

V1968, pg 201

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
BEAUMONT WEST, SECTION ONE  
BEAUMONT, TEXAS

THIS DECLARATION, made on the date hereinafter set forth by  
BEAUMONT WEST, INC., a Texas Corporation domiciled in Jefferson  
County, Texas, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property known as  
BEAUMONT WEST, SECTION ONE, an Addition to the City of Beaumont,  
County of Jefferson, State of Texas, which is more particularly  
described as:

BEING a 13.263 acre tract of land out of the Hezekiah Williams Survey,  
Abstract 56, Beaumont, Jefferson County, Texas, described as follows:

BEGINNING at a point in the north line of Gladys Street, said point  
being located North 89° 59' 27" West a distance of 302.00 feet measured  
along the north line of said Gladys Street from a galvanized pipe which  
marks the southeast corner of a tract of land heretofore conveyed to  
the City of Beaumont by judgment as recorded in Volume 1785, Page 57,  
Deed Records, Jefferson County, Texas, said BEGINNING CORNER being  
located on the northeast bank of Keith Ditch;

THENCE North 37° 02' 13" West along the north bank of said ditch a  
distance of 160.36 feet to a point for corner;

THENCE North 02° 20' 38" East a distance of 351.03 feet to a point  
for corner;

THENCE North 86° 43' 12" East along the north line of access "Tract  
H" as described in Volume 1850, Page 269, Deed Records, Jefferson  
County, Texas, a distance of 987.94 feet to an angle point;

THENCE North 52° 44' 32" East continuing along the north line of  
said "Tract H" a distance of 170.36 feet to a point for corner;

THENCE South 00° 00' 33" East a distance of 638.23 feet to a pipe  
for corner in the north line of Gladys Street;

THENCE South 89° 59' 27" West along the north line of Gladys Street  
a distance of 1,039.78 feet to the PLACE OF BEGINNING;

as shown and reflected by the Final Plat thereof recorded in the  
Office of the County Clerk of Jefferson County, Texas, reference  
to which is here made for all purposes.

NOW, THEREFORE, for the purpose of enhancing and protecting the value, attractiveness and desirability of Lots constituting the Addition, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to BEAUMONT WEST HOME OWNERS ASSOCIATION, a Texas Non-Profit Corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Addition, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Addition" shall mean and refer to the subdivided real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association as hereinafter provided.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be all of the property in the Addition, excluding (i) Lots reflected upon the Plat of the Addition and the improvements thereon; (ii) water, sewer and other utility lines and appurtenances thereto lying, installed and maintained within the utility easements reflected and designated as such upon the Plat

of the Addition; and (iii) public streets lying, constructed and maintained within the street easements reflected and designated as such upon the Plat of the Addition.

Section 5. "Lot" shall mean and refer to any plot of land shown upon the recorded Plat of the Addition, with the exception of (i) the Common Area; and (ii) the public street easements reflected and designated as such upon the Plat of the Addition.

Section 6. "Member" shall mean every person or entity who holds membership in the Association.

Section 7. "Declarant" shall mean BEAUMONT WEST, INC. and its successors; provided, however, "Declarant" shall also mean any person or entity who shall acquire from BEAUMONT WEST, INC. or its successors for the purpose of resale all or substantially all of the Lots in the Addition not theretofore sold and conveyed by BEAUMONT WEST, INC. or its successors.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is designated as BEAUMONT WEST, SECTION ONE, and is more particularly described as follows:

BEING a 13.263 acre tract of land out of the Hezekiah Williams Survey, Abstract 56, Beaumont, Jefferson County, Texas, described as follows:

BEGINNING at a point in the north line of Gladys Street, said point being located North 89° 59' 27" West a distance of 302.00 feet measured along the north line of said Gladys Street from a galvanized pipe which marks the southeast corner of a tract of land heretofore conveyed to the City of Beaumont by judgment as recorded in Volume 1785, Page 57, Deed Records, Jefferson County, Texas, said BEGINNING CORNER being located on the northeast bank of Keith Ditch;

THENCE North 37° 02' 13" West along the north bank of said ditch a distance of 160.36 feet to a point for corner;

THENCE North 02° 20' 38" East a distance of 351.03 feet to a point for corner;

THENCE North 86° 43' 12" East along the north line of access "Tract H" as described in Volume 1850, Page 269, Deed Records, Jefferson County, Texas, a distance of 987.94 feet to an angle point;

THENCE North 52° 44' 32" East continuing along the north line of said "Tract H" a distance of 170.36 feet to a point for corner;

THENCE South 00° 00' 33" East a distance of 638.23 feet to a pipe for corner in the north line of Gladys Street;

THENCE South 89° 59' 27" West along the north line of Gladys Street a distance of 1,039.78 feet to the PLACE OF BEGINNING;

all of which real property may hereinafter be referred to as "existing property."

