

**Declarations-CC&Rs**  
**San Miguel Civic Association**

**FIRST AMENDMENT TO DECLARATIONS  
COVERING MISSION BEND, SAN MIGUEL,  
SECTIONS ONE, TWO, FIVE AND SIX**

STATE OF TEXAS §  
§ KNOW ALL MEN BY THESE PRESENTS THAT:  
COUNTY OF FORT BEND §

WHEREAS, pursuant to Article X, Section 10.2 of each of those certain Declarations covering Mission Bend, San Miguel, Sections One, Two, Five and Six, recorded, respectively, in Volume 767, Page 273, et seq., Volume 767, Page 292, et seq., Volume 910, Page 579, et seq., and Volume 910, Page 594, et seq., Deed Records of Fort Bend County, Texas (said instruments herein referred to collectively as the "Declarations"), the Declarations each provide that the Declarations "may be amended in whole or in part by an instrument executed by the President of the Association when approved by a majority of the votes of each Class of members at a Meeting of Members"; and

WHEREAS the Members have approved and adopted the amendments hereinafter set forth in accordance with the aforesaid provisions of the Declarations at a meeting of the Members duly called, convened and conducted on March 15, 1990.

NOW THEREFORE, notice is hereby given of amendment to each of the Declarations as follows:

Article V of each of the Declarations are, each and all, hereby amended by adding thereto the following Sections 5.11 and 5.12, to wit:

SECTION 5.11 Specific Assessments. The Board of Directors shall specifically assess individual Lots for Association expenses as follows:

(a) Compliance Costs. All expenses incurred by the Association by reason of a breach or violation of or to obtain compliance with any provisions of the Declarations, or the Articles of Incorporation or Bylaws of the Association, or any amendments thereto, shall be assessed against the Owner of the Lot who occasioned the incurrence of such expenses, including reasonable attorney's fees whether incurred prior to, during the pendency of or after successful completion of any actions in a court of competent jurisdiction.

(b) Payment; Waiver. Specific assessments shall become due and payable immediately upon the occurrence of the event giving rise to liability for payment of same. For good cause shown as determined in the sole discretion of the Board of Directors, the Board may waive, wholly or partially, imposition of any specific assessment; provided, any such waiver shall be conditioned upon adequate assurances of future compliance and payment in full of all remaining monetary obligations to the Association or receipt of written commitment that same will be paid within a specified period of time.

SECTION 5.12 Application of Payments. All payments made by or on behalf of an Owner for assessments, annual, special or specific, shall be deemed made upon the date of receipt of the payment by the Association or its designated agent. All payments received, including payments received in consequence of foreclosure proceedings, shall be applied first to payment of all specific assessments due, then to payment of all special assessments due, and finally to payment of all annual assessments due, application within each category to be on a first in, first out basis.

Article I, Section 1.1(m) of each of the Declarations are, each and all, hereby amended by deleting said Article I, Section 1.1(m) in its entirety and substituting in place thereof the following:

(m) "Meeting of Members" shall mean and refer to a meeting of Members duly called in the manner prescribed in the By-Laws of the Association at which a quorum is present. The presence, in person or by proxy, of Members having not less than ten percent (10%) of the total votes entitled to be cast shall constitute a quorum at all meetings of the members for the transaction of business. If a quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

Effective Date: The foregoing amendments shall become effective on and after the first (1st) day of April, 1990.

EXECUTED this 30 day of April, 1990.

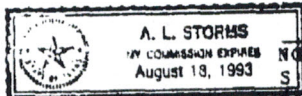
SAN MIGUEL CIVIC ASSOCIATION, INC.

By: [Signature]  
GARY BICKFORD, President

STATE OF TEXAS  
COUNTY OF ~~FORT BEND~~ HARRIS

§  
§  
§

This instrument was acknowledged before me on this 30 day of April, 1990, by GARY BICKFORD, President of SAN MIGUEL CIVIC ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said corporation.



[Signature]  
NOTARY PUBLIC in and for the  
STATE OF TEXAS  
Name: A. L. Storms  
My Commission Expires: 8-13-93

Attorneys:  
BURTON & ASSOCIATES, P.C.  
5301 HOLLISTER, SUITE 490  
HOUSTON, TEXAS 77040  
0219-ho75-0001a

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STATE OF TEXAS COUNTY OF FORT BEND  
I, hereby certify that this instrument was filed on the  
date and time stamped hereon by me and was duly recorded in  
the volume and page of the Official Records of Fort Bend  
County, Texas as stamped by me.

*Hanna Wilson*  
COUNTY CLERK  
FORT BEND COUNTY, TEXAS

JUL 30 1990



*Hanna Wilson*  
County Clerk, Fort Bend Co., TX.

Unofficial Document

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FAIRTEX CORPORATION

DECLARATION OF FAIRTEX CORPORATION  
COVERING MISSION BEND, SAN MIGUEL, SECTION SIX

THE STATE OF TEXAS  
COUNTY OF FORT BEND

FAIRTEX CORPORATION, a Texas corporation, acting herein by and through its duly authorized officers, the owner of the following described real property in Fort Bend County, Texas:

Lots 1 through 23, both inclusive, in Block 23  
Lots 25 through 53, both inclusive, in Block 23  
Lots 1 through 56, both inclusive, in Block 24  
Lots 7 through 23, both inclusive, in Block 25  
Lots 1 through 16, both inclusive, in Block 26

all in MISSION BEND, SAN MIGUEL, SECTION SIX (6),  
a subdivision in Fort Bend County, Texas, accord-  
ing to the map or plat thereof recorded in Volume  
22, Page 21, of the Map Records of Fort Bend  
County, Texas;

hereby declares that said real property, to the extent provided herein, shall be held, sold, transferred, and conveyed subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property.

ARTICLE I

Definitions

SECTION 1.1 Definitions. The following words, when used in this Declaration, shall have the following meanings (unless the context clearly indicates otherwise):

- (a) "Developer" shall mean and refer to FAIRTEX CORPORATION declarant herein, and to any corporation which succeeds to all or substantially all of its assets by any merger, consolidation, or conveyance of assets.
- (b) "Subdivision Plat" shall mean and refer to the plat of Mission Bend, San Miguel, Section Six (6), recorded in Volume 22, Page 21, of the Map Records of Fort Bend County, Texas; and "Subdivision" shall mean and refer to the land subdivided into numbered lots shown on said Map.
- (c) "Lot" shall mean and refer initially to any of the 135 lots shown on the Subdivision Plat, being the lots described hereinabove in this Declaration. If a subdivision plat is hereafter filed for record by Developer in the Office of the County Clerk of Fort Bend County, Texas, replatting the area only, the term "Lot" shall thereafter mean and refer to any of the numbered lots shown on such subdivision plat. If building sites are created pursuant to Section 2.4 herein, the term "Lot" shall also thereafter mean and refer to any building site so created. The term "Lot" shall also include any numbered lot shown on the recorded plat of any additional properties brought within the scheme of this Declaration.
- (d) "Corner Lot" shall mean any Lot that abuts on more than one street.
- (e) "Interior Lot" shall mean any Lot which is not a Corner Lot.

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- (f) "Street" shall mean any street, drive, boulevard, road, lane or avenue shown on the Subdivision Plat.
- (g) "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person or by a single family, including the dwelling, garage, and any greenhouse and servants quarters.
- (h) "Assessable Tract" shall mean and refer to any Lot from and after the date on which such Lot is conveyed by the Developer.
- (i) "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.
- (j) "Owner" shall mean and refer to the Owner(s), whether one or more persons or entities, of the fee simple record title to any Lot, but shall not mean or refer to any person or entity holding only a lien, easement, mineral interest, or royalty interest burdening the title thereto.
- (k) "Association" shall mean and refer to San Miguel Civic Association, a Texas non-profit corporation, and to any non-profit corporation which succeeds to all or substantially all of its assets, rights or powers by any merger, consolidation, or conveyance of assets, rights or powers.
- (l) "Member" shall mean and refer to a member of the Association during the period of such membership, and shall include the Owner (during the period of his ownership) of each Assessable Tract, and the Developer as set forth in Article III hereof.
- (m) "Meeting of Members" shall mean and refer to a meeting of Members duly called in the manner prescribed in the By-Laws of the Association, of which notice shall have been sent to all Members at least ten (10) days in advance of the meeting, stating the purpose(s) of the meeting, and at which a quorum shall be present. At the first Meeting of Members called to act on any matter(s) requiring a vote of Members by the provisions of this Declaration or the By-Laws of the Association, the presence at the meeting in person or by proxies of Members holding fifty percent (50%) of the aggregate of all the votes entitled to be cast shall constitute a quorum. If the required quorum is not present at any meeting called to act on any such matter(s), another meeting may be called to act on the same matter(s), subject to the notice requirement mentioned above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, except that such reduction in the quorum requirements shall not be applicable if the subsequent meeting is held more than sixty (60) days following the preceding meeting.
- (n) "Community Properties" shall mean and refer to such properties, real or personal, as are hereafter conveyed to or otherwise acquired by the Association. The Association's title to any property may cover the fee title thereto or only a leasehold estate therein, and may be subject to easements, reservations, restrictions, liens, indebtedness, obligations and other encumbrances.
- (o) "Architectural Control Committee" shall mean and refer to Mary Ellen Ambrose, William Wong, and John M. Robinson, all of Harris County, Texas, and their successors, who shall act as the Architectural Control Committee.

ARTICLE II

Subdivision Plat; Easements; Rights Reserved; Mineral Reserved; Building Sites; Adjacent Property; Community Properties; Waivers.

SECTION 2.1. Subdivision Plat. All dedications, easements, limitations, restrictions, and reservations shown on the Subdivision Plat are incorporated herein for all purposes, insofar as they relate to the Lots.

SECTION 2.2. Easements. Developer hereby reserves the right to dedicate, convey or reserve easements over, on, or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities, at or

prior to the time Developer parts with title to the land within the easement(s).

**SECTION 2.3 Reservations.** The title conveyed by Developer to any Lot by contract, deed, or other conveyance shall never be intended, construed or held to include the title to any of the Community Properties, if any, or any of the easements referred to in Sections 2.1 or 2.2, or any improvements at any time located over, on, or under the Community Properties, if any, or any such easement, and title to all of the same shall be considered as excluded from any such conveyance, except to the extent that any of the same are specifically referred to in the instrument of conveyance and are stated therein to be conveyed thereby. Developer reserves the right (but shall have no obligation) to construct, install, use, repair and maintain the public utilities, including but not limited to, the water, sewer, electric and telephone lines, conduits and equipment necessary in connection therewith, and the right of access necessary or convenient thereto, and any system of utility lines and facilities constructed by Developer over, on, or under any such easement may be given, sold or leased by Developer to any public authority, utility company, or holder of a public franchise.

**SECTION 2.4 Building Sites.** With the written approval of the Architectural Control Committee, the Owner(s) of a group of Lots, each of which is adjacent to one or more of the other Lots in the Subdivision, may designate a part of a Lot, or any combination of Lots or portions of Lots to be a building site or building sites. The front, rear and side lines of the lots affected by any such action, as such lines are designated on the Subdivision Plat, shall be adjusted to conform to the front, rear and side lines of the new building sites for building and other purposes. Improvements may be constructed on any such building site in accordance with the new front, rear and side lines thereof. No such building site shall have an average width of less than Fifty-Five (55') feet, nor shall any such building site have a total area less than Six Thousand (6,000) Square feet, without the written approval of the Architectural Control Committee. Each such building site, upon being designated as such by the Owner(s), shall thereafter be a Lot for all purposes of this Declaration.

