

DECLARATION OF COVENANTS AND RESTRICTIONS

BRENWOOD, SECTION ONE

112/17/84 00258995 J654569 \$ 61.00

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

THIS DECLARATION is made on the date hereinafter set forth by NASH PHILLIPS/COPUS-HOUSTON, INC., a Texas corporation, hereinafter called "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property known as BRENWOOD, SECTION ONE, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 324, Page 28, of the Map Records of Harris County, Texas; and,

WHEREAS, it is the intent of Declarant to establish a uniform plan for the development, improvement and sale of the property (including any property later brought within the uniform plan), to insure the preservation of the uniform plan for the benefit of both present and future owners of the properties, and, to this end, to establish a Civic Improvement Association that has the powers to administer and enforce the covenants, restrictions, easements, charges and liens set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Lots described below are held, and shall hereafter be conveyed subject to the covenants, restrictions, easements, charges and liens (sometimes referred to herein collectively as "covenants and restrictions") as hereinafter set forth. These covenants and restrictions shall run with said property and shall be binding upon all parties having or acquiring any right, title or interest in said property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The real property which is, and shall be, held, transferred, sold and conveyed and occupied subject to this declaration consists of the following:

All of BRENWOOD, SECTION ONE, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 324, Page 28 of the Map Records of Harris County, Texas (or any subsequently recorded plat thereof).

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

SECTION 1. "Association" shall refer to the Brenwood Park Civic Improvement Association, Inc., a Texas non-profit corporation, which Declarant shall cause to be incorporated, its successors and assigns.

SECTION 2. "Builder" shall refer to any person or entity undertaking the construction of a residence on a Lot.

SECTION 3. "Community Properties" shall refer to any properties, real or personal, hereafter conveyed to or otherwise acquired by the Association for the common use and enjoyment of the Members of the Association.

SECTION 4. "Corner Lot" shall refer to a Lot which abuts on more than one Street.

SECTION 5. "Declarant" shall refer to Nash Phillips/Copus-Houston, Inc., its successors and assigns.

SECTION 6. "Declaration" shall refer to this Declaration of Covenants and Restrictions.

SECTION 7. "FHA" shall refer to the Federal Housing Administration. "VA" shall refer to the Veterans Administration.

SECTION 8. "Lot" shall refer to any of the numbered lots shown on the Subdivision Plat.

SECTION 9. "Member" shall refer to every person or entity which holds a membership in the Association.

SECTION 10. "Owner" shall refer to the owner, whether one or more persons or entites, of the fee simple title to any Lot, but shall not refer to any person or entity holding a lien, easement, mineral interest or royalty interest burdening the title thereto.

SECTION 11. "Street" shall refer to any street, drive, boulevard, road, alley, lane, avenue or any thoroughfare as shown on the Subdivision Plat.

SECTION 12. "Subdivision" shall refer to Brenwood, Section One, as set forth in the map or plat thereof recorded in Volume 324, Page 28, of the Map Records of Harris County, Texas.

SECTION 13. "Subdivision Plat" shall refer to the recorded map or plat of the Subdivision.

## ARTICLE II

### ARCHITECTURAL CONTROL COMMITTEE

SECTION 1. CREATION, PURPOSE AND DUTIES. There is hereby created an Architectural Control Committee (herein referred to as the "Committee")

comprised of Ron Hammonds, Wesley Peoples and Kip Miller, all of Harris County, Texas, each of whom shall serve until his successor is appointed. The powers of the Committee, its successors and the designated representatives as provided for herein-below shall cease on the earlier of ten (10) years from the date of this instrument, or the date upon which all Lots subject to the jurisdiction of the Association have houses thereon occupied as residences, at which time the Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association. A majority of the Committee may designate one member to act for it. In the event of the death or resignation of any person serving on the Architectural Control Committee, the remaining person(s) serving on the Committee shall designate a successor, or successors, who shall have all of the authority and power of his or their predecessor(s) provided, however, this provision shall not apply to a successor Committee appointed by the Association. Until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans submitted or to designate a representative with like authority.

No person serving on the Committee shall be entitled to compensation for services performed, however, the Committee may employ one or more architects, engineers, attorneys or other consultants to assist the Committee in carrying out its duties hereunder, and the Association shall pay such consultants for services rendered to the Committee. Except as to liability by reason of gross negligence or intentional acts, no member of the Committee shall be personally liable for any actions committed in the scope of services performed as a member of the Committee.

SECTION 2. POWERS OF THE COMMITTEE. No building or other improvements shall be constructed or reconstructed in the Subdivision, and no exterior alteration therein shall be made until the plans showing the exterior elevations have been submitted to and approved in writing by the Committee as to conformity and harmony of external design, brick color, paint color and location in relation to surrounding structures and topography. In the event the Committee fails to approve or disapprove such plans within thirty (30) days after submission to the Committee, approval thereof shall be deemed to have been given, however such approval shall not operate to waive any other covenants and restrictions set forth herein.

No construction of a building, structure, fence, wall or other improvements shall be commenced until the contractor designated to perform such construction has

been approved in writing by the Committee. For purposes of the preceding sentence, Contractor shall mean the general contractor only when the work in question is the construction of a new dwelling, it being the intent that it is not necessary to obtain the approval of each subcontractor. When the work in question is other than the construction of a new dwelling, however, all contractors performing work, including subcontractors must be approved as aforesaid. In the event the Committee fails to specifically approve or disapprove a contractor within thirty (30) days after his name is submitted to it, approval thereof shall be deemed to have been given.

The Committee shall have the right to specify architectural and aesthetic requirements for building sites, minimum setback lines, the location, height and extent of fences, walls or other screening devices, the orientation of structures with respect to streets, walks, paths and structures on adjacent property and a limited number of acceptable exterior materials to include paint color, stains and finishes that may be utilized in construction or repair of improvements. The Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or that do not meet its minimum construction or architectural design requirements or that might not be compatible with the overall character and aesthetics of the Subdivision. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and environmental integrity of the Subdivision or the common scheme of development. All variance grants shall be in writing, addressed to the Owner requesting the variance, describing the applicable restrictions to which the variance is granted, listing conditions imposed on the granted variance and listing specific reasons for granting of the variance. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a disapproval of the requested variance.