Section 2. Future Development. Declarant may, at its sole election, bring within the scheme of this Declaration all or part of the additional properties, consisting of 53 acres, more or less, designated for "Future Development" on the Plat recorded contemporaneously with this Declaration. The additions provided under this section shall be made by filing of record a Supplementary Declaration of covenants, conditions and restrictions with respect to the additional property which shall extend the scheme of the covenants. Such Supplementary Declaration shall in all respects conform to the requirements and restrictions of the Cluster Housing Ordinance of the City of Beaumont, Jefferson County, Texas (Section 42-20.4 of the Code of Ordinances of the City of Beaumont, as amended).

Such Supplementary Declaration may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area

which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and the right to suspend such rights for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right to the Association to dedicate or transfer all or any part of the Common Area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment in and to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the property.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. The Association shall have two (2) classes of voting Memberships, as follows:

Class A. Class "A" Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by Class "A" Members.

Class B. The Class "B" Members shall be the Declarant, who 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:

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

(b) on January 1, 1986.

#### ARTICLE V

#### ASSESSMENTS

Section 1. Lien and Personal Obligation of Assessments.

Declarant, for each Lot owned by it in the Addition, hereby covenants, and each Owner of a Lot in the Addition is hereby deemed to covenant by acceptance of his deed for such Lot, whether or not it shall be so expressed in his deed, to pay to the Association (i) annual assessments and (ii) special assessments for capital improvements.

Such assessments will be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the Addition, and for the improvement and maintenance of the Common Area and of the homes situated within the Addition. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

- (a) Maintenance and repair of the Common Area.
- (b) Water, sewer, garbage, electrical, lighting, telephone, gas, and other necessary utility service for the Common Area.
- (c) Acquisition of furnishings and equipment for the Common Area, as may be determined by the Association, including without limitation all equipment, furnishings, and personnel necessary or proper for use of the recreational facilities.
- (d) Maintenance and repair of sidewalks and driveways in the Addition (whether situated on the Common Area or on Lots in the Addition, but only to the extent that same extend beyond privacy fences, garages or carports); private streets and drives in the Addition; and water, sewer, storm

drainage and other utility lines in or serving the Common Area or serving more than one (1) Lot in the Addition (which shall not be dedicated to general public use).

(e) Fire insurance covering the full insurable replacement value of the improvements (and their contents) on the Common Area, with extended coverage.

(f) Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitee, tenants or contract purchaser of any Owner arising out of their occupation and/or use of the Common Area. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association.

(g) Workmen's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Board of Directors of the Association.

(h) A standard fidelity bond covering all members of the Board of Directors of the Association and all other employees of the Association in an amount to be determined by the Board of Directors.

(i) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the Common Area, for the benefit of Lot Owners, or for the enforcement of these restrictions.

(j) In addition to maintenance of the Common Area, the Association shall provide exterior maintenance on each Lot as follows:



(1) Mowing and care of grass in area of Lot not enclosed within a privacy fence;

(2) Painting of exterior surface (or parts thereof requiring painting) as deemed necessary by the Board of Directors of the Association; and

(3) Minor carpentry repairs to or replacement of exterior trim, flashings, gutters, waterproofing and the like.

Exterior maintenance of the Lots in the Addition shall NOT include:

(1) Structural repairs or replacements;

(2) Roof repairs or replacements; or

(3) Any maintenance, repair or replacement attributable to the willful or negligent act of the Owner of a Lot, his family, guests, invitees, tenant or contract purchaser who reside on the property.

It is contemplated that there may ultimately be several additional Sections of the Addition brought within the jurisdiction of the Association (as provided in ART. II, Sec. 2, "Future Development") and within the exterior Lot maintenance of this Subsection. It is further contemplated that the costs of such exterior Lot maintenance may vary from Section to Section, primarily because of the difference in ages of the improvements constructed on the Lots in the earlier and later included Sections of the Addition. In order to more equitably and fairly apportion the exterior Lot maintenance costs among the several Sections of the Addition, the Board of Directors of the Association shall have the power and authority:

(1) To fix and levy the annual assessment for exterior Lot maintenance separately and independently for each Section of the Addition and separately from the annual assessments for all other purposes.