**SECTION 2.5 No Obligation as to Adjacent Property.** The Subdivision is a part of a larger tract or block of land which is now or may hereafter be owned by Developer or others. While Developer or such other owners may subdivide other portions of its or their property now owned or hereafter acquired, or may subject the same to a declaration such as this Declaration, Developer shall have no obligation to do so, and if Developer or such other owners elect to do so, any subdivision plat or declaration executed by Developer or such other owners with respect to any of its or their other property may be the same as or similar or dissimilar to any subdivision plat covering the Subdivision, or any part thereof, or to this Declaration. The tracts shown as "Acreage" on the Subdivision Plat are parts of the other property of Developer or others referred to in this Section 2.5. Any advertisement, preliminary plan, drawing or other writing shown or referring to any other property shall not be binding on the Developer or such other owners unless and until such plan, drawing or other writing is duly executed by Developer or such other owners and recorded by Developer or such other owners in the Map Records or the Official Public Records of Real Property of Fort Bend County, Texas, and shall then only be binding as to the property actually within the boundary of the property intended by the Developer or such other owners to be included therein.

**SECTION 2.6 No Obligation as to Community Properties.** Unless the Subdivision Plat actually designates property therein as Community Properties, Developer shall have no obligations to acquire, furnish, construct, install, repair, maintain or convey to the Association any Community Properties; and in no event shall Developer be obligated to acquire, furnish, construct, install, repair or maintain any structures, improvements or other property (real or personal) on any property that may be designated on the Subdivision Plat as Community Properties.

**SECTION 2.7 Waivers.** Each Owner acquiring any Lot from Developer, its successors or assigns, warrants to Developer by accepting title to said Lot that they have inspected the Lot and the surrounding area and accept the Lot in the condition it is in at the time of acquiring title thereto, and waives, releases and renounces any and all claims, rights, demands, and causes of action in this manner arising out of or connected with the condition or location of said Lot or the merchantability thereof or its fitness for a particular purpose, or any damage caused in whole or in part by flooding, earthquake or other natural phenomena.

ARTICLE III  
Membership And Voting Rights  
in the Association

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SECTION 3.1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

SECTION 3.2. The Association shall have two classes of voting membership with the following rights:

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 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 vote be cast with respect to any Lot.

CLASS B. The Class B member(s) shall be the Declarant and 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 December 31, 1987.

ARTICLE IV

Property Rights in the Community Properties

SECTION 4.1 Members' Easements of Enjoyment. Subject to the provisions of Section 4.2, every Member shall have a common right and easement of enjoyment in the Community Properties, if any, and any such right and easement shall be appurtenant to and shall pass with the title to every Assessable Tract.

SECTION 4.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Developer or others as referred to or provided for in Article II, and shall also be subject to the following rights of the Association (which may be exercised by the officers of the Association when so authorized by its Board of Directors):

- (a) The Association shall have the right to construct, install, repair and maintain the Community Properties, if any, and to borrow money and in aid thereof to mortgage the Community Properties, if any, or any part thereof.
- (b) The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties, if any, against foreclosure or forfeiture of any mortgage, lien or other encumbrance thereon.
- (c) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid.
- (d) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Community Properties, if any, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (e) The Association shall have the right to assess and collect the assessments provided for herein, and in addition shall have the right to charge reasonable admission and other fees for the use of any



recreational or other facilities which are a part of the Community Properties, if any, such as (but not limited to) a separate charge for the use of any swimming facilities, tennis facilities, or clubhouse facilities.

- (f) The Association shall have the right to transfer or convey all or any part of the Community Properties, if any, or interests therein, to any public authority, subject to this Declaration.
- (g) The Association shall have the right to rent or lease any part of any Community Properties.
- (h) The Association shall have the right to extend the enjoyment of any of the Community Properties, if any, to persons other than members.

## ARTICLE V

Assessments and Lien Therefor; Books

SECTION 5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot which shall be or shall hereafter become subject to the assessments hereinafter provided for, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments fixed, established, and collected from time to time as hereinafter provided, together with such interest thereon and cost of collection thereof as are hereinafter provided for, all of which shall be a charge on and secured by a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided for, shall also be and remain the personal obligation of the person who is the Owner of such property at the time the assessment becomes due and payable, notwithstanding any subsequent transfer of title to such property. Such personal obligation shall not pass to such Owner's successors in title unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

SECTION 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively (i) to improve, beautify, manage, operate, care for and maintain the Community Properties, if any, the entrances to the Subdivision, the esplanades and streets in or adjacent to the Subdivision, and any guard house facilities and vacant lots in the Subdivision, the flood control rights-of-way in or adjacent to the Subdivision, and such other areas as the Board of Directors of the Association shall determine, (ii) to pay taxes and insurance premiums on any of such properties or improvements, and (iii) to promote the health, safety, convenience, enjoyment and welfare of the Members, such benefits to include, by way of illustration but not limitation, providing patrol or watchman service, fogging for insect control, enforcing the provisions contained in this Declaration, employing at the request of the Architectural Control Committee one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committee or the Directors of the Association, for the maintenance and/or improvement of the Community Properties, if any, or for the benefit of the Members, the foregoing uses and purposes being permissive and not mandatory, and the decisions of the Board of Directors of the Association being final as long as made in good faith and in accordance with the by-laws of the Association and governmental laws, rules and regulations.

SECTION 5.3 Annual Assessments. The Association, by action of its Board of Directors, shall levy annual assessments against the Assessable Tracts to obtain funds reasonably anticipated to be needed for the purposes stated in Section 5.2, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs. The amount of the annual assessment for an Assessable Tract shall not exceed \$300.00, except that for any calendar year after the calendar year 1981, the Association may increase said maximum amount of the annual assessment for an Assessable Tract, but if any such change increases the maximum amount which can be assigned against an Assessable Tract to more than \$400.00 per year or more than 110% of the amount assessed in the preceding calendar year, whichever is greater, the change must be approved by a majority of the votes cast by each class of Members at a Meeting of Members.

SECTION 5.4 Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on each Assessable Tract on the first day of the calendar month after it becomes an Assessable Tract. The amount of the annual assessment on each such Assessable Tract for the balance remaining in the first year

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of assessment shall be an amount which bears the same relationship to the annual assessment on such Assessable Tract provided for in Section 5.3 hereof as the remaining number of months in that year bears to twelve, and shall be due and payable on the day such Assessable Tract becomes an Assessable Tract. After the first year, the annual assessment on such Assessable Tract for each calendar year shall be due and payable on the first day of January in said year.

SECTION 5.5 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any calendar 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 capital improvements upon the Community Property, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of Members.

SECTION 5.6 Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount to be levied as the annual assessment against each Assessable Tract for each calendar year, subject to the criteria and limitations set out in Section 5.3. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Tracts showing the amount of each assessment, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall upon demand at any time furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether or not there are any unpaid assessments against said Owner's property. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.

SECTION 5.7 Effect of Non-payment of Assessment; The Lien, Remedies of Association. If an assessment is not paid on the date it becomes due, such assessment shall thereupon become delinquent and, together with the interest thereon and cost of collection thereof hereinafter provided for, shall thereupon be secured by a continuing lien on the Assessable Tract against which the assessment was levied, including improvements thereon, which shall bind such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. If the assessment is not paid within thirty (30) days after it becomes due, the assessment shall bear interest from the date it becomes due at the rate of ten percent (10%) per annum until it is paid, and the Association may bring an action at law to foreclose the lien securing the assessment, and there shall be added to the amount of such assessment all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit.

SECTION 5.8 Subordination of the Lien to Mortgages. The lien securing any assessment provided for herein shall be subordinate to the lien of any mortgage(s) now or hereafter placed upon the property subject to the assessment for the purpose of securing indebtedness incurred to purchase or improve such property, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a foreclosure by trustee's sale under a deed of trust, or a conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due, nor from the lien securing any such subsequent assessment. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

SECTION 5.9 Exempt Property. The assessments and liens created in this Section V shall apply only to the Assessable Tracts, and the remainder of the property in the Subdivision shall not be subject thereto.

SECTION 5.10. Books. The Association shall maintain books of account reflecting all of its income and disbursements. Any Member shall have the right to inspect such books at the office of the Association at any reasonable time.

#### ARTICLE VI

##### Garbage and Rubbish Pickup

SECTION 6.1 Pickup Service. The Association shall have the right, but not the obligation, to contract for garbage and rubbish pickup service on behalf of all Occupied Lots, and to charge or have the garbage contractor charge the Owner of each

Occupied Lot for his pro rata share of the cost thereof (such charge being hereinafter called "garbage charge"), such pro rata share to be determined by dividing the number of Occupied Lots being served into the total cost of such garbage and rubbish pickup service. Payment for such service may be on a monthly, quarterly, or semi-annual basis, at the discretion of the Association, and may be payable in advance.

SECTION 6.2 Effect of Non-Payment of Garbage Charge; The Lien; Remedies of Association.

If a garbage charge for any billing period (whether monthly, quarterly or semi-annually) is not paid on or before the first day of the billing period, or within ten (10) days after notice thereof is mailed to the Owner of the Occupied Lot to be charged, whichever is the later, the garbage charge shall bear interest thereafter at the rate of ten percent (10%) per annum until paid. The garbage charge and any interest thereon shall be the personal obligation of the Owner of the Occupied Lot receiving the garbage service (but not of such Owner's successors in title unless expressly assumed by them), and shall be secured by a continuing lien on such Occupied Lot, including improvements thereon, which shall be binding on such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. The Association may bring an action at law to foreclose the lien securing the garbage charge and there shall be added to the amount of the garbage charge the interest thereon and all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit. At its discretion, the Association may discontinue garbage service to any Occupied Lot which is in default hereunder, until all amounts in arrears, including the interest and other expenses provided for herein, have been paid in full.

SECTION 6.3 Subordination of the Lien to Mortgages. With respect to each Occupied Lot, the lien provided for in Section 6.2 shall be subordinate to the same liens to which the assessment provided for in Article V is subordinate pursuant to the provisions of Section 5.8, and may be subordinated to any other lien by the Association, in the discretion of its Board of Directors.

ARTICLE VII

Architectural Control Committee

SECTION 7.1 Tenure. The persons serving on the Architectural Control Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association have Living Units thereon occupied as residences, at which time the Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association, or its assigns. 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). A majority of the Architectural Control Committee may designate someone serving on the Committee to act for it. No person serving on the Committee shall be entitled to compensation for services performed pursuant to this Article VII. 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 such services as they render to the Committee, together with any interest incurred thereon.

SECTION 7.2 Approval of Plans. No buildings or other improvements shall be commenced, constructed, erected, placed or maintained in the Subdivision, unless and until same have been to and approved in writing by the Architectural Control Committee. The final working plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical and plumbing details and the nature, kind, shape and height, materials and locations and exterior color scheme or schemes. Once the Architectural Control Committee has approved a building or other improvements, the same builder or individual may duplicate the identical building or improvements upon another lot or lots without further or additional approval of the Architectural Control Committee. No buildings or improvements including but not limited to streets, driveways, sidewalks, drainage facilities, landscaping, fences, walks, fountains, statuary, outdoor lighting and signs shall be commenced, constructed, erected, placed in the Subdivision, until the building plans from the first building has been approved by the Architectural Committee. No exterior addition to or alteration therein may be made, unless the working plans and specifications have been approved by the Architectural Committee. In the event the Architectural Control Committee fails to approve or disapprove the preliminary site plan and Schematic plan within thirty (30) working days after they have been submitted to it, approval thereof will not be required and the provisions of this Section 7.2 will be deemed to have been fully complied with. Without limitation of the

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powers herein granted, the Architectural Control Committee shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration, or repair of any improvement.