### ARTICLE III

#### BRENWOOD PARK CIVIC IMPROVEMENT ASSOCIATION, INC.

SECTION 1. ORGANIZATION. Declarant shall cause the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas, which shall have initial jurisdiction over Section One of Brenwood and will in the future have jurisdiction over other Sections of the Brenwood Development. The principal purposes of the Association are the collection, expenditure and management

of the maintenance charge funds, enforcement of the Declaration, providing for the maintenance, preservation and architectural control (when the powers of the Committee terminate and the Committee's powers vest in the Association) within the Subdivision, the general overall supervision of all of the affairs and wellbeing of the Subdivision (or any subdivision hereafter brought within its jurisdiction) and the promotion of the health, safety and welfare of the residents within the Subdivision.

SECTION 2. BOARD OF DIRECTORS. The Association acts through a Board of Directors, which manages the affairs of the Association as specified in the By-Laws of the Association.

SECTION 3. MEMBERSHIP. Every Owner of a Lot shall be a member of the Association. Lot ownership is the sole requirement for membership and no Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association and shall automatically pass with the title to the Lot.

SECTION 4. VOTING. The Association shall have two classes of voting membership with respect to the Subdivision covered by this Declaration:

- (a) CLASS A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one individual or entity holds an ownership interest in a Lot, all such persons shall be members, but in no event shall they be entitled to more than one vote with respect to that particular Lot. Holders of future interests shall not be considered as Owners for the purposes of voting hereunder.
- (b) CLASS B. Class B members shall be the Declarant. Class B members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (i) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership including duly annexed areas, or (ii) on January 1, 1995.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot which shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay to the Association the following:

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing Vendor's Lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorney's fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a lot, the assessments accrued to the date of transfer must be paid in full.

SECTION 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association and, at the option of the Board of Directors of the Association, for any and all of the following purposes: lighting, improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways and esplanades in the Subdivision; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expense incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the mowing of vacant lots in the Subdivision and the planting and upkeep of trees, grass and shrubbery on esplanades and easements and in the Community Properties; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision in neat and good order, or which they consider of general benefit to the Owners or occupants of the Subdivision, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance

and other charges as specified herein. The judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

SECTION 3. BASIS AND MAXIMUM LEVEL OF ANNUAL ASSESSMENTS.

Until January 1, of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be \$300.00 per lot.

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 by the Board of Directors of the Association, effective the first day of January of each year, in conformance with the rise, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Department of Labor, Washington, D.C., or any successor publication, for the preceeding month of July or alternatively, by an amount equal to a ten percent (10%) increase over the prior years annual assessments, whichever is greater, without a vote of the Members of the Association. The maximum annual assessment may be increased above that established by the Consumer Price Index formula or the above-mentioned percentage increase only by approval of two-thirds (2/3rds) of each class of Members in the Association present and voting in person or by proxy at a meeting duly called for this purpose. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto provided that any such assessment shall have the assent of two-thirds (2/3) of the votes in each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 OR 4 HEREIN. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in

advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any such meeting, the meeting shall be adjourned but another meeting may be called subject to the same notice requirements, but the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum applicable in the case of the preceding meeting to each class of membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATES OF ASSESSMENT. All Lots shall commence to bear their applicable maintenance fund assessment simultaneously and Lots owned by Declarant are not exempt from assessment. Lots which are occupied by residents shall be subject to the annual assessment determined by the Board of Directors in accordance with provisions of Sections 3 and 7 hereof. Lots which are not occupied by a resident and which are owned by Declarant, a builder, or a building company, shall be assessed at the rate of one-half (1/2) of the full annual assessment. The rate of assessment for an individual Lot, within a calendar year, shall change as the character of ownership and occupancy changes and the applicable assessment for such Lot shall be prorated according to the applicable rate for each type of ownership and occupancy.

SECTION 7. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENT. The annual assessments provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the then current calendar years. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed (by U.S. first class mail) to every Owner subject thereto. The payment dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.



SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the Lot involved. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES. As hereinabove provided, the title to each Lot shall be subject to the Vendor's Lien securing the payment of all assessments and charges due the Association, but the Vendor's Lien shall be subordinate to any valid purchase money lien or valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect the Vendor's Lien provided, however, the sale or transfer of any Lot pursuant to a judicial or non-judicial foreclosure under the aforesaid superior liens shall extinguish the Vendor's Lien securing such assessment or charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided for hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the Vendor's Lien herein retained to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine.

SECTION 10. EXEMPT PROPERTY. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

#### ARTICLE V

##### PROPERTY RIGHTS IN THE COMMUNITY PROPERTIES

##### SECTION 1. OWNER'S EASEMENT FOR ACCESS AND ENJOYMENT.

Subject to the provisions herein stated, every Member shall have an easement of access and a right and easement of enjoyment in the Community Properties, and such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights of the Association:

