competent jurisdiction. In the event that Declarant or an Owner institutes suit to enforce any of its rights hereunder, Declarant or Owner, if the prevailing party in such action, shall be entitled to recover from the other party all reasonable costs thereof, including, without limitation, all attorneys' fees and costs, in addition to any other relief (at law or otherwise) to which Declarant or Owner, as the case may be, may be entitled, which may constitute a lien on the Property and be enforced in the same manner as the Easement Agreement of even date ("Dedicated Easement").

5.02 Severability. Invalidation of any one or more of the covenants or restrictions contained in this Declaration by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

5.03 Non-Merger. This Declaration shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.

5.04 Entire Agreement. This Declaration and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the exhibits attached hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

5.05 Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.

5.06 Governing Law; Place of Performance. This Declaration and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Declaration is performable only in the county in Texas where the Property is located.

5.07 Notices. All notices under this Declaration shall be in writing and given by delivering the same to such party in person, by expedited, nationally recognized overnight delivery services (such as UPS or FedEx) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

5.08 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Declarant, any Owner in their respective businesses or otherwise; nor shall it cause them to be considered joint venturers or members of any joint enterprise.

[SIGNATURES AND NOTARY ACKNOWLEDGEMENTS ARE ON THE NEXT PAGE]

EXECUTED to be effective the day, month and year first above stated.

Marie Shelly Holm

Marie Shelly Holm, as Trustee of the
FLORIAN A. HOLM FAMILY TRUST

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

This instrument was acknowledged before me on this 21st day of March, 2013, by Marie Shelly Holm, as Trustee of the Florian A. Holm Family Trust, established in the Probated Will under Cause No. 2003-PC-0265, Comal County Probate Records of Comal County, Texas.



[Signature]
Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:

Ms. Marie Shelly Holm
c/o Cynthia Holm Stevens
1206 Phantom Valley Street
San Antonio, Texas 78232-3433

EXHIBIT A



Solis-Kanak & Associates, Inc. **Professional Land Surveyors**

184.16 Acres

Field notes for a 184.16 acre tract of land out of a tract of land known as Tract "D" called 651.41 acres in deed to Marie Louise Shelly Holm recorded in Volume 259, Page 760 Official Public Records Comal County, Texas (OPRCCT), situated in the Maria Ampara Survey No. 3, Abstract No. 5, Comal County, Texas, and being more particularly described by metes and bounds as follows with all bearings being based on Texas State Plane Coordinates South Central Zone (NAD 83);

Beginning: at a found $\frac{1}{2}$ " iron bar marking the northeast corner of the herein described tract, the northeast corner of said 651.41 acre tract, the northwest corner of Lot 2 of Ramos Ranch a called 11.874 acre tract of land recorded in Volume 12, Page 168 Map and Plat Records Comal County, Texas (MPRCCT) and lying on the south line of a called 12.52 acre tract of land recorded in Document No. 9806000502 OPRCCT;

Thence: S 01° 17' 21" E (called S 01° 09' E), along the upper east line of the herein described tract, the east line of said 651.41 acre tract, the west line of said Lot 2 and the west line of a called 6.33 acre tract of land recorded in Document No. 9706021023 OPRCCT, at 859.03 feet passing a found $\frac{1}{2}$ " iron bar marking the southwest corner of said 6.33 acre tract and the northwest corner of a called 10.00 acre tract of land recorded in Document No. 9806001699 OPRCCT and continuing along the east line of the herein described tract, the east line of said 651.41 acre tract and the west line of said 10.00 acre tract (Doc. No. 9806001699) for a total distance of 1001.50 feet (called 1001.5 feet) to a found $\frac{1}{2}$ " iron bar with cap (Solis-Kanak) for angle;

Thence: S 00° 28' 16" E (called S 00° 04' E), 1140.60 feet, along the upper east line of the herein described tract, the east line of said 651.41 acre tract, the west line of said 10.00 acre tract (Doc. No. 9806001699), the west line of a called 10.0 acre tract of land recorded in Volume 459, Page 715 OPRCCT, the west line of a called 5.61 acre tract of land recorded in Document No. 200506003864 OPRCCT and the west line of a called 16.490 acre tract of land recorded in Document No. 200706037075 OPRCCT, to a found cotton spindle for an exterior corner of the herein described tract and the northeast corner of a called 5.68 acre tract of land recorded in Document No. 201006010757 OPRCCT;