(2) To establish and maintain a separate account for receipt and disbursement of exterior Lot maintenance assessments for each Section of the Addition.

(3) To enter into separate and independent contracts for exterior Lot maintenance for each Section of the Addition.

(4) To create and appoint members of a separate "Exterior Lot Maintenance Committee" for each Section of the Addition; each such Committee to be composed of three (3) or more Owners of Lots in the Section for which the Committee is created; and the Board of Directors shall have the power and right to delegate to each such Committee all powers, duties and responsibilities of exterior Lot maintenance, except for fixing and levying the annual assessment for such exterior Lot maintenance (which authority shall not be delegated and shall be exercised solely by the Board of Directors of the Association).

Section 3. Power to Fix Annual Assessments. The power and authority to fix and levy the annual assessments shall rest exclusively with the Board of Directors of the Association, and when determined and fixed by the Board of Directors as herein provided, same shall be final, conclusive and binding upon each Lot Owner, his heirs, successors and assigns, including contract purchasers.

Section 4. Special Assessments for Capital Improvements. In addition to the annual maintenance assessments 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 of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Action Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Sec. 4 shall be sent to all Members not less than ten (10) 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 fifty percent (50%) or more of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Except as hereinafter provided, annual and special assessment must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Declarant or a Builder to whom Declarant sells shall not be responsible for the payment of assessments on unimproved Lots until six (6) months after commencement of construction upon an unimproved Lot. For purposes of this Section and the next succeeding Section, "commencement of construction" shall be construed as the date upon which a

building permit is issued by the municipal authorities; and "Builder" shall be construed to mean a person (or entity) who shall purchase from Declarant or its successors more than one (1) unimproved Lot in the Addition for the purpose of improving the Lots with residential improvements and selling, in the customary and ordinary course of his (or its) business, the improved Lots to the public; provided that the occupancy of an improved Lot, other than on a temporary basis as a model home or sales office, shall terminate such person's (or entity's) status as a "Builder", but only as to the Lot so occupied.

As provided in ART. V, Sec. 2(j), the Association may fix and levy assessments for exterior Lot maintenance separately for each Section of the Addition, and although such assessment shall be fixed at a uniform rate for all Lots in a Section, the rate of assessment may differ from Section to Section, as determined by the Board of Directors of the Association.

Section 7. Date of Commencement of Annual Maintenance Assessments; Due Dates. The annual maintenance assessments provided for herein shall commence as to each Lot on the first day of the calendar month next following the earliest to occur of the following: (i) the conveyance of a Lot by the Declarant or a Builder to an Owner; (ii) the termination of the status of "Builder" as to a Lot; or (iii) six (6) months following the commencement of construction by Declarant or Builder upon an unimproved Lot. The first annual assessment shall be adjusted according to the number of months remaining in the annual assessment period (whether a calendar or fiscal year, as determined by the Board of Directors of the Association). 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 sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days of the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. To secure the prompt payment of the aforementioned assessments, a lien is hereby created and granted for the benefit of the Association upon each Lot, and all improvements, additions, fixtures and appurtenances hereinafter placed thereon. The Association may bring an action by law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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. Power of Sale. To secure and enforce the payment of said assessments, and for the auxiliary and cumulative enforcement of said lien hereinabove created, Declarant has granted, sold and conveyed and by these presents does grant, sell and convey unto THAD HEARTFIELD, Trustee, of Jefferson County, Texas, and his substitute or successors, the hereinbefore described real property and all improvements, additions, fixtures and appurtenances hereafter placed thereon. To have and to hold the said premises, together with the rights, privileges and appurtenances unto the said Trustee, and to his substitutes or successors forever. And Declarant does hereby bind itself, its successors and assigns, to warrant and forever defend the said premises unto the said Trustee, his substitutes,

successors and assigns forever, against the claim or claims of all persons claiming or to claim the same, or any part thereof, for and upon the following trusts, terms, covenants and agreements, to-wit: That whereas, Declarant, its successors and assigns may hereafter become justly indebted to the Association, as evidenced by the hereinbefore mentioned assessments. Should Declarant, its successors and assigns do and perform all of the covenants and agreements herein contained and make prompt payment of the assessments hereby secured as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect.