- a. The Association shall have the right to borrow money and in aid thereof to mortgage the Community Properties upon approval by two-thirds (2/3rds) of the votes cast by each class of Members at a Meeting of Members. In the event of a default under or foreclosure of any such mortgage, the rights of the lender or foreclosure sale purchaser shall be subject to the easement of enjoyment of the Members, except that the lender or foreclosure sale purchaser shall have the right, after taking possession of such Community Properties, to charge admission and other fees as a condition to continued enjoyment by the Members of any recreational facilities and to open the enjoyment of such recreational facilities to a reasonably wider public until the mortgage debt owed to such lender, or the purchase price paid by the foreclosure purchaser, interest thereon at the rate originally provided in the debt upon which the foreclosure was based but not to exceed the maximum interest rate provided by the laws of the State of Texas, and other reasonable expenses incident to maintenance of such Community Properties incurred by the lender or foreclosure sale purchaser shall be satisfied or recovered, whereupon the possession of such Properties shall be returned to the Association and all rights hereunder of the Members shall be fully restored.
- b. The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties against foreclosure of any such mortgage.
- c. The Association shall have the right to suspend the voting rights and enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services) the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in the payment of any assessment against said Member's Lot.
- d. The Association shall have the right to establish reasonable rules and regulations. The Association shall have the right to delegate such rules and regulations. The Association shall have the right to delegate management of the Community Properties.
- e. Upon approval by two-thirds (2/3rds) of each class of Members, the Association shall have the right to transfer or convey all or any part of the Community Properties, or interests therein, to any public authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3rds) of each class of Members provided, however, this provision shall not be construed to limit the right of the Association to grant or dedicate public or private utility easements in portions of the Community Properties.
- f. The Directors of the Association shall have the right, but not the obligation, to contract, on behalf of all Lots, for garbage and rubbish pickup and to charge the Owner of each Lot for his pro rata share to be determined by dividing the number of Lots being served into the total cost of providing garbage and rubbish pickup and such cost to be in addition to, should the Directors of the Association so elect, the assessments described herein.

SECTION 2. DELEGATION OF USE. Each Member shall have the right to extend his rights and easements of enjoyment to the Community Properties to the members of his family, to his tenants who reside in the subdivision and to such other persons as may be permitted by the Association.

#### ARTICLE VI

#### USE RESTRICTIONS

SECTION 1. RESIDENTIAL USE. Each and every Lot is hereby restricted to residential dwellings for single family residential use only. No business, profes-

sional, commercial or manufacturing use shall be made of any of said Lots, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the premises as a residence. As used herein, the term "residential use" shall be construed to prohibit the use of any Lot for duplex houses, garage apartments for rental purposes or apartment houses.

SECTION 2. RESERVE A-C. The above Section 1 notwithstanding, Reserves A-C inclusive are hereby restricted to common recreational useage for the benefit of all of the Owners, including, but not limited to a park, playground, open space, recreational center, swimming pool, tennis courts or any similar useage deemed appropriate by the Association except residential or commercial. The other provisions hereof shall not apply to said Reserves A-C.

SECTION 3. ANIMALS AND LIVESTOCK. Consistent with its use as a residence, dogs and cats may be kept on a Lot, provided that (a) they are not kept, bred or maintained for any business purposes, (b) that no more than two (2) such pets shall be kept on a Lot, and (c) that the perimeter boundary of the Lot upon which such pets are being kept is fenced with a fence adequate to retain such pets. No dog allowed by this Section shall be allowed outside the Lot upon which it is being kept unless restrained by an appropriate leash. The Board of Directors shall have the authority to authorize capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets such as hampsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

SECTION 4. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance to residents of the Subdivision.

SECTION 5. STORAGE, PARKING AND REPAIR OF VEHICLES. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter (3/4) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the Street in front of, or side of any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition.

No Owner of any Lot in the Subdivision or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or Streets other than work of a temporary nature. For the purposes of the foregoing term, "temporary" shall mean that the vehicle shall not be worked on in driveways or Streets in excess of twenty-four (24) hours.

SECTION 6. PERMITTED HOURS FOR CONSTRUCTION ACTIVITY.

Except in an emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 A.M. and 10:00 P.M.

SECTION 7. DISPOSAL OF TRASH. No trash, rubbish, garbage, manure, debris or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary containers constructed of metal, plastic or masonry materials with tightfitting sanitary covers or lids and placed in an area adequately screened by planting or fencing. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense.

SECTION 8. BUILDING MATERIALS. No Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced. During initial construction or remodeling of the residences by Builders in the Subdivision, building materials may be placed or stored outside the property lines. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay, after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the street paving.

SECTION 9. MINERAL PRODUCTION. No drilling, developing operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot,

nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas or other minerals from the mineral estate, if any, owned and retained by Declarant.

#### ARTICLE VII

##### ARCHITECTURAL RESTRICTIONS

SECTION 1. TYPE OF RESIDENCE. Only one detached single family residence not more than two stories in height shall be permitted on each Lot. All residences shall have either an attached or detached enclosed garage with minimum interior floor space necessary to accommodate one full sized automobile. Carports on Lots are prohibited. All structures shall be of new construction and no structure shall be moved from another location onto any Lot. All residences must be kept in good repair and must be painted when necessary to preserve their attractiveness. Upon any failure to do so the Association shall have the remedies available in Section 19 of this Article VII.

SECTION 2. LIVING AREA REQUIREMENTS. No dwelling located within the Subdivision shall contain less than 750 square feet of living area, exclusive of open porches and garages.

SECTION 3. LOCATION OF RESIDENCE ON LOT. No building shall be located on any Lot nearer to the front lot line or nearer to the side street than the minimum building setback lines shown on the recorded Plat. For the purposes of this Covenant, eaves, gutters, steps, patios and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on any Lot to encroach upon another Lot. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. Each main residence building will face the front of the Lot, and will be provided with driveway access from the front of the Lot only; except that garages on the corner Lots may face the side street. The Architectural Control Committee shall be empowered to grant exceptions for minor variances, up to one (1) foot in any direction in house locations. It shall be the intention of this covenant to allow placement of residential structures at the option of Declarant or any entity constructing a dwelling on any Lot using one of three (3) acceptable methods, said methods hereinafter known and defined as follows:

1. STANDARD SINGLE FAMILY RESIDENCE OPTION. The front building setback line shall be as hereinabove required. The residence dwelling shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from the side line abutting a street. No dwelling shall be located on any Lot within any utility easement located along the rear lot line.