Thence: S 88° 52' 04" W, 224.76 feet (called S 89° 52' 30" W, 224.98 feet) along the easterly south line of the herein described tract and the north line of said 5.68 acre tract, to a found $\frac{1}{2}$ " iron bar with cap (Ash-5867) marking an interior corner of the herein described tract and the northwest corner of said 5.68 acre tract;

Thence: S 00° 22' 57" E, 1099.87 (called S 00° 37' 03" W, 1099.89 feet) along the lower east line of the herein described tract and the west line of said 5.68 acre tract to a found $\frac{1}{2}$ " iron bar with cap (Ash-5867) marking the upper southeast corner of the herein described tract, the southwest corner of said 5.68 acre tract and lying on the north line of a called 2.50 acre tract of land recorded in Document No. 200706024227 OPRCCT;

Thence: S 88° 49' 53" W, along the upper south line of the herein described tract and the north line of said 2.50 acre tract at 241.39 feet passing a found ½" iron bar with cap (Solis Co.) marking the northwest corner of said 2.50 acre tract and continuing along the upper south line of the herein described tract across said 651.41 acre tract for a total distance of 890.90 feet to a set ½" iron bar with cap (Solis-Kanak) for an interior corner of the herein described tract;

Thence: S 31° 25' 16" W, 248.38 feet, along the southeast line of the herein described tract across said 651.41 acre tract, to a set ½" iron bar with cap (Solis-Kanak) for angle;

Thence: S 11° 54' 39" W, 60.76 feet, continuing along the southeast line of the herein described tract across said 651.41 acre tract, to a set ½" iron bar with cap (Solis-Kanak) for the south corner of the herein described tract;

Thence: N 67° 55' 05" W, 455.51 feet, along the lower south line of the herein described tract across said 651.41 acre tract to a found nail (N 13883353.46, E 2225826.64) in 6" cedar fence post for the southwest corner of the herein described tract, an angle point on the upper west line of said 651.41 acre tract and the east corner of a called 70.003 acre tract of land recorded in Document No. 9806000151 OPRCCT;

Thence: N 36° 54' 34" W (Bearing Basis), 1947.46 feet (called N 36° 31' W, 1947.70 feet) along the west line of the herein described tract, the upper west line of said 651.41 acre tract and the easterly line of said 70.003 acre tract, to a 2" steel fence post corner (N 13884910.62, E 2224657.09) marking an interior corner of the herein described tract, an interior corner of said 651.41 acre tract, an angle point on the north line of said 70.003 acre tract;

Thence: S 86° 21' 12" W, 168.30 feet (called West 168.3 feet), along an exterior line of the herein described tract, exterior line of said 651.41 acre tract and the north line of said 70.003 acre tract, to a 2" steel fence post marking an exterior corner of the herein described tract, an exterior corner of said 651.41 acre tract, the northwest corner of said 70.003 acre tract and the southeast corner of Lot 103 of Eagles Peak Ranch Unit 1 recorded in Volume 8, Pages 225-230 MPRCCT;

Thence: N 03° 38' 48" W, 180.00 feet (called North 180.0 feet), along the west line of the herein described tract, the upper west line of said 651.41 acre tract and the east line of said Lot 103 to a 2" steel fence post for an exterior corner of the herein described tract, an exterior corner of said 651.41 acre tract, the northeast corner of said Lot 103 and lying on the south line of Lot 60 of said Eagles Peak Ranch Unit 1;

Thence: N 86° 21' 12" E, 105.78 feet (called East 100.0 feet adjoiner 105.27 feet), along an exterior line of the herein described tract, an exterior line of said 651.41 acre tract and the south line of said Lot 60, to a 2" steel fence post marking an interior corner of the herein described tract, an interior corner of said 651.41 acre tract and the southeast corner of said Lot 60;

Thence: N 05° 34' 21" W, 280.21 feet (called N 05° 02' W), along an old pasture fence, the west line of the herein described tract, the upper west line of said 651.41 acre tract and the east line of said Lot 60, Flagstone Drive, and Lot 59 of said Eagles Peak Ranch Unit 1 to a found ½" iron bar with cap (HMT) lying on the east line of said Lot 59 marking an exterior corner of the herein described tract and the southwest corner of a called 2.00 acre tract of land recorded in Document No. 201206020870 OPRCCT;