That in the event of default the payment of any assessment hereby secured, in accordance with the terms hereof, it shall thereupon, or any time thereafter, be the duty of the Trustee, or his successor or substitute, at the request of the Association (which request is hereby conclusively presumed) to enforce this trust and make sale of the above described and conveyed property, or any portion thereof, as provided in Article 3810, Revised Civil Statutes of Texas 1925, after notice as provided in said Article (but without any other notice than is required by said Article 3810), selling all of the property as an entirety or in parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers, with general warranty binding the grantor, his heirs and assigns; and out of the money arising from such sale, the Trustee acting shall first pay all expenses of advertising said sale and making the conveyance, and then to the Association the full amount

of assessments owing, interest thereon, and reasonable attorney's fees, rendering the balance of the sales price, if any, to grantor, his heirs or assigns; and the recitals in the conveyance to said purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed and such sale and conveyance shall be conclusive against grantor, his heirs and assigns.

In case of the absence, resignation, death, inability, failure or refusal of the Trustee herein named or of any substitute Trustee appointed hereunder to act, or in the event the Association shall deem it desirable to remove without cause the Trustee or any substitute Trustee and appoint another to execute this trust, then in any of such events the Association shall have the right (to be exercised through its Board of Directors) and is hereby authorized and empowered to appoint a successor and substitute without any formality other than an appointment and designation in writing; and this appointment shall vest in him, as Trustee, the estate and title in and to all said premises, and he shall thereupon hold, possess and execute all the rights, title, powers and duties herein conferred upon the Trustee named herein; and the right to appoint a successor or substitute Trustee shall exist as often and whenever from any of said causes any Trustee, original or substitute, cannot or will not act, or has been removed without cause. The exercise or attempted exercise of the power of sale herein contained shall not exhaust said power of sale and shall not prevent any subsequent exercise thereof.

It is especially agreed that, in the event of a foreclosure under the powers granted herein, the person in possession of said

property shall thereupon become the tenant-at-will of the purchaser at such foreclosure sale, and should such tenant refuse to surrender possession of said property upon demand, the purchaser shall thereupon, at his or her option, be entitled to institute and maintain the statutory action for forcible detainer and procure a writ of possession thereunder. This provision shall in no wise preclude the purchaser from bringing any other legal action for possession of said property and the bringing of one character of action shall not preclude the other, and the same may be exercised separately or simultaneously.

As additional properties are brought into the Addition and within the scheme of this Declaration, the recording of the Supplementary Declaration therefor (as provided in ART. II, Sec. 2, "Future Development") shall automatically subject such additional properties to the lien and power of sale herein provided, with the same force and effect as if separately and expressly conveyed by Declarant to the within named Trustee.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to any purchase money mortgage or any constitutional mechanic's and materialman's lien contract, or any renewal or extension of same. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; except that the existence of an easement on any Lot shall not exempt such Lot from full and uniform assessment as if such easement were not located thereon; (b) all Common Area as defined in ART. I, Sec. 4 hereof; and (c) all property exempted from taxation by the laws of the State of Tex



upon the terms and to the extent of such legal exemption. Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempted from sale assessment, charges or liens.

Section 12. Books and Records. Proper books and records shall be kept with reference to all assessments, and each Owner shall at all reasonable times during business hours have access thereto. The books and records shall be kept in such a manner as to separately identify the payments and assessments for utility service, maintenance and capital improvements. No payment or assessment for each individual assessment account shall be transferred or debited or credited to another account.

#### ARTICLE VI

#### OWNER'S OBLIGATION TO REPAIR AND MAINTAIN; OBLIGATION TO REBUILD; OBLIGATION TO CONSTRUCT SIDEWALK.

Section 1. Owner's Obligation to Repair and Maintain Residence.

Except for any exterior Lot maintenance to be performed by the Association under the provisions of ART. V, Sec. 2(j), each Owner shall, at his sole cost and expense, perform such repairs and maintenance as shall be required to keep his residence in a condition comparable to the condition of such residence at the time of its initial construction, excepting (i) ordinary wear and tear; and (ii) any deterioration resulting from the failure or refusal of the Association to perform any exterior maintenance for which it is obligated hereunder. In the event an Owner shall fail or refuse to make such repairs or perform such maintenance, and such failure or refusal shall continue for more than forty five (45) days from delivery of written notice from the Association to the Owner (or, if more than one [1] Owner, to any of them) specifying the maintenance or repairs

required to be made, the Association may, at its election, cause such maintenance and repairs to be performed. The costs of making or performing such maintenance and repairs shall then be an additional assessment to which such Lot is subject and shall be due and payable to the Association in the month next following the delivery to the Owner (or, if more than one [1] Owner, to any of them) a written itemized statement of costs of such maintenance and repairs. This assessment shall be secured by the same lien or liens and shall be enforceable in the same manner as any other assessment upon such Lot.