2. ZERO LOT LINE OPTION.

(a) Placement. The front building setback line shall be as hereinabove required. Each residence dwelling shall be designed so as to provide that a minimum of fifty percent (50%) of the linear distance of one (1) wall of the residence structure shall be constructed adjacent to and abutting a side lot line. Such side lot line where there is such construction shall be hereinafter referred to as the "Zero Lot Line". Provided however, that an open court or patio may be built adjacent and abutting the aforementioned Zero Lot Line, but said open court or patio must be enclosed by a masonry or wood wall having a minimum height of eight (8) feet. This wall must, as is the case with the residence wall, be constructed adjacent to the abutting Zero Lot Line and enclose the court or patio in such a manner as to appear to be an extension of the residence dwelling. The Zero Lot Line walls shall have no exterior objects or appurtenances such as, for example, there shall be no electric panels, vents, plumbing clean outs, windows or openings of any kind unless such Zero Lot Line side is on the street side of a corner lot. If the Zero Lot Line side is on the street side of a corner lot, normal openings and exterior appurtenances may be constructed on the dwelling abutting the Zero Lot Line. Provided, however, the roof overhang and the attached guttering of the Zero Lot Line dwelling may extend and encroach over the Zero Lot Line for a distance not to exceed twenty-four (24) inches. There is hereby established a six (6) foot minimum distance between the Zero Lot Line and the closest wall of the residence dwelling situated upon the adjoining Lot; however, the minimum distance between the roof of the dwelling located upon the Zero Lot Line and the roof of dwelling situated upon the adjoining Lot shall be five (5) feet. No dwelling shall be located on any Lot within any Utility Easement along the rear lot line.

(b) Zero Lot Line Access Easement. Upon the election by Declarant, its successors and/or assigns of the Zero Lot Line Option, as evidenced by completion on a Lot of construction of any residence complying therewith, each such lot shall have a five (5) foot access easement extending the entire depth of the lot from front to back abutting and parallel to the Zero Lot Line wall, over, on and across the adjacent lot, for the construction, repair and maintenance of improvements located on the Zero Lot line. Conditions and use of the Zero Lot Line Access Easement are hereby declared and established by and between the owner of the Zero Lot Line lot and the owner of the adjacent lot, which shall be covenants running with the land and binding both of the above mentioned owners and all of the respective heirs and assigns forever; to-wit:

(i) The Zero Lot Line lot owner must replace any fencing, landscaping or other items on the adjacent lot that he may disturb during construction, repair or maintenance.

(ii) This easement, when used by the Zero Lot Line lot owner for such construction, repair or maintenance, must be left clean and unobstructed unless the easement is actively being utilized and any items removed must be replaced.

(iii) The Zero Lot Line lot owner must notify the owner of the adjacent lot of his intent to do any construction,

repair or maintenance upon the Zero Lot line wall at least twenty-four (24) hours prior to starting any work, with the hours that such access easement may be utilized being between 8:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. through 6:00 p.m. on Saturday.

(iv) Both the Zero Lot line lot owner and the adjacent lot owner shall have the right of surface drainage over, along and upon the access easement area. Neither owner shall use the access easement area in such a manner as will interfere with such drainage.

(v) Neither owner shall attach any object to the Zero Lot Line wall, facing onto the access easement area and the owner of the adjacent lot will not use the Zero Lot line wall as a playing surface for any sport. In addition, no structure shall be constructed or placed upon the access easement area by either owner, except the roof overhang and guttering as provided for above, and a fence by the owner of the adjacent lot, which allows drainage; however, access to the access easement must be preserved for the owner of the Zero Lot Line lot.

### 3. SIDE YARD CONCEPT OPTION.

I. If the Side Yard Concept Option is exercised as to one or more of the following Lots, to-wit: Lots 1-8, both inclusive of Block 1; Lots 1-31, both inclusive, of Block 2; Lots 1-9, both inclusive, of Block 3; Lots 1-15, both inclusive of Block 4; Lots 1-45, both inclusive, of Block 5 and Lots 1-30, both inclusive, of Block 6, then the provisions of this sub-section I shall apply.

- (a) Placement. The front building setback line shall be as hereinabove required. The residence dwelling shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from the side lot line abutting a street and shall not be nearer than five (5) feet on the other side lot line of such corner lot. Each residence dwelling shall be designed so as to provide that a minimum of fifty percent (50%) of the linear distance of one (1) wall of the residence structure, hereinafter called the Side Yard Wall, shall be constructed adjacent to and five (5) feet from the side lot line. The five (5) foot area bounded by the Side Lot Line and the Side Yard Wall and running from the rear property line to the front building set back line shall hereinafter be referred to as and hereinbelow be defined as "Side Yard Land Maintenance Easement." Provided, however, that an open court or patio may be built to the residence structure adjacent and abutting the aforementioned Side Yard Land Maintenance Easement and within the Side Yard Wall area, but said open court or patio must be enclosed by a masonry or wood wall having a minimum height of eight (8) feet. This wall must, as in the case with the Side Yard Wall, be constructed adjacent to and abutting in such a manner as to complement the residence dwelling. The Side Yard Wall shall have no exterior objects or appurtenances such as, for example, electric panels, vents, plumbing cleanouts or windows unless such Side Yard Wall is on the street side of a corner Lot. If, on the street side of a corner Lot, regular openings may be constructed on such dwelling abutting the street side lot line. There is hereby established a ten (10) foot minimum distance between the Side Yard Wall and the closest wall of the residence dwelling situated upon the adjoining Lot. No dwelling shall be located on any Lot within any rear-lot Utility Easement.

- (b) Side Yard Land Maintenance Easement. The following terms, conditions and uses of the Side Yard Land Maintenance Easement are hereby declared and established by the Owner of said Side Yard Wall Lot and the owner of the adjacent Lot, which terms shall be a covenant running with the land and binding both of the above mentioned owners and all of the respective heirs and assigns forever:

(i) The Side Yard Land Maintenance Easement (herein called the easement area) may be used by either owner for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of a lot so as to improve the drainage of water from the lots or the easement area. It shall be the responsibility of each owner to take appropriate measures, whether by landscaping or otherwise to protect an adjoining owner's lot or the easement area from water running off of such owner's roof onto an adjoining owner's lot or onto the easement area and no owner shall have liability or otherwise be responsible to any other owner for any loss, expense or damage resulting from such roof run-off.