Where not otherwise specified herein, the Architectural Control Committee shall also have the right to specify requirements for each building site as follows: minimum set-backs; driveway access screening devices; and the orientation of structures with respect to streets, walks, and structures on adjacent property. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in its judgment, with the overall character, design or aesthetics of the Subdivision.

**SECTION 7.3 Approved Contractors.** No construction of a building, structure, fence, wall, or other improvement shall be commenced in the Subdivision until the contractor to perform such construction shall have been approved in writing by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove a contractor within thirty (30) working days after his name is submitted to it, approval will not be required, and the provisions of this Section 7.3 will be deemed to have been fully complied with. This paragraph shall apply only in the event there is more than one contractor in this Subdivision.

#### ARTICLE VIII

#### Restrictions

**SECTION 8.1.** All Lots shall be used solely for single-family residential purposes, and no Lot shall be used (either primarily or secondarily) for any business, professional, commercial or multi-family residential purpose whatsoever of any kind or type.

**SECTION 8.2.** No building or other structure of any kind or type other than one detached single-family dwelling, not to exceed two and one-half (2-1/2) stories in height, and a private garage for not less than two (2) nor more than three (3) passenger cars and servants' quarters for domestic servants actually employed by the Owner or resident of the Lot and a greenhouse to grow plants for the Owner's or residents' family or household purposes and fences shall be constructed, placed or permitted to remain on any Lot. Carports shall not be allowed unless specifically approved in writing by the Architectural Control Committee.

**SECTION 8.3.** All buildings, structures, and other improvements erected, altered, or placed in the Subdivision shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or outbuilding shall be used in the Subdivision at any time as a residence, either temporarily or permanently. Unless the Architectural Control Committee otherwise agrees in writing, the exterior finish or construction of any Living Unit and each outside wall of each structure within the Living Unit shall be at least fifty-one (51%) brick, stone, or other masonry; in computing such percentage, roof areas and windows shall be excluded, but attached garages, servants quarters, greenhouses, porches, and other structures constituting part of the Living Unit shall be included.

**SECTION 8.4.** No temporary building shall be erected or maintained on any lot except during actual construction of a dwelling being erected thereon, and, then such temporary building must be on the Lot on which construction is in progress and not on adjoining lots, streets, or easements and, at completion of construction, the temporary building must be removed immediately. No such temporary building or structure shall be used for residential purposes during construction or at any other time.

**SECTION 8.5.** No garage apartments for rental purposes shall be permitted in the Subdivision. Living quarters on any Lot other than in the main dwelling may be used for bona fide servants only which are actually employed by the Owner or resident of such Lot.

**SECTION 8.6.** All improvements shall be constructed on the Lot so as to front the street upon which such Lot faces. A Lot shall be deemed to face the street which has its building set back line the farthest from said street.

**SECTION 8.7.** All improvements on Corner Lots shall have a presentable frontage on all streets on which that particular Corner Lot abuts.

SECTION 8.8. A one story dwelling in any Living Unit shall contain not less than 1,400 square feet of living area; and the total living area of a one and one-half, two story or two and one-half story dwelling shall contain not less than 1,700 square feet with the exception of Lots 21, 22, 23, 26, 27, 28, Block 23, and Lots 7, 8, 9, Block 25. A one story dwelling in any Living Unit on Lots 23, 26 of Block 23, and Lot 7 of Block 25, shall contain not less than 1,700 square feet of living area; and 1,600 square feet of living area on Lots 22, 27 of Block 23, and Lot 8 of Block 25; and 1,500 square feet of living area on Lots 21, 28 of Block 23, and Lot 9 of Block 25. A one and one-half story, two story or two and one-half story dwelling in any Living Unit on Lots 23, 26 of Block 23, and Lot 7 of Block 25, shall contain not less than 2,000 square feet of living area; and 1,900 square feet of living area on Lots 22, 27 of Block 23, and Lot 8 of Block 25; and 1,800 square feet of living area on Lots 21, 28 of Block 23, and Lot 9 of Block 25. All computations of living area shall be exclusive of open or screened porches, terraces, patios, driveways, garages, servants quarters and/or greenhouses. Measurements shall be to the face of the outside walls of the living area.

SECTION 8.9. Unless the Architectural Control Committee specifically agrees otherwise in writing, no roof of any structure in the Subdivision shall be constructed or covered so that the exposed material is asphalt shingles or composition type shingles having a weight per square of less than 235 pounds or wood shingles having a grade no less than No. 1.

SECTION 8.10. Unless the Architectural Control Committee specifically agrees otherwise in writing, each Living Unit shall have an attached garage or detached enclosed private garage for not less than two nor more than three passenger cars.

SECTION 8.11. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building, fence, or other structure (i) shall be placed or built on any Lot nearer to the front lot line or nearer to a side street line than the building lines therefor shown on the Subdivision Plat.

SECTION 8.12. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building shall be located nearer than five (5') feet to any interior lot line, except that a detached garage or other permitted building located seventy (70') feet or more from the front lot line may be located as near as three (3') feet to an interior side lot line. No servants' quarters or greenhouse shall be located nearer than seventy (70') feet to a front lot line.

SECTION 8.13. No nuisance shall ever be erected, placed, or suffered to remain upon any property in the Subdivision, and no Owner or resident on any property in the Subdivision shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. No Owner or other person shall discharge any firearm within the Subdivision. The Association is hereby authorized to determine what constitutes a violation of this restriction.

SECTION 8.14. No sheep, goats, horses, cattle, swine, poultry, dangerous animals (the determination as to what is a dangerous animal shall be in the sole discretion of the Association), snakes, livestock or other animals or fowl of any kind shall ever be kept in the Subdivision except that dogs, cats or other common household pets (not to exceed a total of three adult animals) may be kept by the Owner or tenant of any Living Unit, provided they are not kept, bred or maintained for any commercial purposes.

SECTION 8.15. No trash, rubbish, garbage, manure, building materials or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street. Reasonable amounts of construction materials and equipment may be stored upon a Lot or between that Lot and the street abutting same for reasonable periods of time during the construction of improvements on such Lot, but no such materials or equipment shall ever be placed or stored on any street.

SECTION 8.16. No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted in the Subdivision.

SECTION 8.17. No water well, privy, cesspool or septic tank shall be drilled, constructed, placed or maintained on any Lot.

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SECTION 8.18. No boat, trailer, camping unit, motor home, bus, truck or self-propelled or towable equipment, consumer goods or machinery of any sort shall be permitted to park on any street or any Lot except in a garage or other enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street, except that (i) during the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of necessity therefor, and (ii) this restriction shall not apply to automobiles and pick-up trucks in good repair and attractive condition parked farther from the street than the building setback lines as shown on the Subdivision Plat; and (iii) this restriction shall not apply to the mere temporary parking of any such equipment or consumer goods which is in good repair and attractive condition. The Association is hereby authorized to determine what constitutes temporary parking.

SECTION 8.19. No clothing or other materials shall be aired or dried in the Subdivision except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot.

SECTION 8.20. 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 after 7:00 A.M. and before 9:00 P.M.

SECTION 8.21. Without the prior written authorization of the Architectural Control Committee, no television or radio antenna of any sort shall be placed, allowed, or maintained outside a Living Unit or on the exterior of any building or other improvement located on a Lot.

SECTION 8.22. All electrical, telephone and other utility lines and facilities which (i) are located on a Lot, (ii) are not within or a part of any building, and (iii) are not owned by a government entity, a public utility company, or the Association, shall be installed in underground conduits or other underground facilities. Lighting Fixtures may be installed above ground if approved in writing by the Architectural Control Committee.

The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical 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 Subdivision the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 240/120 volt, three wire, 60 cycle alternating current.

SECTION 8.23. Easements for the underground service may be crossed by driveways, fences and walkways provided that the Owner of each Lot affected makes prior arrangements satisfactory with the utility company furnishing electric service and any other owner or user of such easement and provides and installs the necessary electric conduit and other structures of approved type and size under such driveways, fences or walkways and 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 the Developer 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, flowers, or other improvements located on the land covered by said easements.

SECTION 8.24. Mailboxes, house numbers and similar matter used in the Subdivision

must be harmonious with the overall character and aesthetics of the community and the decisions of the Architectural Control Committee that any such matter is not harmonious shall be final.

SECTION 8.25. Except for one sign of not more than five (5) square feet advertising the Lot on which it is located for sale, no billboards or other signs of any kind or type may be erected in the Subdivision without the prior written consent of the Architectural Control Committee. In no event shall the use of flags or banners be permitted in the promotion or sale of any Living Unit in the subdivision.

SECTION 8.26. The Owner of each Lot shall maintain the same, and the improvements, grass, trees, hedges, and plantings thereon, in a neat and attractive condition. The Association shall have the right, after seven (7) days' notice to the Owner of any Lot, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner, (i) to mow the grass thereon, (ii) to remove any debris therefrom, (iii) to remove, trim or prune any tree, hedge, or planting that, in the opinion of the Association, by reason of its location or height, or the manner in which it has been permitted to grow, or disease, decay or other condition, is detrimental to the enjoyment of adjoining property, is unattractive in appearance or obstructs the view of traffic, (iv) to repair or paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent property in the Subdivision, and (v) to do any and all things necessary or desirable in the opinion of the Association to place such property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such property at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) days after it is performed by the Association, and if such amount is not paid within said period of time, such Owner shall be obligated thereafter to pay interest thereon at the rate of ten percent (10%) per annum, and to pay any attorneys' fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on such Owner's property, subject only to liens then existing thereon.

SECTION 8.27. Unless the Architectural Control Committee agrees otherwise, each Lot shall have driveway access to the street on which the Lot faces and shall not have driveway access to a street on which it may side. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street, including the portion in the street easement, and he shall repair at his expense any damage to the street occasioned by connecting his driveway thereto.

SECTION 8.28. Before the residence constructed on the Lot is completed and occupied, the Owner shall construct and complete in the adjacent street right(s)-of-way a concrete sidewalk four feet (4') in width parallel to the street curb, with the edge of such sidewalk closest to the lot line being located two feet (2') away from the lot line. The sidewalk shall extend along the entire common boundary between the Lot and the adjacent street right(s)-of-way. In the case of a corner Lot, the front and side sidewalks shall each extend to the street curb, and shall provide curb ramps for the handicapped and must be constructed in full compliance with Section 228 of the Highway Safety Act of 1973, and all amendments thereto, and all rules, regulations and interpretations thereunder. Additionally, the plans required to be submitted to the Architectural Control Committee under SECTION 7.2 of these restrictions shall include plans and specifications for such sidewalks.

SECTION 8.29. Prior to the initial occupancy of any Living Unit on any Lot in the Subdivision, the Owner of such Lot shall require the contractor or builder erecting the Living Unit, as a minimum, to spot sod or sprig with grass, and to plant tree(s) in the same area, in such a manner as to satisfy the minimum requirements of F.H.A. and V.A. regulations.

SECTION 8.30. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above any street shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree, hedge or shrubbery shall be permitted to remain within such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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SECTION 8.31. All fences, walls and other barriers to be erected between Living Units on any Lot or Lots shall first be approved in writing by the Architectural Control Committee. No such fence, wall or barrier shall exceed more than eight feet (8') in height from finished grade, and each such fence, wall or barrier shall be of an architectural style and material which harmonizes with other improvements constructed within the Subdivision, and the decision of the Architectural Control Committee in this matter shall be final. Fences, walls and barriers may be of wood or masonry, but no wire or chain link or similar fence, wall or barrier shall be erected or permitted to remain in the Subdivision.

SECTION 8.32. Notwithstanding the foregoing provisions of this Article VIII, Developer and its permittees shall have the exclusive right to erect, place, and maintain on their respective properties in the Subdivision such facilities (including but not limited to, offices, storage areas, model units, and signs) as in Developer's sole discretion may be necessary or convenient to improve and/or sell properties in the Subdivision.

