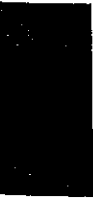


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Document

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**



1829

Filed 4/13/78

F556253

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, Custom Contemporaries, Inc. (hereinafter called the "Declarant"), is the owner of all that certain real property located in Harris County, Texas, described as follows:

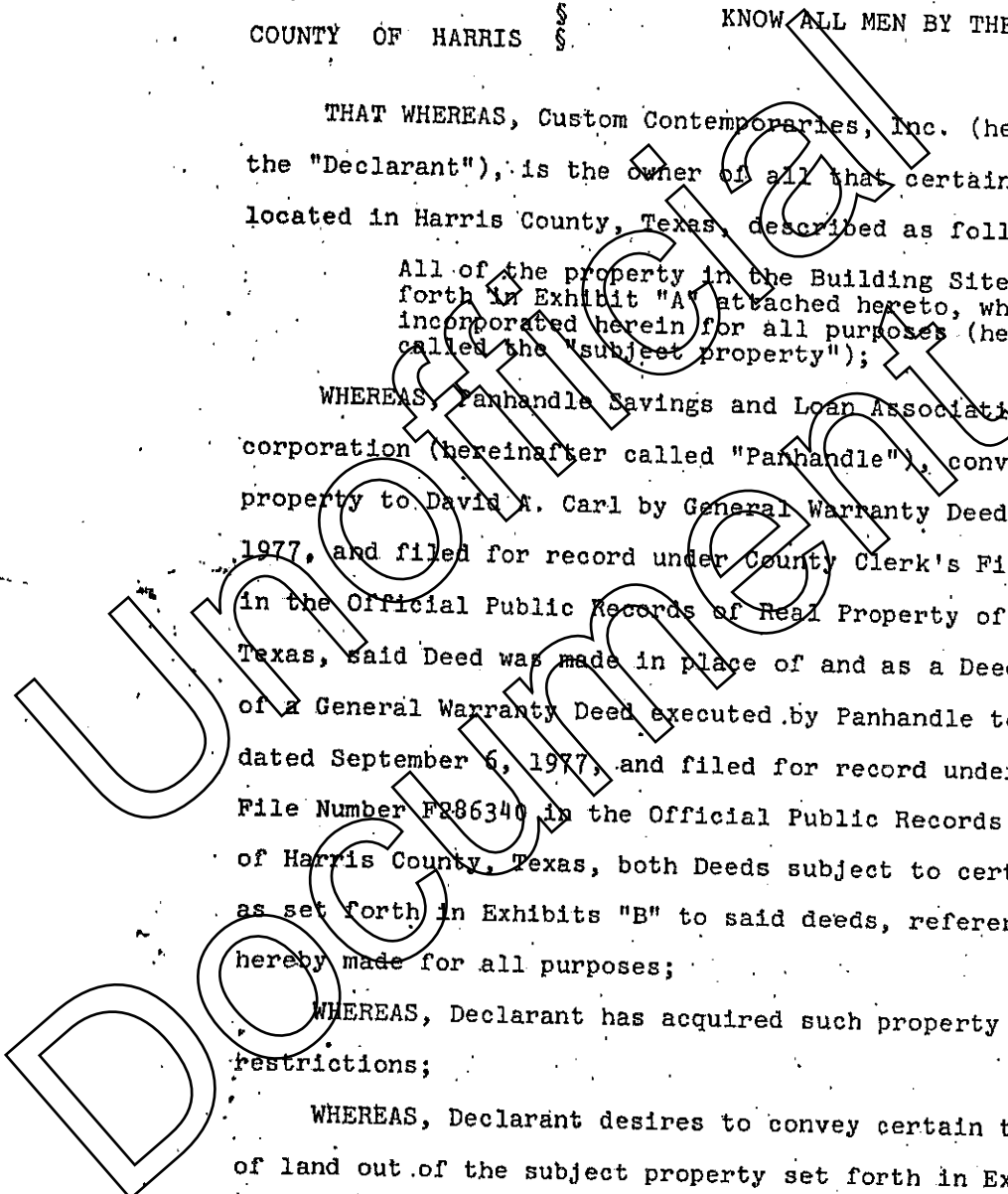
All of the property in the Building Sites as set forth in Exhibit "A" attached hereto, which is incorporated herein for all purposes (hereinafter called the "subject property");