(ii) The owner of the adjacent lot, except as otherwise provided in this Section, shall have the exclusive use of the surface of the easement area for the purposes of maintaining the lawn and/or other landscaping located within such easement area which maintenance shall be the obligation of the adjacent lot owner, and for all uses and enjoyments except as expressly limited or prohibited by the rules in this Section 3 and other applicable provisions of these Restrictions.

(iii) The owner of the Side Yard Wall Lot, upon twenty-four (24) hours notice to the adjacent lot owner shall have the right of entry unto the easement area between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. Saturday for the sole purposes of maintenance, painting, repairing and rebuilding of the Side Yard Wall or foundation and fencing which is situated adjacent to and abutting the easement area.

(iv) The owner of the Side Yard Wall Lot must replace any fencing, landscape or other item on the easement area or the adjacent lot that he may disturb during such maintenance or repair of the Side Yard Wall.

(v) Neither owner shall attach any object to the side of the Side Yard Wall abutting the easement area and the adjacent lot owner will not use the Side Yard Wall as a playing surface for any sport. In addition, no structure shall be constructed or placed upon the easement area by either owner, except that the owner of the adjacent lot may construct a fence, which allows drainage; however, access to the easement area must be preserved for the owner of the Side Yard Wall Lot.

(vi) The Owner of the adjacent Lot shall indemnify and hold harmless the owner of the Side Yard Wall Lot against any and all claims, demands, actions and causes of action of any nature arising out of the general use of the easement by the Owner of the adjacent lot, his licenses or invitees.

(vii) It is recognized by Declarant that the Side Yard Concept Option is best suited for regularly shaped adjoining lots and that if such option is exercised on adjoining irregularly shaped lots, such as those common to lots located on either a cul-de-sac or lots located on a curved street, that a strict adherence to the above terms may result in a disproportionate and inconvenient location of the Side Yard Land Main-



tenance Easement. Accordingly, Declarant hereby reserves and retains the right unto itself, its successors and those who purchase lots directly from it, to vary the Side Yard Land Maintenance Easement on Lots in the addition which are irregularly shaped and upon which the Side Yard Concept Option is exercised. The variance, if any, will be accomplished in the conveyance from either the Declarant or its successors or those who purchase Lots directly from it so as to clearly identify of record the variance involved. All owners of lots so involved will be requested to join in and consent to such variance, if any. By irregularly shaped lots, as used herein, is meant a lot where the front and back lot lines are not of equal length and the side lot lines are not of equal length.

(viii) Declarant further recognizes that strict adherence to the Side Yard Concept Option may result in a disproportionate and inconvenient location of the Side Yard Land Maintenance Easement as specifically relates to Lots 8 and 9 of Block 1. As to these specified Lots only, Declarant hereby grants to the Architectural Control Committee, in its sole discretion, the absolute right to vary and modify the Side Yard Land Maintenance Easement. The variance, if any, will be accomplished in the conveyance from either the Declarant or its successors or those who purchase Lots directly from it so as to clearly identify of record the variance involved. All owners of Lots so involved will be requested to join in and consent to such variance, if any.

II. If the Side Yard Concept Option is exercised as to one or more of the remaining Lots in the Subdivision, to-wit: Lots 9-22, both inclusive, of Block 1, then the provisions of this sub-section II shall apply.

- (a) Placement. The front building setback line shall be as hereinabove required. The residence dwelling shall not be located on the Lot nearer than three (3) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from the side lot line abutting a street and shall not be nearer than three (3) feet on the other side lot line of such corner lot. Each residence dwelling shall be designed so as to provide that a minimum of fifty percent (50%) of the linear distance of one (1) wall of the residence structure, hereinafter called the Side Yard Wall, shall be constructed adjacent to and three (3) feet from the side lot line. The three (3) foot area bounded by the Side Lot Line and the Side Yard Wall and running from the rear property line to the front building set back line shall hereinafter be referred to as and hereinbelow be defined as "Side Yard Land Maintenance Easement." Provided, however, that an open court or patio may be built to the residence structure adjacent and abutting the aforementioned Side Yard Land Maintenance Easement and within the Side Yard Wall area, but said open court or patio must be enclosed by a masonry or wood wall having a minimum height of eight (8) feet. This wall must, as in the case with the Side Yard Wall, be constructed adjacent to and abutting in such a manner as to complement the residence dwelling. The Side Yard Wall shall have no exterior objects or appurtenances such as, for example, electric panels, vents, plumbing cleanouts or windows unless such Side Yard Wall is on the street side of a corner Lot. If, on the street side of a corner Lot, regular openings may be constructed on such dwelling abutting the street side lot line. There is hereby established a six (6) foot minimum distance between the Side Yard Wall and the closest wall of the residence dwelling situated upon the adjoining Lot; however, the minimum distance between the roof of the dwelling located upon the Lot containing Side Yard Wall and the roof of the dwelling situated upon the adjoining Lot shall be five (5)

feet. No dwelling shall be located on any Lot within any rear-lot Utility Easement.

- (b) Side Yard Land Maintenance Easement. The following terms, conditions and uses of the Side Yard Land Maintenance Easement are hereby declared and established by the Owner of said Side Yard Wall Lot and the owner of the adjacent Lot, which terms shall be a covenant running with the land and binding both of the above mentioned owners and all of the respective heirs and assigns forever:

(i) The Side Yard Land Maintenance Easement (herein called the easement area) may be used by either owner for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of a lot so as to improve the drainage of water from the lots or the easement area. It shall be the responsibility of each owner to take appropriate measures, whether by landscaping or otherwise to protect an adjoining owner's lot or the easement area from water running off of such owner's roof onto an adjoining owner's lot or onto the easement area and no owner shall have liability or otherwise be responsible to any other owner for any loss, expense or damage resulting from such roof run-off.