#### ARTICLE IX

##### Extension of Declaration to Additional Land

SECTION 9.1 Additions to the Subdivision. Notwithstanding the provisions of Section 10.2, and notwithstanding any other provisions of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or anyone else, Developer shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1987, to file for record in the Office of the County Clerk of Fort Bend County, Texas, an Amendment to this Declaration which:

- (a) Expands the definition of "Subdivision Plat" herein so that it covers and includes not only the subdivision plat(s) then covered by said definition but also the recorded plat(s) of one or more additional subdivisions; expands the definition of "Subdivision" herein so that it covers and includes not only the land then covered by said definition but also all or any part of the land subdivided into numbered lots in the plat(s) of said additional subdivision(s); and/or expands the definition of "Lots" in the first sentence of Subsection 1.1(c) hereof so that it covers and includes not only the Lots then covered on the plat(s) of said additional subdivision(s) and/or (ii) one or more tracts described by metes and bounds in said Amendment and designated therein as residential lots. After the filing for record of any such Amendment, the provisions of the second and third sentences of Subsection 1.1(c) hereof shall apply not only to the Lots to which such provisions previously applied but also to the Lots which become such pursuant to such Amendment;
- (b) Makes such additional Lots subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth in this Declaration, except that said Amendment may alter, amend, change or delete such of the reservations, covenants, obligations, assessments, liens, terms and provisions herein as to such additional Lots, as Developer deems reasonable or desirable, including, but not limited to, allowing such additional Lots to be for multi-family residences or patio homes;
- (c) Grants to such additional Lots and the Owners thereof the benefits of this Declaration; and
- (d) Sets forth any additional restrictions which Developer wishes to impose on said additional Lots.

Each such Amendment shall be executed by Developer, and if Developer is not the Owner of the additional Lots added by the Amendment, or is not the Owner of some of such Lots, then the Amendment shall also be executed by the Owner(s) of such of the additional Lots added by that Amendment as are not owned by Developer. Each such Amendment shall be effective as an Amendment to this Declaration from and after the date it is filed for record in the Office of the County Clerk of Fort Bend County, Texas, and all rights and obligations accruing therefrom shall commence and be measured as of and from said filing date.



DEED

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**SECTION 9.2 Merger of Associations.** Notwithstanding the provisions of Section 10.2, and notwithstanding any other provision of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or any one else, the Board of Directors of the Association shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1987, to merge or consolidate the Association with another non-profit corporation, and transfer all or substantially all of the Association's properties, if any, rights, duties and obligations to any such other surviving non-profit corporation, or, if the Association is the surviving corporation, accept all or substantially all of the properties, if any, rights, duties and obligations of such other non-profit corporation, and the surviving corporation shall thereupon administer the covenants and restrictions established by this Declaration together with the covenants and restrictions theretofore administered by the non-surviving corporation as one scheme; provided, however, no such merger or consolidation shall in any manner revoke, modify or otherwise alter any of the covenants and restrictions established by this Declaration. In the event of any such merger or consolidation, the term "Association" where used in this Declaration shall thereafter mean and refer to the surviving corporation.

Each Owner of an Assessable Tract by accepting title to any Lot appoints Developer such Owner's proxy, with full power of substitution, to vote all votes entitled to be cast by such Owner in connection with any such merger or consolidation or the transfer of all or substantially all of the properties, if any, of the Association, and each such Owner agrees that this proxy shall be irrevocable so long as Developer is a Class B member of the Association.

ARTICLE X

General Provisions

**SECTION 10.1 Incorporation.** The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter executed by Developer conveying all or any part of the land in the Subdivision, whether or not referred to therein, and all estates conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Declaration.

**SECTION 10.2 Amendments.** This Declaration may be amended in whole or in part by an instrument executed by the President of the Association when approved by a majority of the votes cast by each Class of Members at a Meeting of Members. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration as so amended.

**SECTION 10.3 Duration.** This Declaration shall remain in full force and effect for a term of forty (40) years from the date this Declaration is recorded in the Office of the County Clerk of Fort Bend County, Texas, after which time this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the holders of a majority of the votes of each Class of Members with voting privileges has been filed for record in the Office of the County Clerk of Fort Bend County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or the date it is so filed for record, whichever is the later date.

**SECTION 10.4 Enforcement.** The terms and provisions of this Declaration shall run with and bind the land in the Subdivision, and shall inure to the benefit of and be enforceable by Developer, the Association, or the Owner of any Lot, and by their respective legal representatives, heirs, successors and assigns. This Declaration may be enforced in any proceeding at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain violation or to recover damages, and against the property to enforce any lien created by this Declaration, and failure of Developer, the Association, or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the right to do so thereafter.

**SECTION 10.5 Severability.** Invalidation of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated.

DEED

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SECTION 10.6 Gender and Grammar. The singular wherever used herein shall be construed to mean or include the plural where 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 10.7 Titles. The titles of this Declaration and of Articles and Sections 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 10.8 Successors in Title. The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Developer and the Association and all Owners and occupants of any Lot and their respective heirs, devisees, successors, legal representatives and assigns.

SECTION 10.9 F.H.A., V.A. Approval. As long as there is a Class B Membership, the following action will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenant, Condition and Restriction.

IN WITNESSETH WHEREOF, this Declaration is executed this the 5 day of July, 1980, A.D..

ATTEST:

*John M. Robinson*  
Secretary

FAIRTEX CORPORATION

BY: *[Signature]*  
President

LIENHOLDERS

ATTEST:

*Zoe A. Charles*  
Zoe A. Charles Asst. Secretary

HOUSTON FIRST AMERICAN SAVINGS

BY: *[Signature]*  
Vice Pres.

GUARDIAN BANK

BY: *[Signature]*

THE STATE OF TEXAS  
COUNTY OF HARRIS

DEED  
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BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM WONG, President of FAIRTEX CORPORATION, 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 3<sup>RD</sup> day of July, 1980, A. D.

*W. Timothy Hauer*

Notary Public in and for  
Harris County, TEXAS  
W. Timothy Hauer 5/17/81

THE STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Robert Woolson, Vice President of HOUSTON FIRST AMERICAN SAVINGS, 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 15<sup>TH</sup> day of July, 1980, A. D.

*Cathy D. Hill*

Notary Public in and for  
Harris County, TEXAS

CATHY D. HILL  
Notary Public in and for Harris County, Texas  
My Commission Expires 3/14, 1981

THE STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Walter P. Gibbs, Jr., President of GUARDIAN BANK, 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 8 day of July, 1980, A. D.

*Vernal J. Steimer*

Notary Public in and for  
Harris County, TEXAS

VERNAL J. STEIMER  
Notary Public in and for Harris County, Texas  
My Commission Expires 3-31-81

FILED FOR RECORD

TIME 2 A.M. / P.M.

JUL 29 1980

*Pearl Elliott*  
COUNTY CLERK, FORT BEND COUNTY, TEX.

Duly recorded this the 30th day of July 1980 A.D. at 4:30 O'Clock P.M.  
Pearl Elliott, County Clerk  
Fort Bend County, Texas  
By Sara Mission deputy

3900  
COMPARED

40866

DEED

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WONACO DEVELOPMENT, INC.

DECLARATION OF WONACO DEVELOPMENT, INC.  
COVERING MISSION BEND, SAN MIGUEL, SECTION ONE

THE STATE OF TEXAS 0

COUNTY OF FORT BEND 0

WONACO DEVELOPMENT, INC., a Texas corporation, acting herein by and through its duly authorized officers, the owner of the following described real property in Fort Bend County, Texas:

Lots 1 through 66, both inclusive, in Block 6  
Lots 1 through 71, both inclusive, in Block 5  
Lots 1 through 26, both inclusive, in Block 4  
Lots 1 through 8, both inclusive, in Block 3

all in MISSION BEND, SAN MIGUEL, SECTION ONE (1), a subdivision in Fort Bend County, Texas, according to the map or plat thereof recorded in Volume 21, Page 32, of the Map Records of Fort Bend County, Texas;

hereby declares that said real property, to the extent provided herein, shall be held, sold, transferred, and conveyed subject to the reservations, covenants, obligations, assessments, liens, terms, and provisions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property.

ARTICLE I

Definitions

SECTION 1.1. Definitions. The following words, when used in this Declaration, shall have the following meanings (unless the context clearly indicates otherwise):

- (a) "Developer" shall mean and refer to Wonaco Development, Inc., declarant herein, and to any corporation which succeeds to all or substantially all of its assets by any merger, consolidation, or conveyance of assets.
- (b) "Subdivision Plat," shall mean and refer to the plat of Mission Bend, San Miguel, Section One (1), recorded in Volume 21, Page 32, of the Map Records of Fort Bend County, Texas; and "Subdivision" shall mean and refer to the land subdivided into numbered lots shown on said Map.
- (c) "Lot" shall mean and refer initially to any of the 170 lots shown on the Subdivision Plat, being the Lots described hereinabove in this Declaration. If a subdivision plat is hereafter filed for record by Developer in the Office of the County Clerk of Fort Bend County, Texas, replating the

area only, the term "Lot" shall thereafter mean and refer to any of the numbered lots shown on such subdivision plat. If building sites are created pursuant to Section 2.4 herein, the term "Lot" shall also thereafter mean and refer to any building site so created. The term "Lot" shall also include any numbered lot shown on the recorded plat of any additional properties brought within the scheme of this Declaration.

- (d) "Corner Lot" shall mean any Lot that abuts on more than one street.
- (e) "Interior Lot" shall mean any Lot which is not a Corner Lot.
- (f) "Street" shall mean any street, drive, boulevard, road, lane or avenue shown on the Subdivision Plat.
- (g) "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person or by a single family, including the dwelling, garage, and any greenhouse and servants quarters.
- (h) "Assessable Tract" shall mean and refer to any Lot from and after the date on which such Lot is conveyed by the Developer.
- (i) "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.
- (j) "Owner" shall mean and refer to the Owner(s), whether one or more persons or entities, of the fee simple record title to any Lot, but shall not mean or refer to any person or entity holding only a lien, easement, mineral interest, or royalty interest burdening the title thereto.
- (k) "Association" shall mean and refer to San Miguel Civic Association, a Texas non-profit corporation, and to any non-profit corporation which succeeds to all or substantially all of its assets, rights or powers by any merger, consolidation, or conveyance of assets, rights or powers.
- (l) "Member" shall mean and refer to a member of the Association during the period of such membership, and shall include the Owner (during the period of his ownership) of each Assessable Tract, and the Developer as set forth in Article III hereof.
- (m) "Meeting of Members" shall mean and refer to a meeting of Members duly called in the manner prescribed in the by-laws of the Association, of which notice shall have been sent to all Members at least ten (10) days in advance of the meeting, stating the purpose(s) of the meeting, and at which a quorum shall be present. At the first Meeting

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of Members called to act on any matter(s) requiring a vote of Members by the provisions of this Declaration or the by-laws of the Association, the presence at the meeting in person or by proxies of Members holding fifty percent (50%) of the aggregate of all the votes entitled to be cast shall constitute a quorum. If the required quorum is not present at any meeting called to act on any such matter(s), another meeting may be called to act on the same matter(s), subject to the notice requirement mentioned above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, except that such reduction in the quorum requirements shall not be applicable if the subsequent meeting is held more than sixty (60) days following the preceding meeting.