WHEREAS, Panhandle Savings and Loan Association, a Texas corporation (hereinafter called "Panhandle"), conveyed the subject property to David A. Carl by General Warranty Deed dated November 11, 1977, and filed for record under County Clerk's File Number F391379 in the Official Public Records of Real Property of Harris County, Texas, said Deed was made in place of and as a Deed of Correction of a General Warranty Deed executed by Panhandle to David A. Carl, dated September 6, 1977, and filed for record under County Clerk's File Number F286340 in the Official Public Records of Real Property of Harris County, Texas, both Deeds subject to certain restrictions as set forth in Exhibits "B" to said deeds, reference to which is hereby made for all purposes;

WHEREAS, Declarant has acquired such property subject to such restrictions;

WHEREAS, Declarant desires to convey certain tracts or parcels of land out of the subject property set forth in Exhibit "A", said tracts or parcels are numbered consecutively starting with the number "1" and continuing through the number "29" (each such tract hereinafter called a "Tract") and said twenty-nine (29) Tracts compose the subject property;

WHEREAS, Declarant desires to remove any restrictions on the subject property in lieu of the restrictions set forth in Exhibits "B" to the deeds from Panhandle to David A. Carl, as set forth in Exhibit "C";



NOW, THEREFORE, it is hereby declared that the restrictions attached as Exhibits "B" to the General Warranty Deeds referred to above from Panhandle to David A. Carl are null and void and that the subject property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title, or interest in or to the subject property or any part thereof, and their heirs, successors, and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each owner thereof.

I  
TOWN HOUSE RESIDENTIAL CONSTRUCTION

No Building shall be erected, altered or permitted to remain on any Tract other than one single family residential dwelling not to exceed three (3) stories in height and private garage for not more than two (2) cars. No Tract upon which a dwelling shall be erected shall be smaller than 1300 square feet of area.

II

ARCHITECTURAL CONTROL

No buildings or improvements of any character shall be erected or placed or the erection begun, or changes made in the design thereof after original construction, on any Tract until the construction plans and specifications and a plot plan showing the location of the structure or improvements have been submitted to and approved by the Architectural Control Committee, consisting of David A. Carl, Doug Smith and Woodrow A. Holland, as its assignee as hereinafter provided for, as to compliance with these restrictions,

as to quality of material, harmony of external design with existing and proposed structures and as to location with respect to building set-back lines. In the event the Committee fails to approve or disapprove within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. The approval required herein is conclusively presumed upon substantial completion of the particular buildings or improvements.

The Architectural Control Committee referred to above hereby agrees to assign its rights to approve or disapprove plans and specifications to the 1829 Bering Drive Community Association, (hereinafter mentioned), when all twenty-nine Tracts comprising the subject property are sold by the Declarant, his successors or assigns.

### III

#### CONSTRUCTION REQUIREMENTS AND MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS

The living area on the ground floor of the main structure on each Tract exclusive of open porches and garages shall not be less than 800 square feet. The exterior materials of the residential structure shall not be less than thirty-five percent (35%) masonry. All structures and uses of all structures shall at all times comply with the Building Codes and Regulations of the City of Houston, Texas.

### IV

#### LOCATION OF THE IMPROVEMENTS UPON THE TRACTS

No building shall be located on any Tract nearer to the front line or nearer to the side street line than the minimum building set-back lines shown on the recorded plat. For the purposes of

this paragraph, eaves, steps and unroofed terraces shall not be considered part of a building, provided however, that this shall not be construed to permit any portion of the improvements on a Tract to encroach upon another Tract. Any deviation from the requirements of the above building lines may be waived at any time by written waiver of the Architectural Control Committee, its successors or assigns, and all purchasers of Tracts herein shall accept properties with this right reserved for the benefit of the Architectural Control Committee, its successors and assigns, but such waivers shall not affect requirements as may be made by ordinance, or restrictions and covenants not so waived.

#### V. UTILITY EASEMENTS

Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded plat and no structure shall be erected upon any of said easements. Neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees or servants to shrubbery, trees, flowers or improvements of the owner located on the land covered by said easements..

#### VI

#### USE REQUIREMENTS AND PROHIBITION OF OFFENSIVE ACTIVITIES

No Tract shall be used for any purpose except for a single family residential dwelling for the owner, his family, his social guests or his tenants. No activity, whether for profit or not, shall be permitted on any Tract which is not related to residential purposes. No noxious or offensive activity of any sort shall be

permitted nor shall anything be done on any Tract which may be or become an annoyance or nuisance to the neighborhood. Declarant, his successors and assigns, may maintain on the subject property models, construction and sales offices, and storage areas or such other facilities as in its sole discretion may be necessary or convenient as long as it owns any Tract covered hereby.