Section 2. Owner's Obligation to Rebuild. If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof with all due diligence, to rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to such casualty. Reconstruction will be undertaken within three (3) months after the damage occurs and shall be completed within twelve (12) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners.

Section 3. Owner's Obligation to Construct Sidewalk. Reflected upon the Plat of the Addition are sidewalks providing or designated to provide pedestrian circulation within the Addition, which sidewalks are designated as (i) "collector sidewalks", or (ii) "unit access sidewalks". Declarant or its successors shall construct, in conjunction with the construction of streets and private drives, those sidewalks designated as "collector sidewalks" upon said Plat. It shall be the obligation of the Owner or Owners of each Lot served by a "unit access sidewalk" to construct (in accordance with Section 42-20.4 of Chapter 42 of the Code of Ordinances of the City of

Beaumont, as amended) that portion or segment of such "unit access sidewalk" as is adjacent to such Lot, as reflected upon such Plat. Where a "unit access sidewalk" serves two (2) Lots (i.e., where situated in a courtyard between blocks), the obligation to construct such portion or segment of the "unit access sidewalk" serving both Lots shall be the joint and mutual obligation of the Owners of both such Lots, with one-half (1/2) of the costs of construction to be borne by the Owner or Owners of each such Lot. Each portion or segment of the "unit access sidewalk" shall be constructed within one (1) year from the date of the conveyance from Declarant to the Owner or Owners of the Lot served thereby or adjacent thereto, or upon the completion of a dwelling upon the Lot served thereby or adjacent thereto, whichever first occurs. Where a sidewalk segment serves or is adjacent to two (2) Lots, when the Owner or Owners of either such Lot shall be obligated to construct and complete such segment, then the Owners of both Lots shall be so obligated (even though the time for completion would not have elapsed as to the Owner or Owners of the second Lot). The obligation to construct a segment of the "unit access sidewalk" shall be deemed a covenant running with and a charge upon the Lot(s) served thereby and adjacent thereto. Additionally, if the Owner or Owners of the Lot(s) obligated to construct and complete a segment of the "unit access sidewalk" shall fail or refuse to construct the same within the time stated above, the Association may, at its election, construct such segment (without any notice to the Owner or Owners obligated to construct the same) and assess the costs of constructing such sidewalk segment ratably among the Owners of the Lot(s) served thereby or adjacent thereto. This assessment shall be due and payable by the Owner or Owners to whom same is assessed in the month next following delivery of an itemized statement of the construction costs incurred by the Association, and such assessment shall be secured by the same liens

and enforceable in the same manner as other assessments fixed or levied by the Association hereunder.

## ARTICLE VII

### ARCHITECTURAL CONTROL

Section 1. Authority of Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected, placed or maintained upon any Lot in the Addition or upon any portion of the Common Area, nor shall any exterior addition to or change or alteration of any improvement in the Addition be made, until the plans and specifications therefor, showing the kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the quality of materials, the harmony of external design and location in relation to other existing or planned structures and overall topography. Plans and specifications shall reflect all driveways and sidewalks required to serve the Lot, even though the same may, in whole or in part, extend beyond the perimeter boundaries of the Lot. The Architectural Control Committee shall give or withhold approval (as is in the judgment of the Committee proper) of all matters set forth above. In the event the Architectural Control Committee fails to approve or disapprove plans and specifications within thirty (30) days after same are submitted to it, approval will not be required and the related covenants will be deemed to have been fully complied with.

Section 2. Composition of Committee; Vacancies; Delegation of Authority; and Surrender of Authority. The Architectural Control Committee shall be composed of three (3) or more persons to be appointed by Declarant. Declarant herewith appoints SAM O. SMITH and THAD HEARTFIELD as two (2) members of the initial Architectural Control Committee. In the event of the death, inability to serve,

or resignation of a member of the Architectural Control Committee, the remaining members of the Committee shall have the power to designate a successor. The Committee shall have the power to designate a representative to act for it. No member of the Committee or its designated representative shall be entitled to demand or receive any compensation or fee as a condition to its examination or approval of plans or specifications submitted or to be submitted to the Committee hereunder. Upon the completion of construction of a residence upon each and every Lot in a Section of the Addition, the Architectural Control Committee may, by instrument in writing executed by a majority of the then members of the Architectural Control Committee, surrender its authority, powers and duties under this ARTICLE as to such completed Section to the Board of Directors of the Association or to a committee appointed by the Board of Directors. Upon completion of construction of a dwelling upon each and every Lot in the Addition (including the 53 acres, more or less, designated upon the Plat for "Future Development"), the Architectural Control Committee shall thereupon surrender its authority, powers and duties to the Board of Directors or to a committee appointed by the Board of Directors of the Association as to the whole of said Addition.