- (n) "Community Properties" shall mean and refer to such properties, real or personal, as are hereafter conveyed to or otherwise acquired by the Association. The Association's title to any property may cover the fee title thereto or only a leasehold estate therein, and may be subject to easements, reservations, restrictions, liens, indebtedness, obligations and other encumbrances.
- (o) "Architectural Control Committee" shall mean and refer to Mary Ellen Ambrose, W. W. Woods, William Wong and John M. Robinson, all of Harris County, Texas, and their successors, who shall act as the Architectural Control Committee.

## ARTICLE II

Subdivision Plat; Easements; Rights Reserved; Mineral Reserved; Building Sites; Adjacent Property; Community Properties; Waivers

SECTION 2.1. Subdivision Plat. All dedications, easements, limitations, restrictions, and reservations shown on the Subdivision Plat are incorporated herein for all purposes, insofar as they relate to the Lots.

SECTION 2.2. Easements. Developer hereby reserves the right to dedicate, convey or reserve easements over, on, or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities, at or prior to the time Developer parts with title to the land within the easement(s).

SECTION 2.3 Reservations. The title conveyed by Developer to any Lot by contract, deed, or other conveyance shall never be intended, construed or held to include the title to any of the Community Properties, if any, or any of the easements referred to in Sections 2.1 or 2.2, or any improvements at any time located over, on, or under the Community Properties, if any, or any such easement, and title to all of the same shall be considered as excluded from any such conveyance, except to the extent that any of the same are specifically referred to in the instrument of conveyance and are stated therein to be conveyed thereby. Developer reserves the right (but shall have no obligation) to construct, install, use, repair and maintain

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the public utilities, including, but not limited to, the water, sewer, electric and telephone lines, conduits and equipment necessary in connection therewith, and the right of access necessary or convenient thereto, and any system of utility lines and facilities constructed by Developer over, on, or under any such easement may be given, sold or leased by Developer to any public authority, utility company, or holder of a public franchise.

SECTION 2.4. Building Sites. With the written approval of the Architectural Control Committee, the Owner(s) of a group of Lots, each of which is adjacent to one or more of the other Lots in the Subdivision, may designate a part of a Lot, or any combination of Lots or portions of Lots to be a building site or building sites. The front, rear and side lines of the Lots affected by any such action, as such lines are designated on the Subdivision Plat, shall be adjusted to conform to the front, rear and side lines of the new building sites for building and other purposes. Improvements may be constructed on any such building site in accordance with the new front, rear and side lines thereof. Each such building site, upon being designated as such by the Owner(s) thereof with the written approval of the Architectural Control Committee, shall thereafter be a Lot for all purposes of this Declaration; provided, however, in no event shall any such building site have a width of less than the shortest Lot width measured at the building set back line presently shown on the Subdivision Plat, nor shall any such building site have a total area less than the total area of the smallest Lot presently shown on the Subdivision Plat.

SECTION 2.5 No Obligation as to Adjacent Property. The Subdivision is a part of a larger tract or block of land which is now or may hereafter be owned by Developer or others. While Developer or such other owners may subdivide other portions of its or their property now owned or hereafter acquired, or may subject the same to a declaration such as this Declaration, Developer shall have no obligation to do so, and if Developer or such other owners elect to do so, any subdivision plat or declaration executed by Developer or such other owners with respect to any of its or their other property may be the same as or similar or dissimilar to any subdivision plat covering the Subdivision, or any part thereof, or to this Declaration. The tracts shown as "Acreage" on the Subdivision Plat are parts of the other property of Developer or others referred to in this Section 2.5. Any advertisement, preliminary plan, drawing or other writing showing or referring to any other property shall not be binding on the Developer or such other owners unless and until such plan, drawing or other writing is duly executed by Developer or such other owners and recorded by Developer or such other owners in the Map Records or the Official Public Records of Real Property of Fort Bend County, Texas, and shall then only be binding as to the property actually within the boundary of the property intended by the Developer or such other owners to be included therein.

SECTION 2.6 No Obligation as to Community Properties. Unless the Subdivision Plat actually designates property therein as Community Properties, Developer shall have no obligations to acquire, furnish, construct, install, repair, maintain or convey to the Association any Community Properties; and in no event shall Developer be obligated to acquire, furnish, construct, install, repair or maintain any structures, improvements or other property (real or personal) on any property that may be designated on the Subdivision Plat as Community Properties.

SECTION 2.7. Waivers. Each Owner acquiring any Lot from Developer, its successors or assigns, warrants to Developer by accepting title to said Lot that they have inspected the Lot and the surrounding area and accept the Lot in the condition it is in at the time of acquiring title thereto, and waives, releases and renounces any and all claims, rights, demands, and causes of action in this manner arising out of or connected with the condition or location of said Lot or the merchantability thereof or its fitness for a particular purpose, or any damage caused in whole or in part by flooding, earthquake or other natural phenomena.

### ARTICLE III

#### Membership and Voting Rights in the Association

SECTION 3.1. Membership. The Owner of each Assessable Tract, during the period of his ownership, shall automatically be a Member. Developer, whether or not it is the Owner of an Assessable Tract, shall also be a Member until its membership terminates pursuant to the provisions of Section 3.2 below.

SECTION 3.2 Voting Classes and Rights. The Association shall have the following class or classes of voting membership with the following rights:

CLASS A: The Owners of the Assessable Tracts shall be the Class A Members, and by virtue of such membership, the Owner of each Assessable Tract shall be entitled to one vote in the Association. There shall be no fractional votes. When the Owner of an Assessable Tract consists of more than one person or entity, they shall designate one of their number to cast their one vote with respect to such Assessable Tract.

CLASS B: Developer shall be the sole Class B Member, and by virtue of such membership, shall be entitled to the same number of votes in the Association as the aggregate votes of the Class A Members, plus two hundred (200) additional votes. The Class B Membership shall terminate at Midnight on December 31, 1983, or at the time when seventy-five percent (75%) of the Lots have become Assessable Tracts upon which are Living Units occupied as residences, whichever occurs later; provided, Developer shall have the right and option to terminate the Class B Membership at any time by notifying the Association in writing of its election to so terminate its Class B Membership.

### ARTICLE IV

#### Property Rights in the Community Properties

SECTION 4.1. Members' Easements of Enjoyment. Subject to the provisions of Section 4.2, every Member shall have a common right and easement of enjoyment in the Community Properties, if any, and any such right and easement shall be appurtenant to and shall pass with the title to every Assessable Tract.



SECTION 4.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Developer or others as referred to or provided for in Article II, and shall also be subject to the following rights of the Association (which may be exercised by the officers of the Association when so authorized by its Board of Directors):

- (a) The Association shall have the right to construct, install, repair and maintain the Community Properties, if any, and to borrow money and in aid thereof to mortgage the Community Properties, if any, or any part thereof.
- (b) The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties, if any, against foreclosure or forfeiture of any mortgage, lien or other encumbrance thereon.
- (c) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid.
- (d) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Community Properties, if any, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (e) The Association shall have the right to assess and collect the assessments provided for herein, and in addition shall have the right to charge reasonable admission and other fees for the use of any recreational or other facilities which are a part of the Community Properties, if any, such as (but not limited to) a separate charge for the use of any swimming facilities, tennis facilities, or clubhouse facilities.
- (f) The Association shall have the right to transfer or convey all or any part of the Community Properties, if any, or interests therein, to any public authority.
- (g) The Association shall have the right to rent or lease any part of any Community Properties.
- (h) The Association shall have the right to extend the enjoyment of any of the Community Properties, if any, to persons, other than members.

ARTICLE V

Assessments and Lien Therefor; Books

SECTION 5.1 Creation of the Lien and Personal Obligation of Assessments.  
Each Owner of a Lot which shall be or shall hereafter become subject to

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the assessments hereinafter provided for, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments fixed, established, and collected from time to time as hereinafter provided, together with such interest thereon and cost of collection thereof as are hereinafter provided for, all of which shall be a charge on and secured by a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided for, shall also be and remain the personal obligation of the person who is the Owner of such property at the time the assessment becomes due and payable, notwithstanding any subsequent transfer of title to such property. Such personal obligation shall not pass to such Owner's successors in title unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

SECTION 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively (i) to improve, beautify, manage, operate, care for and maintain the Community Properties, if any, the entrances to the Subdivision, the esplanades and streets in or adjacent to the Subdivision, and any guard house facilities and vacant Lots in the Subdivision, the flood control rights-of-way in or adjacent to the Subdivision, and such other areas as the Board of Directors of the Association shall determine, (ii) to pay taxes and insurance premiums on any of such properties or improvements, and (iii) to promote the health, safety, convenience, enjoyment and welfare of the Members, such benefits to include, by way of illustration but not limitation, providing patrol or watchman service, fogging for insect control, enforcing the provisions contained in this Declaration, employing at the request of the Architectural Control Committee one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committee or the Directors of the Association, for the maintenance and/or improvement of the Community Properties, if any, or for the benefit of the Members, the foregoing uses and purposes being permissive and not mandatory, and the decisions of the Board of Directors of the Association being final as long as made in good faith and in accordance with the by-laws of the Association and governmental laws, rules and regulations.

SECTION 5.3 Annual Assessments. The Association, by action of its Board of Directors, shall levy annual assessments against the Assessable Tracts to obtain funds reasonably anticipated to be needed for the purposes stated in Section 5.2, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs. The amount of the annual assessment for an Assessable Tract shall not exceed \$300.00, except that for any calendar year after the calendar year 1978, the Association may increase said maximum amount of the annual assessment for an Assessable Tract, but if any such change increases the maximum amount which can be assessed against an Assessable Tract to more than \$400.00 per year or more than 110% of the amount assessed in the preceding calendar year, whichever is greater, the change must be approved by a majority of the votes cast by each class of Members at a Meeting of Members.

SECTION 5.4. Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on each Assessable Tract on the first day of the calendar month after it becomes an Assessable Tract. The amount of the annual assessment on each such Assessable Tract for the balance remaining in the first year of assessment shall be an amount

which bears the same relationship to the annual assessment on such Assessable Tract provided for in Section 5.3 hereof as the remaining number of months in that year bears to twelve, and shall be due and payable on the day such Assessable Tract becomes an Assessable Tract. After the first year, the annual assessment on such Assessable Tract for each calendar year shall be due and payable on the first day of January in said year.

SECTION 5.5 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any calendar 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 capital improvements upon the Community Property, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of Members.

SECTION 5.6 Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount to be levied as the annual assessment against each Assessable Tract for each calendar year, subject to the criteria and limitations set out in Section 5.3. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Tracts showing the amount of each assessment, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall upon demand at any time furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether or not there are any unpaid assessments against said Owner's property. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.

SECTION 5.7. Effect of Non-payment of Assessment; The Lien, Remedies of Association. If an assessment is not paid on the date it becomes due, such assessment shall thereupon become delinquent and, together with the interest thereon and cost of collection thereof hereinafter provided for, shall thereupon be secured by a continuing lien on the Assessable Tract against which the assessment was levied, including improvements thereon, which shall bind such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. If the assessment is not paid within thirty (30) days after it becomes due, the assessment shall bear interest from the date it becomes due at the rate of ten percent (10%) per annum until it is paid, and the Association may bring an action at law to foreclose the lien securing the assessment, and there shall be added to the amount of such assessment all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit.

SECTION 5.8. Subordination of the Lien to Mortgages. The Lien securing any assessment provided for herein shall be subordinate to the lien of any mortgage(s) now or hereafter placed upon the property subject to the assessment for the purpose of securing indebtedness incurred to purchase or improve such property; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a foreclosure by trustee's sale under a deed of trust, or a conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due, nor from the

lien securing any such subsequent assessment. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

SECTION 5.9. Exempt Property. The assessments and liens created in this Section V shall apply only to the Assessable Tracts, and the remainder of the property in the Subdivision shall not be subject thereto.