VII

USE OF TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any Tract at any time as a residence. Temporary structures used as building offices and for other related purposes during the initial construction period must be approved by the Architectural Control Committee.

VIII

STORAGE OF AUTOMOBILES, BOATS  
TRAILERS, MOTOR HOMES, AND OTHER VEHICLES

No automobiles, boats, trailers, travel trailers, motor homes, inoperative automobiles, campers or other vehicles of any kind shall be parked, other than occasionally, or semi-permanently or permanently stored in the private street right-of-way or forward of the front building line. Such vehicles may be so kept if parked or stored in the garage.

IX

ANIMAL HUSBANDRY

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Tract except that dogs, cats and other common

household pets of the domestic variety may be kept provided that they are not kept, bred, or maintained for commercial purposes and provided that no more than two (2) of each type animal is kept.

X  
WALLS, FENCES AND HEDGES

No wall, fence or hedge may be erected or maintained nearer to the streets than the building set-back lines existing on each Tract. No side or rear fence, wall or hedge shall be more than eight feet (8') high. No chain link fence type construction shall be permitted on any Tract.

XI  
PARTY WALL AGREEMENT

Each wall which is built as a part of the original construction of any town house on the subject property and used as a common wall with any other separately owned town house shall constitute a party wall and, to the extent not consistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto.

In the event of damage or destruction of a party wall, the cost of reasonable repair and maintenance shall be shared by the owners; and each party, his successors and assigns, shall have the right to the full use of said wall so repaired or rebuilt. If either party's negligence or willful acts shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost to repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such costs in case of negligence, the other party may have such wall repaired or restored and shall be entitled to have a Mechanic's Lien on the premises of the party

so failing to pay, for the amount of such defaulting party's share of the repair or the reconstruction costs.

The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owners' successors in title.

Each abutting owner shall have the right to break through the party wall for the purpose of repairing or restoring sewage, water or other utilities, subject to the obligation to restore said wall to its previous structural condition at his own expense and the payment to the abutting owner of any damages negligently caused thereby.

Neither party shall alter or change said party walls in any manner, interior decoration excepted, and said party walls shall always remain in the same location as when erected, and each party to said common or division wall shall have a perpetual easement in that portion of the premises of the abutting owner on which said party wall is located for party wall purposes.

In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party shall upon three (3) days notice choose one arbitrator, and such arbitrators shall within three (3) days choose one additional arbitrator, and the decision shall be made by majority of all arbitrators to which all parties shall be bound.

## XII

### MAINTENANCE EASEMENT

There is reserved a three foot wide access easement on each Tract along and parallel to the side tract line on which an exposed exterior wall is located. These easements provide an owner access to the exterior walls for periodic maintenance. The use thereof by



an adjacent property owner shall in no way limit the liability for any damage done to shrubbery, trees, flowers or improvements belonging to the owner of the land on which the easement is located.

XIII

TRACT MAINTENANCE

No Tract shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. All incinerators and other equipment for the storage and disposal of such trash, garbage or other waste shall be kept in a clean and sanitary condition and shall be kept and maintained at the rear of the residential structure on each Tract, or other location on each Tract as approved in writing by the Architectural Control Committee. All Tracts shall be kept clean and free of unsightly obstacles at all times and shall be mowed as often as may be necessary to keep the Tracts in a neat and attractive condition. The drying of clothes in full public view is prohibited and the owners or occupants of any Tracts at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Tract is visible to full public view shall construct and maintain a drying yard or suitable enclosures to screen the following from view: the drying of clothes, yard equipment or storage piles which are incident to the normal residential requirements of the typical family. In the event of default on the part of the owner or occupant of any Tract in observing the above requirements or any of them, such default continuing after ten (10) days written notice thereof, Declarant, his successors, assigns, agents, employees, or servants shall without liability in trespass or otherwise enter upon said Tract and cut or cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions so as to place

such Tract in a neat, attractive, healthful and sanitary condition and may charge the owner or occupant of such Tract for the costs of such work. The owner or occupant, as the case may be, agrees by the purchase or occupation of the property to pay such costs immediately upon receipt of a statement from Declarant, his successors or assigns.

XIV

SIGNS, ADVERTISEMENTS, BILLBOARDS

No sign, advertisement or billboard or advertising structure of any kind other than a normal "For Sale" sign not exceeding eight square feet may be erected or maintained on any Tract. Declarant, his successors or assigns will have the right to remove such sign, advertisement, or billboard or structure which is placed on said Tract and in so doing shall not be subject to any liability for trespass or otherwise in connection therewith or arising from such removal. Declarant, his successors or assigns may, however, maintain a temporary sign or signs on the subject property during the initial construction, which may be up to 160 square feet.