#### ARTICLE VIII

##### MAINTENANCE BY ASSOCIATION

Section 1. Maintenance of Common Area. It shall be the duty and obligation of the Association to (i) maintain and repair the Common Area of the Addition, together with all structures and improvements thereon; (ii) maintain and repair all water, sewer, storm drainage and other utility lines in or serving the Common Area or serving more than one (1) Lot in the Addition (which shall not be dedicated to general public use); (iii) maintain and repair sidewalks and driveways in the Addition (whether situated on the Common Area

or on Lots in the Addition, but only to the extent that same extend beyond privacy fences, garages or carports); (iv) maintain and repair private streets and drives in the Addition; and (v) provide exterior maintenance and repairs on each Lot in the Addition (as provided in ART. V, Sec. 2[j] above).

## ARTICLE IX

### PARTY WALLS

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

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

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

Section 4. Weatherproofing. Notwithstanding any other provision of this ARTICLE, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this ARTICLE

shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this ARTICLE, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to choose an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.

## ARTICLE X

### USE RESTRICTIONS

The Lots and the Common Area shall be occupied and used as follows:

Section 1. Residential Use. No Owner shall occupy or use his Lot or building thereon, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner, his family, guests and tenants.

Section 2. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 3. Insurance. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

Section 4. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No boat, trailer, truck (except for a pickup truck having a manufacturer's rated carrying capacity of one half [1/2] ton or less), camping or recreational vehicle shall be parked or stored upon any Lot in the Addition on a "permanent basis" (as hereinafter defined) in such a manner as to extend beyond the front or rear of the dwelling, or, if upon a corner Lot, in such a manner as to extend beyond the side of the dwelling facing the side street or side drive; nor shall any such boat, trailer, truck, camping or recreational vehicle be parked or stored upon any street or drive in the Addition on a "permanent basis" (as hereinafter defined). A "permanent basis", as that term is used above, shall mean any period of forty eight (48) consecutive hours or any period of twelve (12) consecutive hours on any two (2) consecutive days. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, drive, driveway or yard adjacent to a street, or in the Common Area.

Section 5. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn, servants quarters or other out buildings shall be used on any Lot at any time as a residence, either temporarily or permanently; nor shall any used residence or other used structure be moved onto any Lot. During the construction and sales period of the initial dwelling units the Builder may erect and maintain such structures as is customary in connection with such construction and sale of such property, including, but without limitation, a business office, storage areas, construction yards, signs, model units and sales offices.

Section 6. Signs. No sign of any kind shall be displayed to public view on any Lot or building except one (1) sign of not more



than five (5) square feet in area advertising the merits of the property for sale or rent. During the construction and initial sales period of the dwelling units the Builder may use other signs and displays to advertise the merits of the property for sale or rent.

Section 7. Oil and Mining Operations. Subject to the terms and provisions of the PARTIAL RELEASE OF SURFACE RIGHTS, UNDER OIL, GAS AND MINERAL LEASE, dated June 3, 1974, executed by HNG Oil Company and recorded in Volume 1850, Page 269 of the Deed Records and in Volume 9, Page 188 of the Map Records, both in Jefferson County, Texas, no gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot.

Section 8. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets, not to exceed a total of two (2) pets, may be kept provided that they shall not become a nuisance and are not kept, bred, or maintained for any commercial purposes.

Section 9. Garbage and Refuse Disposal. No Lot or any part of the Common Area shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall be kept screened by adequate planting or fencing so as to conceal them from public view. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal contractor(s). All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

Section 10. Sewage Treatment. No sewage treatment system shall be permitted on any Lot.

Section 11. Use of Common Areas. Except in the individual yard areas appurtenant to a residence, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any Lot except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Architectural Control Committee. Except for the right of ingress and egress and the right and easement of enjoyment as defined herein, the Owners are hereby prohibited and restricted from using any of the property in the Addition outside the exterior property lines of each Lot, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Lots in the Addition, and any additions thereto, and is necessary for the protection of said Owners. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area, all improvements on the Common Area, including but not limited to, buildings, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representative.