SECTION 5.10. Books. The Association shall maintain books of account reflecting all of its income and disbursements. Any Member shall have the right to inspect such books at the office of the Association at any reasonable time.

ARTICLE VI

Garbage and Rubbish Pickup

SECTION 6.1 Pickup Service. The Association shall have the right, but not the obligation, to contract for garbage and rubbish pickup service on behalf of all Occupied Lots, and to charge or have the garbage contractor charge the Owner of each Occupied Lot for his pro rata share of the cost thereof (such charge being hereinafter called "garbage charge"), such pro rata share to be determined by dividing the number of Occupied Lots being served into the total cost of such garbage and rubbish pickup service. Payment for such service may be on a monthly, quarterly, or semi-annual basis, at the discretion of the Association, and may be payable in advance.

SECTION 6.2. Effect of Non-Payment of Garbage Charge; The Lien; Remedies of Association. If a garbage charge for any billing period (whether monthly, quarterly or semi-annually) is not paid on or before the first day of the billing period, or within ten (10) days after notice thereof is mailed to the Owner of the Occupied Lot to be charged, whichever is the later, the garbage charge shall bear interest thereafter at the rate of ten percent (10%) per annum until paid. The garbage charge and any interest thereon shall be the personal obligation of the Owner of the Occupied Lot receiving the garbage service (but not of such Owner's successors in title unless expressly assumed by them), and shall be secured by a continuing lien on such Occupied Lot, including improvements thereon, which shall be binding on such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. The Association may bring an action at law to foreclose the lien securing the garbage charge and there shall be added to the amount of the garbage charge the interest thereon and all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit. At its discretion, the Association may discontinue garbage service to any Occupied Lot which is in default hereunder, until all amounts in arrears, including the interest and other expenses provided for herein, have been paid in full.

SECTION 6.3 Subordination of the Lien to Mortgages. With respect to each Occupied Lot, the lien provided for in Section 6.2 shall be subordinate to the same liens to which the assessment provided for in Article V is subordinate pursuant to the provisions of Section 5.8, and may be subordinated to any other lien by the Association, in the discretion of its Board of Directors.

ARTICLE VII

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Architectural Control Committee

SECTION 7.1. Tenure. The persons serving on the Architectural Control Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association have Living Units thereon occupied as residences, at which time the Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association, or its assigns. 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). A majority of the Architectural Control Committee may designate someone serving on the Committee to act for it. No person serving on the Committee shall be entitled to compensation for services performed pursuant to this Article VII. 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 such services as they render to the Committee, together with any interest incurred thereon.

SECTION 7.2. Approval of Plans. No buildings or other improvements, including, but not limited to, streets, driveways, sidewalks, drainage facilities, landscaping, fences, walks, fountains, statuary, outdoor lighting and signs, shall be commenced, constructed, erected, placed, or maintained in the Subdivision, nor shall any exterior addition to or alteration therein be made, unless and until (i) a preliminary site plan showing all uses and dimensions, the location of buildings, entries, streets, driveways, sidewalks, parking areas, pedestrian ways, and storage areas, and a schematic plan for the landscaping and lighting of the property, have been submitted to and approved in writing by the Architectural Control Committee, and thereafter (ii) the final working plans and specifications for the work shown on the preliminary site plan and schematic plan have been submitted to and approved in writing by the Architectural Control Committee as to compliance with this Declaration and as to harmony of external design and location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography. The final working plans and specifications shall not be commenced until the preliminary site plan and schematic plan have been so approved. The final working plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, exterior color scheme, materials, and location of the proposed improvements or alterations thereto. In the event the Architectural Control Committee fails to approve or disapprove the preliminary site plan and Schematic plan within thirty (30) working days after they have been submitted to it, approval thereof will not be required and the provisions of this Section 7.2 will be deemed to have been duly complied with. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration, or repair of any improvement.

Where not otherwise specified herein, the Architectural Control Committee shall also have the right to specify requirements for each building site

as follows: minimum set-backs; driveway access screening devices; and the orientation of structures with respect to streets, walks, and structures on adjacent property. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in its judgment, with the overall character, design or aesthetics of the Subdivision.

SECTION 7.3. Approved Contractors. No construction of a building, structure, fence, wall, or other improvement shall be commenced in the Subdivision until the contractor to perform such construction shall have been approved in writing by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove a contractor within thirty (30) working days after his name is submitted to it, approval will not be required, and the provisions of this Section 7.2 will be deemed to have been fully complied with.

#### ARTICLE VIII

##### Restrictions

SECTION 8.1. All Lots shall be used solely for single-family residential purposes, and no Lot shall be used (either primarily or secondarily) for any business, professional, commercial or multi-family residential purpose whatsoever of any kind or type.

SECTION 8.2 No building or other structure of any kind or type other than one detached single-family dwelling, not to exceed two and one-half (2-1/2) stories in height, and a private garage for not less than two (2) nor more than three (3) passenger cars and servants' quarters for domestic servants actually employed by the Owner or resident of the Lot and a greenhouse to grow plants for the Owner's or residents' family or household purposes and fences shall be constructed, placed or permitted to remain on any Lot. Carports shall not be allowed unless specifically approved in writing by the Architectural Control Committee.

SECTION 8.3 All buildings, structures, and other improvements erected, altered, or placed in the Subdivision shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or outbuilding shall be used in the Subdivision at any time as a residence, either temporarily or permanently. Unless the Architectural Control Committee otherwise agrees in writing, the exterior finish or construction of any Living Unit and each outside wall of each structure within the Living Unit shall be at least fifty-one percent (51%) brick, stone, or other masonry; in computing such percentage, roof areas and windows shall be excluded, but attached garages, servants quarters, greenhouses, porches, and other structures constituting part of the Living Unit shall be included.

SECTION 8.4. No temporary building shall be erected or maintained on any lot except during actual construction of a dwelling being erected thereon, and, then such temporary building must be on the Lot on which construction is in progress and not on adjoining Lots, streets, or easements and, at completion of construction, the temporary building must be removed immediately. No such temporary building or structure shall be used for residential purposes during construction or at any other time.

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SECTION 8.5. No garage apartments for rental purposes shall be permitted in the Subdivision. Living quarters on any Lot other than in the main dwelling may be used for bona fide servants only which are actually employed by the Owner or resident of such Lot.

SECTION 8.6. All improvements shall be constructed on the Lot so as to front the street upon which such Lot faces. A Lot shall be deemed to face the street which has its building set back line the farthest from said street.

SECTION 8.7. All improvements on Corner Lots shall have a presentable frontage on all streets on which that particular Corner Lot abuts.

SECTION 8.8. A one story dwelling in any Living Unit shall contain not less than 1,700 square feet of living area; and the total living area of a one and one-half story, two story or two and one-half story dwelling shall contain not less than 2,000 square feet. All computations of living area shall be exclusive of open or screened porches, terraces, patios, driveways, garages, servants' quarters and/or greenhouse. Measurements shall be to the face of the outside walls of the living area.

SECTION 8.9. Unless the Architectural Control Committee specifically agrees otherwise in writing, no roof of any structure in the Subdivision shall be constructed or covered so that the exposed material is asphalt shingles or composition type shingles having a weight per square of less than 240 pounds or wood shingles having a grade of less than No. 1.

SECTION 8.10. Unless the Architectural Control Committee specifically agrees otherwise in writing, each Living Unit shall have an attached or detached enclosed private garage for not less than two nor more than three passenger cars.

SECTION 8.11. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building, fence, or other structure (i) shall be placed or built on any Lot nearer to the front lot line or nearer to a side street line than the building lines therefor shown on the Subdivision Plat, or (ii) shall encroach on any easement shown on the Subdivision Plat.

SECTION 8.12. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building shall be located nearer than five feet (5') to any interior lot line, except that a detached garage or other permitted building located seventy feet (70') or more from the front lot line may be located as near as three feet (3') to an interior side lot line. No detached garage shall be located nearer than fifty feet (50') to a front lot line and no servants' quarters or greenhouse shall be located nearer than seventy feet (70') to a front lot line.

SECTION 8.12. Any garage located on an interior Lot which has any part thereof located within fifty feet (50') from the front lot line must open or face onto an interior side or rear lot line. Unless the Architectural Control Committee specifically agrees otherwise in writing, any garage located on a Corner Lot must open or face onto an interior side or rear lot line, and all approved plans with a garage facing any street must provide that such garage shall be equipped with automatic garage door openers/closers.

SECTION 8.14. No nuisance shall ever be erected, placed, or suffered to

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remain upon any property in the Subdivision, and no Owner of or resident on any property in the Subdivision shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. No Owner or other person shall discharge any firearm within the Subdivision. The Association is hereby authorized to determine what constitutes a violation of this restriction.

SECTION 8.15. No sheep, goats, horses, cattle, swine, poultry, dangerous animals (the determination as to what is a dangerous animal shall be in the sole discretion of the Association), snakes, livestock or other animals or fowl of any kind shall ever be kept in the Subdivision except that dogs, cats or other common household pets (not to exceed a total of three adult animals) may be kept by the Owner or tenant of any Living Unit, provided they are not kept, bred or maintained for any commercial purpose.

SECTION 8.16. No trash, rubbish, garbage, manure, building materials or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street. Reasonable amounts of construction materials and equipment may be stored upon a Lot or between that Lot and the street abutting same for reasonable periods of time during the construction of improvements on such Lot, but no such material or equipment shall ever be placed or stored on any street.

SECTION 8.17. No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted in the Subdivision.

SECTION 8.18. No water well, privy, cesspool or septic tank shall be drilled, constructed, placed or maintained on any Lot.

SECTION 8.19. No boat, trailer, camping unit, motor home, bus, truck, or self-propelled or towable equipment, consumer goods or machinery of any sort shall be permitted to park on any street or any Lot except in a garage or other enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street, except that (i) during the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of necessity therefor, and (ii) this restriction shall not apply to automobiles and pick-up trucks in good repair and attractive condition parked farther from the street than the building setback lines as shown on the Subdivision Plat, and (iii) this restriction shall not apply to the mere temporary parking of any such equipment or consumer goods which is in good repair and attractive condition. The Association is hereby authorized to determine what constitutes temporary parking.

SECTION 8.20. No clothing or other materials shall be aired or dried in the Subdivision except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot.



SECTION 8.21. 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 after 7:00 A. M. and before 9:00 P. M.

SECTION 8.22. Without the prior written authorization of the Architectural Control Committee, no television or radio antenna of any sort shall be placed, allowed, or maintained outside a Living Unit or on the exterior of any building or other improvement located on a Lot.

SECTION 8.23. All electrical, telephone and other utility lines and facilities which (i) are located on a Lot, (ii) are not within or a part of any building, and (iii) are not owned by a government entity, a public utility company, or the Association, shall be installed in underground conduits or other underground facilities. Lighting Fixtures may be installed above ground if approved in writing by the Architectural Control Committee.

The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical 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 Subdivision the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 240/120 volt, three wire, 60 cycle alternating current.

SECTION 8.24. Easements for the underground service may be crossed by driveways, fences and walkways provided that the Owner of each Lot affected makes prior arrangements satisfactory with the utility company furnishing electric service and any other owner or user of such easement and provides and installs the necessary electric conduit and other structures of approved type and size under such driveways, fences or walkways and 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 the Developer 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, flowers, or other improvements located on the land covered by said easements.

SECTION 8.25. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community and the decision of the Architectural Control Committee that any such matter is not harmonious shall be final.

SECTION 8.26. Except for one sign of not more than five (5) square feet advertising the Lot on which it is located for sale, no billboards or other

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signs of any kind or type may be erected in the Subdivision without the prior written consent of the Architectural Control Committee. In no event shall the use of flags or banners be permitted in the promotion or sale of any Living Unit in the Subdivision.