(ii) The owner of the adjacent lot, except as otherwise provided in this Section, shall have the exclusive use of the surface of the easement area for the purposes of maintaining the lawn and/or other landscaping located within such easement area which maintenance shall be the obligation of the adjacent lot owner, and for all uses and enjoyments except as expressly limited or prohibited by the rules in this Section 3 and other applicable provisions of these Restrictions.

(iii) The owner of the Side Yard Wall Lot, upon twenty-four (24) hours notice to the adjacent lot owner shall have the right of entry unto the easement area between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. Saturday for the sole purposes of maintenance, painting, repairing and rebuilding of the Side Yard Wall or foundation and fencing which is situated adjacent to and abutting the easement area.

(iv) The owner of the Side Yard Wall Lot must replace any fencing, landscape or other item on the easement area or the adjacent lot that he may disturb during such maintenance or repair of the Side Yard Wall.

(v) Neither owner shall attach any object to the side of the Side Yard Wall abutting the easement area and the adjacent lot owner will not use the Side Yard Wall as a playing surface for any sport. In addition, no structure shall be constructed or placed upon the easement area by either owner, except that the owner of the adjacent lot may construct a fence, which allows drainage; however, access to the easement area must be preserved for the owner of the Side Yard Wall Lot.

(vi) The Owner of the adjacent Lot shall indemnify and hold harmless the owner of the Side Yard Wall Lot against any and all claims, demands, actions and causes of action of any nature arising out of the general use of the easement by the Owner of the adjacent lot, his licenses or invitees.

(vii) It is recognized by Declarant that the Side Yard Concept Option is best suited for regularly shaped adjoining lots and that if such option is exercised on adjoining irregularly shaped lots, such as those common to lots located on

either a cul-de-sac or lots located on a curved street, that a strict adherence to the above terms may result in a disproportionate and inconvenient location of the Side Yard Land Maintenance Easement. Accordingly, Declarant hereby reserves and retains the right unto itself, its successors and those who purchase lots directly from it, to vary the Side Yard Land Maintenance Easement on Lots in the addition which are irregularly shaped and upon which the Side Yard Concept Option is exercised. The variance, if any, will be accomplished in the conveyance from either the Declarant or its successors or those who purchase Lots directly from it so as to clearly identify of record the variance involved. All owners of lots so involved will be requested to join in and consent to such variance, if any. By irregularly shaped lots, as used herein, is meant a lot where the front and back lot lines are not of equal length and the side lot lines are not of equal length.

(viii) Declarant further recognizes that strict adherence to the Side Yard Concept Option may result in a disproportionate and inconvenient location of the Side Yard Land Maintenance Easement as specifically relates to Lots 8 and 9 of Block 1. As to these specified Lots only, Declarant hereby grants to the Architectural Control Committee, in its sole discretion, the absolute right to vary and modify the Side Yard Land Maintenance Easement. The variance, if any, will be accomplished in the conveyance from either the Declarant or its successors or those who purchase Lots directly from it so as to clearly identify of record the variance involved. All owners of Lots so involved will be requested to join in and consent to such variance, if any.

SECTION 4. TYPE OF CONSTRUCTION. Exterior walls may be of masonry, brick, wood or other suitable material approved by the Committee. No garage, carport or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage or other permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. All exterior wood shall receive at least two coats of paint at the time of construction, unless such exterior wood is of redwood or cedar material.

SECTION 5. TEMPORARY BUILDINGS. Temporary buildings or structures shall not be permitted on any Lot. Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences. Builders in the Subdivision may use garages as sales offices for the time during which such Builders are marketing homes within the Subdivision. At the time of the sale of a residence by a Builder any garage appurtenant to such residence used for sales purposes must have been reconverted to a garage.

SECTION 6. DRIVEWAYS. On each Lot the Builder shall construct and the Owner shall maintain at his expense the driveway from the garage to the abutting Street, including the portion of the driveway in the street easement, and the Builder

shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto.

SECTION 7. ROOF MATERIAL. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

SECTION 8. FENCES. No fence or wall shall be erected on any Lot nearer to the Street than the building setback lines as shown on the Subdivision Plat. In the event the main residential structure on any Lot is constructed behind such building setback lines, then no fence or wall shall be erected on such Lot nearer to the Street than the front side of the residential structure which faces directly upon the Street. The erection of chain link fences anywhere in the Subdivision is prohibited without the prior written consent of the Committee which has absolute discretion in permitting or denying requests for chain link fences. Fences that are constructed on a Lot by a Builder may not be removed, painted, replaced, restored, altered or modified in any manner until the plans thereof have been approved by the Committee.

SECTION 9. GRASS, SHRUBBERY AND FENCING. The Owner of each Lot used as a residence shall solid sod with grass the area between the front of his residence and the curb line of the abutting Street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be kept mowed to prevent unsightly appearance. If not mowed and edged by the Owner within ten (10) days after written request to do so is made by the Association, then the Association shall have the right to cause the mowing and edging to be performed and add the cost thereof to the defaulting Owner's assessment. Dead or damaged trees, which might create a hazard to property or persons within the Subdivision shall be promptly removed or repaired, and if not removed by Owner upon request, then the Declarant or Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. Vacant Lots shall be mowed and maintained in appearance by the Owner and shall not be used as dumping grounds for rubbish, trash, rubble or soil, except that Declarant may designate fill areas into which materials specified by Declarant may be placed. The Association may plant, install and maintain shrubbery and other screening devices around boxes, transformers and

other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment and wood piles or storage piles.

SECTION 10. SIGNS. No signs, billboards, posters or advertising devices of any kind shall be permitted on any Lot without the prior written consent of the Committee other than (a) one sign of not more than six (6) square feet advertising the particular Lot on which the sign is situated for sale or rent, and (b) one sign of not more than six (6) square feet to identify the particular Lot as may be required by FHA or VA during the period of actual construction of a single family residential structure thereon. The right is reserved by Declarant (and to Builders provided the prior written consent of the Architectural Control Committee is obtained) to construct and maintain, signs, billboards and advertising devices as is customary in connection with the sale of newly constructed residential dwellings. The Declarant and the Association shall have the right to erect identifying signs at each entrance to the Subdivision.