XI

ROOFING MATERIAL

The roofing material to be used in the construction of any improvements of the Tracts must be approved by the Architectural Control Committee, its successors or assigns.

XVI

MISCELLANEOUS

No radio, television, short wave, or other communication aerial, antenna, pole, or other similar framework, structure or devise shall be erected or maintained on any Tract or on the exterior of any improvements on any Tract. No spiritous vinous or malt liquors or medicated bitters capable of producing intoxication

shall ever be sold or offered for sale on any Tract, nor shall any Tract ever be used for vicious, illegal or immoral purposes, nor shall any such Tract ever be used for any purpose in violation of the laws of the United States of America, the State of Texas, any and all local governmental authorities, or of police, health, sanitary, building or fire codes, regulations, or instructions relating to or affecting the use, occupancy or possession of any of the Tracts. No oil, gas or other drilling, or no oil, gas or mineral development operations, and no oil, gas or other mineral refining, quarrying, or mining operations of any kind shall be permitted upon or in any Tract, nor shall oil or gas wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Tract. No derrick or other structure designed for use in boring for oil, gas or other minerals shall be erected, maintained or permitted on any Tract.

XVII

MAINTENANCE ASSESSMENT

Each Tract herein shall be subject to an annual maintenance assessment. The maintenance assessment shall be \$120.00 Dollars per year per Tract and is due and payable to 1829 Bering Drive Community Association, a Texas non-profit corporation (hereinafter defined and referred to as the "Association") in advance on the first day of each year. Declarant and any builder to whom Declarant sells a Tract shall not be liable for the payment of maintenance assessments for any Tract until such time as the improvements situated upon such Tract are occupied as a residence, or until such time as a townhouse is completed and a permanent loan closed on such Tract, whichever is sooner, after which date, such maintenance assessment shall accrue and be paid pro-rata, based on the number of months remaining in the current assessment year. Such mainten-

ance assessment may be adjusted by the Board of Trustees of the Association as the needs of the subject property may in the judgment of the Board require. The Board of Trustees may levy special assessments against all of the Tracts for additional and/or extraordinary expenses for which the regular maintenance fund may be expended. The Board shall apply the total fund arising from both such assessments, so far as the same may be sufficient, toward the payment of expenses incurred for any and all of the following purposes: For the payment of any ad valorem taxes and other assessments levied or imposed against any property owned by the Association; for the construction, maintenance, upkeep, repair, and replacement of obsolete or damaged improvements, fixtures and equipment owned or located on property owned by the Association; to provide for the regular removal of normal daily refuse of all Tract owners and such refuse and debris as may accumulate on any portion of the subject property and property owned by the Association; for the payment of personal liability insurance and property damage insurance if such is desired by the Board; for the payment of legal or other expenses incurred in connection with the enforcement of all recorded charges, covenants, restrictions, and conditions affecting the subject property and property owned by the Association to which the above maintenance assessment applies; for the payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge; for employing policemen and watchmen if desired by the Board; and doing any other thing necessary or desirable in the opinion of the Board to keep the subject property and property owned by the Association in neat and good order, or which it considers of general benefit to the owners or occupants of the Tracts, it being understood that the judgment of the Board in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good

faith. The obligation to pay the maintenance assessment shall be a covenant running with the land. To secure the payment of the assessments established hereby, and to be levied on individual residential Tracts, there shall be reserved in each deed (whether specifically stated therein or not) by which the Declarant will convey such Tracts, a vendor's lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that each such lien shall be secondary, subordinate, and inferior to all liens, present and future, given, granted and created by or at the instance and request of the Owner of any such Tract to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the construction of improvements on any such Tract to the extent of any such maintenance assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further, provided that as a condition precedent to any proceeding to enforce such lien upon any Tract upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage holder by prepaid U. S. Postal Service, and shall contain a statement of the delinquent maintenance assessments upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Tract covered by such first mortgage lien to the holder thereof.

XVIII

SUBORDINATION OF LIEN

The vendor's lien, reserved herein as security for the payment of the maintenance and special assessments set out herein, shall be subject, subordinate, inferior and secondary to all liens, mortgages and encumbrances, whether now or hereafter existing, that (i) are created to secure the payment of the purchase price of all or any part of any Tracts (and any improvements thereon), situated within the subject property, or (ii) are created to secure the payment of all amounts due or to become due under and by virtue of any contract, now or hereafter executed, for the construction, addition or repair of any improvements now or hereafter situated upon all or any part of the Tract situated within the subject property.