SECTION 8.27. The Owner of each Lot shall maintain the same, and the improvements, grass, trees, hedges, and plantings thereon, in a neat and attractive condition. The Association shall have the right, after seven (7) days' notice to the Owner of any Lot, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner, (i) to mow the grass thereon, (ii) to remove any debris therefrom, (iii) to remove, trim or prune any tree, hedge, or planting that, in the opinion of the Association, by reason of its location or height, or the manner in which it has been permitted to grow, or disease, decay or other condition, is detrimental to the enjoyment of adjoining property, is unattractive in appearance or obstructs the view of traffic, (iv) to repair or paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent property in the Subdivision, and (v) to do any and all things necessary or desirable in the opinion of the Association to place such property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such property at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) days after it is performed by the Association, and if such amount is not paid within said period of time, such Owner shall be obligated thereafter to pay interest thereon at the rate of ten percent (10%) per annum, and to pay any attorneys' fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on such Owner's property, subject only to liens then existing thereon.

SECTION 8.28. Unless the Architectural Control Committee agrees otherwise, each Lot shall have driveway access to the street on which the Lot faces and shall not have driveway access to a street on which it may side. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street, including the portion in the street easement, and he shall repair at his expense any damage to the street occasioned by connecting his driveway thereto.

SECTION 8.29. Before the residence constructed on the Lot is completed and occupied, the Owner shall construct and complete in the adjacent street right(s)-of-way a concrete sidewalk four feet (4') in width parallel to the street curb, with the edge of such sidewalk closest to the curb being located four feet (4') away from the back of the curb. The sidewalk shall extend along the entire common boundary between the Lot and the adjacent street right(s)-of-way. In the case of a corner Lot, the front and side sidewalks shall each extend to the street curb, and shall provide curb ramps for the handicapped and must be constructed in full compliance with Section 228 of the Highway Safety Act of 1973, and all amendments thereto, and all rules, regulations and interpretations thereunder. Additionally, the plans required to be submitted to the Architectural Control Committee under SECTION 7.2. of these restrictions shall include plans and specifications for such sidewalks.

SECTION 8.30. Prior to the initial occupancy of any Living Unit on any Lot in the Subdivision, the Owner of such Lot shall require the contractor or builder erecting the Living Unit, as a minimum, to spot sod or sprig

with grass the area between his Living Unit and the curb line(s) of the abutting street(s), and to plant in the same area at least two trees, each having a minimum diameter of three inches (3") at a height twelve inches (12") above finished grade. The grass and trees shall be of a type and within standards prescribed by the Architectural Control Committee, and the proposed locations of such trees shall be set forth in the plans and specifications required to be submitted to the Architectural Control Committee under SECTION 7.2 of these restrictions, and shall be approved in writing prior to commencement of any construction on the Lot.

SECTION 8.21. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above any street shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree, hedge or shrubbery shall be permitted to remain within such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

SECTION 8.32. All fences, walls and other barriers to be erected between Living Units on any Lot or Lots shall first be approved in writing by the Architectural Control Committee. No such fence, wall or barrier shall exceed more than eight feet (8') in height from finished grade, and each such fence, wall or barrier shall be of an architectural style and material which harmonizes with other improvements constructed within the Subdivision, and the decision of the Architectural Control Committee in this matter shall be final. Fences, walls and barriers may be of wood or masonry, but no wire or chain link or similar fence, wall or barrier shall be erected or permitted to remain in the Subdivision.

SECTION 8.22. Notwithstanding the foregoing provisions of this Article VIII, Developer and its permittees shall have the exclusive right to erect, place, and maintain on their respective properties in the Subdivision such facilities (including but not limited to, offices, storage areas, model units, and signs) as in Developer's sole discretion may be necessary or convenient to improve and/or sell properties in the Subdivision.

#### ARTICLE IX

##### Extension of Declaration to Additional Land

SECTION 9.1. Additions to the Subdivision. Notwithstanding the provisions of Section 10.2, and notwithstanding any other provisions of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or anyone else, Developer shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1983, to file for record in the Office of the County Clerk of Fort Bend County, Texas, an Amendment to this Declaration which:

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- (a) Expands the definition of "Subdivision Plat" herein so that it covers and includes not only the subdivision plat(s) then covered by said definition but also the recorded plat(s) of one or more additional subdivisions; expands the definition of "Subdivision" herein so that it covers and includes not only the land then covered by said definition but also all or any part of the land subdivided into numbered lots in the plat(s) of said additional subdivision(s); and/or expands the definition of "Lots" in the first sentence of Subsection 1.1(c) hereof so that it covers and includes not only the Lots then covered on the plat(s) of said additional subdivision(s) and/or (ii) one or more tracts described by metes and bounds in said Amendment and designated therein as residential lots. After the filing for record of any such Amendment, the provisions of the second and third sentences of Subsection 1.1(c) hereof shall apply not only to the Lots to which such provisions previously applied but also to the Lots which become such pursuant to such Amendment.
- (b) Makes such additional Lots subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth in this Declaration, except that said Amendment may alter, amend, change or delete such of the reservations, covenants, obligations, assessments, liens, terms and provisions herein as to such additional Lots, as Developer deems reasonable or desirable, including, but not limited to, allowing such additional Lots to be for multi-family residences or patio homes;
- (c) Grants to such additional Lots and the Owners thereof the benefits of this Declaration, and
- (d) Sets forth any additional restrictions which Developer wishes to impose on said additional Lots.

Each such Amendment shall be executed by Developer, and if Developer is not the Owner of the additional Lots added by the Amendment, or is not the Owner of some of such Lots, then the Amendment shall also be executed by the Owner(s) of such of the additional Lots added by that Amendment as are not owned by Developer. Each such Amendment shall be effective as an Amendment to this Declaration from and after the date it is filed for record in the Office of the County Clerk of Fort Bend County, Texas, and all rights and obligations accruing therefrom shall commence and be measured as of and from said filing date.

SECTION 9.2. Merger of Associations. Notwithstanding the provisions of Section 10.2, and notwithstanding any other provision of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or any one else, the Board of Directors of the Association shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1983, to merge or consolidate the Association with another non-profit corporation, and transfer all or substantially all of the Association's

properties, if any, rights, duties and obligations to any such other surviving non-profit corporation, or, if the Association is the surviving corporation, accept all or substantially all of the properties, if any, rights, duties and obligations of such other non-profit corporation, and the surviving corporation shall thereupon administer the covenants and restrictions established by this Declaration together with the covenants and restrictions theretofore administered by the non-surviving corporation as one scheme; provided, however, no such merger or consolidation shall in any manner revoke, modify or otherwise alter any of the covenants and restrictions established by this Declaration. In the event of any such merger or consolidation, the term "Association" where used in this Declaration shall thereafter mean and refer to the surviving corporation.

Each Owner of an Assessable Tract by accepting title to any Lot appoints Developer such Owner's proxy, with full power of substitution, to vote all votes entitled to be cast by such Owner in connection with any such merger or consolidation or the transfer of all or substantially all of the properties, if any, of the Association, and each such Owner agrees that this proxy shall be irrevocable so long as Developer is a Class B member of the Association.

#### ARTICLE X

##### General Provisions

SECTION 10.1 Incorporation. The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter executed by Developer conveying all or any part of the land in the Subdivision, whether or not referred to therein, and all estates conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Declaration.

SECTION 10.2. Amendments. This Declaration may be amended in whole or in part by an instrument executed by the President of the Association when approved by a majority of the votes cast by each Class of Members at a Meeting of Members. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration as so amended.

SECTION 10.3 Duration. This Declaration shall remain in full force and effect for a term of forty (40) years from the date this Declaration is recorded in the Office of the County Clerk of Fort Bend County, Texas, after which time this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the holders of a majority of the votes of each Class of Members with voting privileges has been filed for record in the Office of the County Clerk of Fort Bend County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or the date it is so filed for record, whichever is the later date.

SECTION 10.4 Enforcement. The terms and provisions of this Declaration shall run with and bind the land in the Subdivision, and shall inure to the benefit of and be enforceable by Developer, the Association, or the Owner of any Lot, and by their respective legal representatives, heirs, successors

and assigns. This Declaration may be enforced in any proceeding at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain violation or to recover damages, and against the property to enforce any lien created by this Declaration, and failure of Developer, the Association, or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the right to do so thereafter.

SECTION 10.5. Severability. Invalidation of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated.

SECTION 10.6 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 10.7. Titles. The titles of this Declaration and of Articles and Sections 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 10.8. Successors in Title. The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Developer and the Association and all Owners and occupants of any Lot and their respective heirs, devisees, successors, legal representatives and assigns.

IN WITNESS WHEREOF, this Declaration is executed this the 23rd day of March, 1978, A. D.

ATTEST:  
William M. Ambrose  
Secretary

WONACO DEVELOPMENT, INC.  
By William Wong  
President

THE STATE OF TEXAS           0  
COUNTY OF HARRIS           0

BEFORE ME, the undersigned authority, on this day personally appeared William Wong, President of Womaco Development, Inc., a corporation, 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 23rd day of March, 1978.



Mary Ellen Ambrose  
Notary Public in and for  
Harris County, Texas

-19-  
MARY ELLEN AMBROSE  
HARRIS COUNTY, TEXAS  
MY COMMISSION EXPIRES

Filed for Record at 11A M March 7 1978  
Pearl Ellett, Clark County Court, Fort Bend Co. Texas  
By Ellie Richter Deputy

Duly recorded this the 28 day of March A.D. 1978 at 4:30 O'Clock P.M.  
By Olivier L. Carter Deputy           Pearl Ellett, County Clerk  
Fort Bend County, Texas

COMPARED

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FAIRTEX CORPORATION

DECLARATION OF FAIRTEX CORPORATION  
COVERING MISSION BEND, SAN MIGUEL, SECTION TWO

THE STATE OF TEXAS 0

COUNTY OF FORT BEND 0

FAIRTEX CORPORATION, a Texas corporation, acting herein by and through its duly authorized officers, the owner of the following described real property in Fort Bend County, Texas:

- Lots 1 through 54, both inclusive, Block 21
- Lots 1 through 25, both inclusive, Block 22
- Lots 24 and 25, Block 23
- Lots 1 through 6, Block 25

All in MISSION BEND, SAN MIGUEL, SECTION TWO (2), a subdivision in Fort Bend County, Texas, according to the map or plat thereof recorded in Volume 21, Page 33, of the Map Records of Fort Bend County, Texas;

hereby declares that said real property, to the extent provided herein, shall be held, sold, transferred, and conveyed subject to the reservations, covenants, obligations, assessments, liens, terms, and provisions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property.

ARTICLE I

Definitions

SECTION 1.1. Definitions. The following words, when used in this Declaration, shall have the following meanings (unless the context clearly indicates otherwise):

- (a) "Developer" shall mean and refer to Fairtex Corporation, declarant herein, and to any corporation which succeeds to all or substantially all of its assets by any merger, consolidation, or conveyance of assets.
- (b) "Subdivision Plat," shall mean and refer to the plat of Mission Bend, San Miguel, Section Two (2), recorded in Volume 21, Page 33, of the Map Records of Fort Bend County, Texas; and "Subdivision" shall mean and refer to the land subdivided into numbered lots shown on said Map.
- (c) "Lot" shall mean and refer initially to any of the 84 lots shown on the Subdivision Plat, being the Lots described hereinabove in this Declaration. If a subdivision plat is hereafter filed for record by Developer in the Office of the County Clerk of Fort Bend County, Texas, replating the

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area only, the term "Lot" shall thereafter mean and refer to any of the numbered lots shown on such subdivision plat. If building sites are created pursuant to Section 2.4 herein, the term "Lot" shall also thereafter mean and refer to any building site so created. The term "Lot" shall also include any numbered lot shown on the recorded plat of any additional properties brought within the scheme of this Declaration.