SECTION 11. TRAFFIC SIGHT AREAS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the Street shall be permitted to remain on any Corner Lot within the triangular area formed by the two (2) lot lines abutting the Street and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area formed by the lot line abutting a Street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

SECTION 12. EXTERIOR ANTENNAE. No radio, satellite or television wires, antennae or other equipment shall be placed on any Lot between the residence and an adjoining Street or upon the roof of any dwelling. There shall be no free standing antennae located upon any Lot.

SECTION 13. CURB RAMPS. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalk and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

SECTION 14. FHA SCREENING FENCES. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Subdivision Plat, as required pursuant to this instrument, or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the Owners of the Lots adjacent thereto at their own expense. If the FHA or the VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements.

SECTION 15. MINIMUM LOT SIZE IN RELATION TO RESIDENCE. No residence shall be erected on any Lot or combination of Lots having a lot width at the front of the Lot less than the shortest lot width at the front of any Lot as shown on the Subdivision Plat; and no residence shall be erected on any Lot or combination of Lots having a lot area less than 3,000 square feet.

SECTION 16. MAILBOXES. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community. In the event the U. S. Postal Service requires the installation of some type of centralized mail delivery service such as use of Neighborhood Box Units, then, in that event, the concrete slabs upon which such units are to be placed will be constructed by Declarant within the street right of way and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the neat and attractive appearance of the area surrounding the said unit.

SECTION 17. AIR CONDITIONERS. No window or wall type air conditioners visible from any Street shall be permitted.

SECTION 18. PRIVATE UTILITY LINES. All electrical, telephone and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

SECTION 19. ENFORCEMENT OF EXTERIOR MAINTENANCE. In the event of violation of any covenant or restriction herein by any Owner or occupant of any Lot and the continuance of such violation after ten (10) days written notice thereof, or in the event the Owner or occupant has not proceeded with due diligence to complete appropriate repairs, painting and maintenance after such notice, the

Association shall have the right (but not the obligation), through its agents or employees, to repair, maintain and restore the Lot and the exterior of the residence and any other improvement located thereon. To the extent necessary to prevent rat infestation, diminish fire hazards and accomplish any of the above needed repair, maintenance and restoration, the Association shall have the right, through its agents and employees, to enter any residence or improvements located upon such Lot. The Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. The Owner and occupant agree by the purchase and occupation of the Lot to pay such statement immediately upon receipt. The cost of such work, plus interest thereon at the maximum rate permitted under the laws of the State of Texas, shall become a part of the assessment payable by said Owners and payment thereof shall be secured by the lien herein retained. The Association, its agents and employees shall not be liable, and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized herein.

#### ARTICLE VIII

##### EASEMENTS

SECTION 1. EXISTING EASEMENTS. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and the Subdivision Plat further establishes dedications, limitations, reservations and restrictions applicable to the Lots. Further, Declarant and Declarant's predecessors in title have heretofore granted, created and dedicated by several recorded instruments, certain other easements and related rights affecting the Lots. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Lots are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Lots.

SECTION 2. CHANGES AND ADDITIONS. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity,

to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes, (including, without limitation, gas, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to the Properties, along and on either or both sides of any side lot line, which such easements shall have a maximum width of five (5) feet on each side of such side lot line.

SECTION 3. CABLE TV. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more Cable Television Companies and Declarant shall have the right and power in such agreement or agreements to grant to such Cable Television Company or Companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the plat referenced above and Declarant does hereby reserve unto itself, its successors and assigns the sole and exclusive right to obtain and retain all income, revenue and other things of value paid or to be paid by such Cable Television Companies to Declarant pursuant to any such agreements between Declarant and such Cable Television Companies, provided, however, that from and after such time as, pursuant to Article III, Section 4 hereinabove, the Class B membership ceases, the right to all revenue, income and other things of value paid by such Cable Television Companies shall be assigned to the Association by Declarant.

SECTION 4. TITLE TO EASEMENTS AND APPURTENANCES NOT CONVEYED. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Lots, and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

SECTION 5. INSTALLATION AND MAINTENANCE. There is hereby created an easement upon, across, over and under all of the Lots for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas and appurten-



ances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, services lines or other utility facilities or appurtenances thereto, on, above, across and under the Lots within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines water lines, or other utilities or appurtenances thereto may be installed or relocated on the Lots until approved by Declarant or the Association's Board of Directors. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on portions of the Lots abutting such easements.

SECTION 6. EMERGENCY AND SERVICE VEHICLES. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles and other service vehicles to enter upon the Lots in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Lots to render any service.

SECTION 7. UNDERGROUND ELECTRICAL DISTRIBUTION SYSTEM. An underground electric distribution system will be installed within the Subdivision which will be designated an Underground Residential Subdivision and which underground service area shall embrace all Lots in the Subdivision. The Owner of each Lot in the Underground Residential Subdivision shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence

constructed on such Owner's Lot. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company will install the underground electric distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable) upon Declarant's representation that the Underground Residential Subdivision is being developed for residential dwelling units which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Therefore, should the plans of Lot Owners in the Underground Residential Subdivision be changed and this Declaration be amended so as to permit the erection therein of one or more mobile homes, the company shall not be obligated to provide electric service to any such mobile home unless (a) Declarant has paid to the company an amount representing the excess in cost for the entire Underground Residential Subdivision of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision, or (b) the Owner of such affected Lot, or the applicant for service to any mobile home, shall pay to the company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot over the cost of equivalent overhead facilities to serve such Lot, plus (2) the cost of rearranging and adding any electric facilities serving such lot, which rearrangement and/or addition is determined by the company to be necessary, provided that in no instance shall Declarant be obligated to pay the electric company such amount representing the excess in cost should the Lot Owners amend the Declaration to allow dwellings of a different type.