Thence: N 78° 54' 13" E, 218.17 feet (called N 78° 54' 53" E, 218.08 feet), along an exterior line of the herein described tract and the south line of said 2.00 acre tract to a found ½" iron bar with cap (HMT) marking an interior corner of the herein described tract and the southeast corner of said 2.00 acre tract;

Thence: N 05° 30' 07" W, 276.69 feet (called N 05° 29' 32" E, 276.76 feet), along the west line of the herein described tract and the east line of said 2.00 acre tract, to a found ½" iron bar for angle;

Thence: N 15° 53' 28" E, 302.71 feet (called N 15° 51' 24" E, 302.71 feet), along the west line of the herein described tract, the east line of said 2.00 acre tract and the east line of a called 1.00 acre tract of land recorded in Document No. 201206020872 OPRCCT, to a found mag nail with disk marking an exterior corner of the herein described tract, the northeast corner of said 1.00 acre tract lying on the south line of a called 10.03 acre tract of land recorded in Document No. 201106031626 OPRCCT;

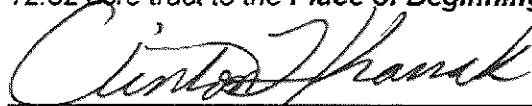
Thence: S 73° 32' 15" E, 95.14 feet (called S 73° 29' 52" E, 94.92 feet), along an exterior line of the herein described tract and the south line of said 10.03 acre tract, to a found ½" iron bar with cap (Solis-Kanak) for angle;

Thence: N 61° 27' 50" E, 126.63 feet (called N 61° 30' 08" E, 126.79 feet), along an exterior line of the herein described tract and the south line of said 10.03 acre tract, to a found ½" iron bar with cap (Solis-Kanak) marking an interior corner of the herein described tract and the southeast corner of said 10.03 acre tract;

Thence: N 21° 21' 11" E, 982.58 feet (called N 21° 21' 11" E, 982.52 feet), along the west line of the herein described tract and the east line of said 10.03 acre tract to a found ½" iron bar with cap (Solis-Kanak) marking the northwest corner of the herein described tract, the northeast corner of said 10.03 acre tract, lying on the south right-of-way line of Farm-to-Market (FM) 32 (100' ROW) and being southeasterly along a curve to the left, a length of 669.31 feet, a radius of 2914.79 feet, a chord bearing and distance of S 62° 05' 49" E, 667.85 feet from a found concrete highway monument (N 13887234.94, E 2224796.44) lying on the south line of said FM 32;

Thence: in an easterly direction along the north line of the herein described tract, the upper north line of said 651.41 acre tract and the south line of said FM 32 with a curve to the left having a central angle of 32° 55' 17", a radius of 2914.79 feet (called 2914.79 feet) a length of 1674.80 a tangent of 861.23 feet a chord bearing and distance of S 85° 08' 51" E, 1651.87 feet to a found ½" iron bar with cap (Solis-Kanak) for angle from which a found concrete highway right-of-way monument (N 13886796.43, E 2227096.34) bears northeasterly along a curve to the left having a radius of 2914.79 feet (called 2914.79 feet) a length of 65.19 feet a chord bearing and distance of N 77° 45' 16" E, 65.19 feet;

Thence: S 81° 31' 15" E, 439.04 feet (called S 81° 16' E, 446.0 feet) along the north line of the herein described tract, the upper north line of said 651.41 acre tract, and the south line of said 12.52 acre tract to the **Place of Beginning** and containing 184.16 acres of land more or less.

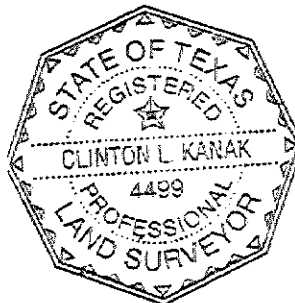


Clinton L. Kanak, R.P.L.S.

Registered Professional Land Surveyor, No. 4499

Date: December 3, 2012

G:\Jobs\2012\12-0335\Field Notes 184.16 Acres.doc



Filed and Recorded
Official Public Records
Joy Streater, County Clerk
Comal County, Texas
04/02/2013 09:08:48 AM
TAMMY 10 Page(s)
201306013584