The sale or transfer of any Tract shall not affect the lien securing the assessments provided for herein. However, the sale or transfer of any Tract, pursuant either to mortgage foreclosure or to any proceeding in lieu thereof, shall extinguish the lien of such assessments as to any payments that have become due and payable prior to such foreclosure, sale or transfer in lieu thereof. No foreclosure or sale or transfer in lieu thereof covering any Tract shall relieve the purchaser or transferee thereof from liability for any assessments thereafter becoming due and payable nor release any such Tract from the lien securing payment of such subsequent assessments.

XIX

PROPERTY OWNERS' ASSOCIATION

Notice is hereby given that a Property Owners' Association will be created by Declarant, under the Texas Non-Profit Corporation

Act. Said Property Owners' Association will be known as the "1829 Bering Drive Community Association" (the "Association") and will be created to promote the social and civic welfare of the community. The owner or owners of each Tract shall be a member of the Association by virtue of their title to the property and membership shall run with title to each Tract. The owner or owners of each Tract shall be entitled to one vote per Tract and each member shall have the right to participate in the operations of the Association according to the Articles of Incorporation and the By-Laws, which shall govern the actions of the Association. Each member shall have the right to use and enjoy the private streets, sanitary sewer facilities and other utilities located in or under the property described in Exhibit "C" hereto, referred to and incorporated herein for all purposes, said property containing the private streets and utilities to be used and enjoyed by the Association members.

XX

#### ENFORCEMENT

The Association, its Board of Trustees or any owner/member shall have the right to enforce by any proceeding of law or in equity all restrictions, conditions, covenants, reservations, liens, charges and assessments now or hereafter imposed by the provisions of these restrictions. Failure by the Association, its Board of Trustees or by any owner/member to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter. Violations of any restrictions, conditions or covenants herein shall give the Association, its Board of Trustees or any owner/member the right to enter upon any Tract where such entry and abatement or removal shall not be deemed a trespass.

XXI

SEVERABILITY

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no event affect any other provision which shall remain in full force and effect.

XXII

COVENANTS TO RUN WITH LAND

The restrictions, covenants, easements, conditions, assessments, charges, liens, stipulations and reservations hereby created are and shall be perpetual and construed as covenants running with the land and each and every person accepting a deed to any Tract shall be deemed to accept said deed with the understanding that each and every purchaser is also bound thereby by the provisions herein contained, and each and every purchaser, by accepting the deed to any Tract, shall thereby consent and agree to be bound by the covenants herein contained to the same extent as though he had executed this instrument.

XXIII

DURATION AND AMENDMENT TO THESE RESTRICTIONS

The covenants and restrictions of this declaration shall run with and bind the land for a term of twenty (20) years from the date this declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years; provided, however, the owners of a majority of the Tracts may change, alter, or amend or terminate the same at any time by executing, acknowledging and filing for record in the office of the County Clerk of Harris County, Texas, an appropriate instrument or agreement in writing setting forth such change, alteration, amendment or termination.



EXECUTED this 2nd day of April, A.D. 1978.

CUSTOM CONTEMPORARIES, INC.

By: David A. Carl  
President DAVID A. CARL

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared David A. Carl, \_\_\_\_\_ President of CUSTOM CONTEMPORARIES, INC., known to me to be the person whose name is subscribed to the foregoing instrument and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 2nd day of April, 1978.

Donna Lou Hood  
Notary Public in and for  
Harris County, TEXAS

DONNA LOU HOOD  
NOTARY PUBLIC IN AND FOR  
HARRIS COUNTY, TEXAS  
MY COMMISSION EXPIRES 5/20/79

The undersigned is the holder of certain liens against the property described in the Exhibits attached hereto, and consent is hereby given to the imposition of the foregoing restrictions and the undersigned does hereby agree to the terms and provisions thereof.

PENNAMCO, INC.

By:

*[Signature]*  
VICE PRESIDENT  
JACK L. Hughey

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared *Jack L. Hughey*, Vice President of PENNAMCO, INC., known to me to be the person whose name is subscribed to the foregoing instrument and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this *4th* day of *April*, 1978.

*Eileen F. McGinnis*  
Notary Public in and for  
Harris County, TEXAS  
Eileen F. McGinnis