Section 12. Owner's Maintenance. The Owner shall maintain and keep in repair the following equipment and lines located outside the residence: air conditioning compressor condenser, including pipes and electrical lines connecting same to the residence, sanitary sewer line connecting the residence to the sanitary sewer collection system, electric power service conductors from the exterior of the building to the point of connecting to the electric utility company's junction box or transformer, electric circuit breakers, any portion of natural gas and/or telephone service lines located on the Lot but not maintained by the gas and/or telephone companies.

An Owner shall do no act nor any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other residences or their Owners.

Section 13. Outside Antennas. Without prior written approval of the Board of Directors, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon any Lot, nor upon any structure situated in the Addition other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 14. Annoyance. No activity shall be carried on upon any Lot or the Common Area which might reasonably be considered as giving annoyance to neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the Addition as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit.

Section 15. Minimum Square Footage Requirements. No one-story or split level dwelling shall be permitted on any Lot in the Addition in which the living floor area of the main structure (including enclosed utility and storage rooms, but excluding open porches, carports and garages) shall be less than one thousand four hundred (1,400) square feet; nor shall the first floor of any two-story or story and one-half dwelling on any Lot have less than eight hundred (800) square feet of such living area or a total of such living area of less than one thousand four hundred (1,400) square feet. Provided, however, there shall be permitted, on not more than ten percent (10%) of the interior Lots in each Section of the Addition and on not more than two (2) such interior Lots in each Unit of each Section (as reflected by the recorded Plat of each Section of the Addition), one-story dwellings having one thousand three hundred

(1,300) square feet of living area, as above defined; the location and density of such dwellings shall be subject to the approval of the Architectural Control Committee provided for in ARTICLE VII hereof.

Section 16. Exterior Construction Materials. Any dwelling and all structures appurtenant thereto constructed on any Lot in the Addition shall have not less than sixty five percent (65%) of the exterior thereof constructed of masonry, glass or other material not ordinarily requiring exterior painting.

Section 17. Rights of Declarant and Its Transferees. Declarant or the Transferees of Declarant shall undertake the work of developing all or substantially all Lots included within the Addition. The completion of that work, and the sale, rental, or other disposal of residential units is essential to the establishment and welfare of the Addition as an ongoing residential community. In order that such work may be completed and the Addition be established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, Declarant's Transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's Transferees from doing on any part or parts of the Addition owned or controlled by Declarant or Declarant's Transferees or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;

(b) Prevent Declarant, Declarant's Transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's Transferees from constructing and maintaining on any part or parts of the Addition property owned or controlled by Declarant, Declarant's Transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the Addition as a residential community, and the disposition of Lots by sale, lease, or otherwise;

(c) Prevent Declarant, Declarant's Transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's Transferees from conducting on any part or parts of the Addition property owned or controlled by Declarant or Declarant's Transferees or their representatives, the business of completing such work, of establishing the Addition as a residential community, and of disposing of Lots by sale, lease or otherwise; or

(d) Prevent Declarant, Declarant's Transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's Transferees from maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale, lease, or otherwise of Lots in the Addition.

As used in this section, the words "its Transferees" specifically exclude purchasers of Lots improved with completed residences.

## ARTICLE XI

### EASEMENTS

Section 1. Easements of Encroachment. There shall exist reciprocal appurtenant easements as between adjacent Lots and between each Lot and any portion or portions of the Common Area adjacent thereto for any encroachment due to the unwilful placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this Declaration. Such easement shall exist to a distance of not more than one foot (1') as measured from any point on the common boundary between adjacent Lots, and between each Lot and any adjacent portion of the Common Area, along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the wilful conduct of an Owner. In the event the structure containing two (2) or more residences is partially or

totally destroyed, and then rebuilt, the Owners so affected agree that minor encroachments of parts of the adjacent residential units on Common Areas (to the extent of not more than one foot [1'], calculated and measured as provided above) due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Other Easements.

(a) Easements for installation and maintenance of utilities and drainage facilities and for a public street or streets are shown and designated as such on the recorded subdivision Plat and are hereby dedicated to public use by Declarant. In addition to the easements shown on the recorded Plat of the Addition, there are hereby dedicated to public use by Declarant extensions of the various utility easements shown on such Plat under and across the areas designated on said Plat as "Private Drives" lying between said utility easements and the individual Lots which are to be served by said utility easements. Within these utility or drainage easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements.