The provisions of the two preceding paragraphs shall also apply to any future residential development in reserve(s), if any, shown on the Subdivision Plat, as such plat exists at the execution of the Agreement for Underground Electric Service between the electric company and Developer or thereafter. Specifically, but not by way of limitation, if an Owner in a former reserve undertakes some action which would have invoked the above per front lot foot payment if such action has been undertaken in the Underground Residential Subdivision, such Owner shall pay the electric company \$1.75 per front lot foot unless the Developer has paid the electric

company as above-described. The provisions of this section and the two preceding paragraphs do not apply to any future nonresidential development in such reserve(s).

Easements for the underground service may be crossed by driveways and walkways provided that the Builder or Owner makes prior arrangements with the utility company furnishing electric service and provides and installs the necessary electric conduit of approved type and size under such driveways or walkways prior to construction thereof. Such easement for the underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, and neither Builder nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees or improvements (other than crossing driveways or walkways provided the conduit has been installed as outlined above) of the Owner and located on the land covered by said easements.

SECTION 8. DRAINAGE EASEMENTS. Declarant hereby grants, dedicates and creates two (2) feet drainage easements adjacent to the two Side Lot lines of each Lot within the Subdivision in favor of the Association for the purpose of maintaining drainage ditches and swales. The Owners of such Lots shall not plant, install or otherwise maintain any shrubbery, vegetation or trees or build or allow to stand any structure or other improvement in such easement area without the prior written consent of the Architectural Control Committee being first obtained. A fence may be placed on or across the easement only if the design thereof is approved in writing by the Committee prior to its installation and such fence does not obstruct the natural drainage pattern of such easement.

#### ARTICLE IX

##### ENFORCEMENT

The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, the covenants and restrictions contained herein. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorney's fees incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in violation of the covenants and restrictions. Each such Owner, by his acceptance of a Deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner

may waive or otherwise escape liability for the charges provided for herein by non-use of the Community Properties or abandonment of his Lot.

ARTICLE X

GENERAL PROVISIONS

SECTION 1. TERM. These covenants and restrictions shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the Owners of a majority of the Lots has been recorded agreeing to terminate the covenants and restrictions herein.

SECTION 2. SEVERABILITY. Invalidation of any one of these covenants and restrictions by judgment or other court order shall in no wise affect any other provisions, which shall remain in full force and effect except as to any terms and provisions which are invalidated.

SECTION 3. GENDER AND GRAMMAR. The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

SECTION 4. TITLES. The titles of this Declaration contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

SECTION 5. INTERPRETATION. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

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

SECTION 7. 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 Member or Owner on the records of the Association at the time of such mailing.

SECTION 8. REPLATTING. Declarant shall have the right, but shall never be obligated, to resubdivide into Lots, by recorded plat or in any other lawful manner, all or any part of the property contained within the outer boundaries of the Subdivision Plat and such Lots as replatted shall be subject to these restrictions as if such Lots were originally included herein. Any such replat must comply with all local, state, FHA and VA replatting ordinances, statutes, regulations and requirements.

SECTION 9. AMENDMENT. This Declaration may be amended at any time by an instrument executed by the Owners of at least seventy-five percent (75%) of the Lots, provided that same must be approved by the FHA and VA.

The Declarant shall have and reserve the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration and any Supplemental Declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or his mortgagee.

#### ARTICLE XI

#### ANNEXATION

Additional property may be annexed into the jurisdiction of the Association by recorded restrictions so stating upon the consent of two-thirds (2/3rds) of each class of Members of the Association provided, however, that upon submission to and approval by the FHA or the VA of a general plan, such additional stages of development may be annexed by Declarant without such approval by the Membership. The Owners of Lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Community Properties that may become subject to the jurisdiction of the Association, provided that such annexed property shall be impressed with and subject to at least the annual maintenance assessment imposed hereby. As long as there is a Class "B" membership, the annexation of additional properties, the dedication of Community Properties, if any, to the Association, the mortgaging of such Community Properties, and the amendment of this Declaration shall require the prior approval of the FHA or the VA.

ARTICLE XII

RATIFICATION: LIENHOLDER AND OWNER

Gibraltar Savings Association, the owner and holder of a lien or liens covering the Lots and Monarch Homes, Inc., the owner of several Lots, have executed this Declaration to evidence their joinder in, consent to, and ratification of the imposition of the foregoing covenants and restrictions.

IN WITNESS WHEREOF, this Declaration is executed this 3rd day of AUGUST, 1984.

DECLARANT:

NASH PHILLIPS/COPUS-HOUSTON, INC. (2) / 100

By: [Signature]  
Name: RON HAMMONDS  
Title: President

LIENHOLDER:  
GIBRALTAR SAVINGS ASSOCIATION / 100

By: [Signature]  
Name: Charles R. Berkman  
Title: Sr. V. President President

~~MONARCH HOMES, INC.~~

~~By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ President~~

RECORDER'S MEMORANDUM  
ALL DIACROPTS, ADDITIONS AND CHANGES  
WERE PRESENT AT THE TIME THE INSTRUMENT  
WAS FILED AND RECORDED.

FILED  
AUG 17 12 55 PM '84  
Charles R. Berkman  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 3rd day of AUGUST, 1984 by RON HAMMONDS, PRESIDENT of Nash Phillips/Copus-Houston, Inc., a Texas corporation, on behalf of said corporation.

[Signature]  
Notary Public in and for  
The State of T E X A S  
FRANCES E. DOWLING

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

Notary Public State of Texas  
My Commission Expires September 29, 1984  
Bonded by L. Alexander Lovett, Lawyers Surety Corp.

This instrument was acknowledged before me on the 16 day of August, 1984 by Charles R. Berkman, Sr Vice Pres. of Gibraltar Savings Association, a Texas savings association, on behalf of said association.

[Signature]  
Notary Public in and for  
The State of T E X A S

[Signature]  
(Commission Expires 5/22/87)