(b) No dwelling unit or other structure of any kind (except as hereinafter provided) shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easement, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, and to the Association, its agents, employees and contractors, all of whom shall have the right and privilege

of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved. Easements for underground utilities may be crossed by sidewalks and driveways, provided that Declarant or any utility company or municipal agency using the easement shall not be liable for any damage done by them, their agents, employees or contractors to such sidewalks or driveways in the course of installing, maintaining or removing utility lines and appurtenances thereto within such easements.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. 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. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Joinder by Lienholder. At the request of and as an accommodation to Declarant, THE AMERICAN NATIONAL BANK OF BEAUMONT (the "Bank"), of Beaumont, Texas, being the owner and holder of a certain lien or certain liens upon the real property herein described (the "existing property"), joins with Declarant in the dedication to public use of the utility, drainage and street easements in and upon said real property, as shown and designated upon the recorded subdivision Plat thereof, together with the unplatted extensions of said utility easements, and in the imposition of the restrictions, covenants and conditions hereinabove set forth in this Declaration; and, by its joinder herein, the Bank expressly subordinates its lien, liens, superior title and equities to the easements herein dedicated and to the restrictions, covenants and conditions herein imposed. By its joinder herein, however, the Bank assumes none of the liabilities, duties, covenants or obligations of Declarant, its successors or assigns, nor does the Bank make any representations, guaranties or warranties as to any undertaking, covenants or representations of Declarant, its successors or assigns, the sole purpose of the joinder by said Bank being to consent and agree to the dedication of said easements and to the imposition of said restrictions, covenants and conditions and to the subordination of its lien, liens, superior title and equities to said easements, restrictions, covenants and conditions.



IN WITNESS WHEREOF, the BEAUMONT WEST, INC., the Declarant,  
joined herein by THE AMERICAN NATIONAL BANK OF BEAUMONT, has  
executed this Declaration on this the 29<sup>th</sup> day of July,  
1976, A.D.

BEAUMONT WEST, INC. ("DECLARANT")

By: [Signature]  
Its President

ATTEST

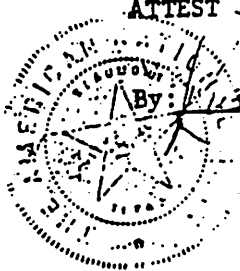
By: [Signature]  
Its Secretary

THE AMERICAN NATIONAL BANK OF  
BEAUMONT ("BANK")

By: [Signature]  
Vice President

ATTEST

By: [Signature]  
Assistant Cashier

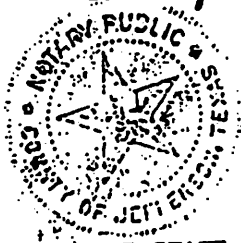


THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

BEFORE ME, the undersigned authority, on this day personally appeared Sam O. Smith, President of BEAUMONT WEST, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated as the act and deed of said Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 29<sup>th</sup> day of July, 1976, A.D.

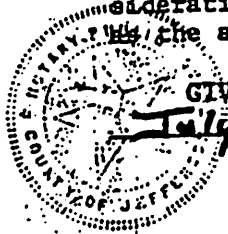


A. T. Underwood  
Notary Public in and for  
Jefferson County, Texas

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

BEFORE ME, the undersigned authority, on this day personally appeared Walter Hallmark, Vice President of THE AMERICAN NATIONAL BANK OF BEAUMONT, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated as the act and deed of said Corporation.



GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 29<sup>th</sup> day of July, 1976, A.D.

James Carter  
Notary Public in and for  
Jefferson County, Texas

FILED FOR RECORD

929800

*R. L. Bann*  
COUNTY CLERK  
JEFFERSON COUNTY, TEXAS

JUL 30 8 00 AM '76

Vol 1948 Page 419  
DEED RECORDS

STATE OF TEXAS  
COUNTY OF JEFFERSON

I hereby certify that this instrument was FILED for RECORD on the date and at the time stamped herein; and duly RECORDED without delay in the Volume and Page of the above named RECORDS of Jefferson County, Texas as stamped herein by me.

*R. L. Bann*  
COUNTY CLERK  
JEFFERSON COUNTY, TEXAS

929800

1948  
419

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Return to  
Beaumont, West, Inc.  
437 Petroleum Bldg.  
Beaumont, Texas 77701