- (d) "Corner Lot" shall mean any Lot that abuts on more than one street.
- (e) "Interior Lot" shall mean any Lot which is not a Corner Lot.
- (f) "Street" shall mean any street, drive, boulevard, road, lane or avenue shown on the Subdivision Plat.
- (g) "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person or by a single family, including the dwelling, garage, and any greenhouse and servants quarters.
- (h) "Assessable Tract" shall mean and refer to any Lot from and after the date on which such Lot is conveyed by the Developer.
- (i) "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.
- (j) "Owner" shall mean and refer to the Owner(s), whether one or more persons or entities, of the fee simple record title to any Lot, but shall not mean or refer to any person or entity holding only a lien, easement, mineral interest, or royalty interest burdening the title thereto.
- (k) "Association" shall mean and refer to San Miguel Civic Association, a Texas non-profit corporation, and to any non-profit corporation which succeeds to all or substantially all of its assets, rights or powers by any merger, consolidation, or conveyance of assets, rights or powers.
- (l) "Member" shall mean and refer to a member of the Association during the period of such membership, and shall include the Owner (during the period of his ownership) of each Assessable Tract, and the Developer as set forth in Article III hereof.
- (m) "Meeting of Members" shall mean and refer to a meeting of Members duly called in the manner prescribed in the by-laws of the Association, of which notice shall have been sent to all Members at least ten (10) days in advance of the meeting, stating the purpose(s) of the meeting, and at which a quorum shall be present. At the first Meeting



of Members called to act on any matter(s) requiring a vote of Members by the provisions of this Declaration or the by-laws of the Association, the presence at the meeting in person or by proxies of Members holding fifty percent (50%) of the aggregate of all the votes entitled to be cast shall constitute a quorum. If the required quorum is not present at any meeting called to act on any such matter(s), another meeting may be called to act on the same matter(s), subject to the notice requirement mentioned above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, except that such reduction in the quorum requirements shall not be applicable if the subsequent meeting is held more than sixty (60) days following the preceding meeting.

- (n) "Community Properties" shall mean and refer to such properties, real or personal, as are hereafter conveyed to or otherwise acquired by the Association. The Association's title to any property may cover the fee title thereto or only a leasehold estate therein, and may be subject to easements, reservations, restrictions, liens, indebtedness, obligations and other encumbrances.
- (o) "Architectural Control Committee" shall mean and refer to Mary Ellen Ambrose, W. W. Woods, William Wong and John M. Robinson, all of Harris County, Texas, and their successors, who shall act as the Architectural Control Committee.

ARTICLE II

Subdivision Plat; Easements; Rights Reserved; Mineral Reserved; Building Sites; Adjacent Property; Community Properties; Waivers

SECTION 2.1. Subdivision Plat. All dedications, easements, limitations, restrictions, and reservations shown on the Subdivision Plat are incorporated herein for all purposes, insofar as they relate to the Lots.

SECTION 2.2. Easements. Developer hereby reserves the right to dedicate, convey or reserve easements over, on, or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities, at or prior to the time Developer parts with title to the land within the easement(s).

SECTION 2.3 Reservations. The title conveyed by Developer to any Lot by contract, deed, or other conveyance shall never be intended, construed or held to include the title to any of the Community Properties, if any, or any of the easements referred to in Sections 2.1 or 2.2, or any improvements at any time located over, on, or under the Community Properties, if any, or any such easement, and title to all of the same shall be considered as excluded from any such conveyance, except to the extent that any of the same are specifically referred to in the instrument of conveyance and are stated therein to be conveyed thereby. Developer reserves the right (but shall have no obligation) to construct, install, use, repair and maintain

the public utilities, including, but not limited to, the water, sewer, electric and telephone lines, conduits and equipment necessary in connection therewith, and the right of access necessary or convenient thereto, and any system of utility lines and facilities constructed by Developer over, on, or under any such easement may be given, sold or leased by Developer to any public authority, utility company, or holder of a public franchise.

SECTION 2.4. Building Sites. With the written approval of the Architectural Control Committee, the Owner(s) of a group of Lots, each of which is adjacent to one or more of the other Lots in the Subdivision, may designate a part of a Lot, or any combination of Lots or portions of Lots to be a building site or building sites. The front, rear and side lines of the Lots affected by any such action, as such lines are designated on the Subdivision Plat, shall be adjusted to conform to the front, rear and side lines of the new building sites for building and other purposes. Improvements may be constructed on any such building site in accordance with the new front, rear and side lines thereof. Each such building site, upon being designated as such by the Owner(s) thereof with the written approval of the Architectural Control Committee, shall thereafter be a Lot for all purposes of this Declaration; provided, however, in no event shall any such building site have a width of less than the shortest lot width measured at the building set back line presently shown on the Subdivision Plat, nor shall any such building site have a total area less than the total area of the smallest Lot presently shown on the Subdivision plat.

SECTION 2.5 No Obligation as to Adjacent Property. The Subdivision is a part of a larger tract or block of land which is now or may hereafter be owned by Developer or others. While Developer or such other owners may subdivide other portions of its or their property now owned or hereafter acquired, or may subject the same to a declaration such as this Declaration, Developer shall have no obligation to do so, and if Developer or such other owners elect to do so, any subdivision plat or declaration executed by Developer or such other owners with respect to any of its or their other property may be the same as or similar or dissimilar to any subdivision plat covering the Subdivision, or any part thereof, or to this Declaration. The tracts shown as "Acreage" on the Subdivision Plat are parts of the other property of Developer or others referred to in this Section 2.5. Any advertisement, preliminary plan, drawing or other writing showing or referring to any other property shall not be binding on the Developer or such other owners unless and until such plan, drawing or other writing is duly executed by Developer or such other owners and recorded by Developer or such other owners in the Map Records or the Official Public Records of Real Property of Fort Bend County, Texas, and shall then only be binding as to the property actually within the boundary of the property intended by the Developer or such other owners to be included therein.

SECTION 2.6 No Obligation as to Community Properties. Unless the Subdivision Plat actually designates property therein as Community Properties, Developer shall have no obligations to acquire, furnish, construct, install, repair, maintain or convey to the Association any Community Properties, and in no event shall Developer be obligated to acquire, furnish, construct, install, repair or maintain any structures, improvements or other property (real or personal) on any property that may be designated on the Subdivision Plat as Community Properties.

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SECTION 2.7. Waivers. Each Owner acquiring any Lot from Developer, its successors or assigns, warrants to Developer by accepting title to said Lot that they have inspected the Lot and the surrounding area and accept the Lot in the condition it is in at the time of acquiring title thereto, and waives, releases and renounces any and all claims, rights, demands, and causes of action in this manner arising out of or connected with the condition or location of said Lot or the merchantability thereof or its fitness for a particular purpose, or any damage caused in whole or in part by flooding, earthquake or other natural phenomena.

### ARTICLE III

#### Membership and Voting Rights in the Association

SECTION 3.1. Membership. The Owner of each Assessable Tract, during the period of his ownership, shall automatically be a Member. Developer, whether or not it is the Owner of an Assessable Tract, shall also be a Member until its membership terminates pursuant to the provisions of Section 3.2 below.

SECTION 3.2 Voting Classes and Rights. The Association shall have the following class or classes of voting membership with the following rights:

CLASS A: The Owners of the Assessable Tracts shall be the Class A Members, and by virtue of such membership, the Owner of each Assessable Tract shall be entitled to one vote in the Association. There shall be no fractional votes. When the Owner of an Assessable Tract consists of more than one person or entity, they shall designate one of their number to cast their one vote with respect to such Assessable Tract.

CLASS B: Developer shall be the sole Class B Member, and by virtue of such membership, shall be entitled to the same number of votes in the Association as the aggregate votes of the Class A Members, plus two hundred (200) additional votes. The Class B Membership shall terminate at Midnight on December 31, 1983, or at the time when seventy-five percent (75%) of the Lots have become Assessable Tracts upon which are Living Units occupied as residences, whichever occurs later; provided, Developer shall have the right and option to terminate the Class B Membership at any time by notifying the Association in writing of its election to so terminate its Class B Membership.

### ARTICLE IV

#### Property Rights in the Community Properties

SECTION 4.1. Members' Easements of Enjoyment. Subject to the provisions of Section 4.2, every Member shall have a common right and easement of enjoyment in the Community Properties, if any, and any such right and easement shall be appurtenant to and shall pass with the title to every Assessable Tract.

SECTION 4.2. Extent of Members' Easements. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Developer or others as referred to or provided for in Article II, and shall also be subject to the following rights of the Association (which may be exercised by the officers of the Association when so authorized by its Board of Directors):

- (a) The Association shall have the right to construct, install, repair and maintain the Community Properties, if any, and to borrow money and in aid thereof to mortgage the Community Properties, if any, or any part thereof.
- (b) The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties, if any, against foreclosure or forfeiture of any mortgage, lien or other encumbrance thereon.
- (c) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid.
- (d) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Community Properties, if any, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (e) The Association shall have the right to assess and collect the assessments provided for herein, and in addition shall have the right to charge reasonable admission and other fees for the use of any recreational or other facilities which are a part of the Community Properties, if any, such as (but not limited to) a separate charge for the use of any swimming facilities, tennis facilities, or clubhouse facilities.
- (f) The Association shall have the right to transfer or convey all or any part of the Community Properties, if any, or interests therein, to any public authority.
- (g) The Association shall have the right to rent or lease any part of any Community Properties.
- (h) The Association shall have the right to extend the enjoyment of any of the Community Properties, if any, to persons other than members.

#### ARTICLE V

##### Assessments and Lien Therefor; Books

SECTION 5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot which shall be or shall hereafter become subject to

the assessments hereinafter provided for, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments fixed, established, and collected from time to time as hereinafter provided, together with such interest thereon and cost of collection thereof as are hereinafter provided for, all of which shall be a charge on and secured by a continuing lien upon the property against which such such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided for, shall also be and remain the personal obligation of the person who is the Owner of such property at the time the assessment becomes due and payable, notwithstanding any subsequent transfer of title to such property. Such personal obligation shall not pass to such Owner's successors in title unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

SECTION 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively (i) to improve, beautify, manage, operate, care for and maintain the Community Properties, if any, the entrances to the Subdivision, the esplanades and streets in or adjacent to the Subdivision, and any guard house facilities and vacant Lots in the Subdivision, the flood control rights-of-way in or adjacent to the Subdivision, and such other areas as the Board of Directors of the Association shall determine, (ii) to pay taxes and insurance premiums on any of such properties or improvements, and (iii) to promote the health, safety, convenience, enjoyment and welfare of the Members, such benefits to include, by way of illustration but not limitation, providing patrol or watchman service, fogging for insect control, enforcing the provisions contained in this Declaration, employing at the request of the Architectural Control Committee one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committee or the Directors of the Association, for the maintenance and/or improvement of the Community Properties, if any, or for the benefit of the Members, the foregoing uses and purposes being permissive and not mandatory, and the decisions of the Board of Directors of the Association being final as long as made in good faith and in accordance with the by-laws of the Association and governmental laws, rules and regulations.

SECTION 5.3 Annual Assessments. The Association, by action of its Board of Directors, shall levy annual assessments against the Assessable Tracts to obtain funds reasonably anticipated to be needed for the purposes stated in Section 5.2, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs. The amount of the annual assessment for an Assessable Tract shall not exceed \$300.00, except that for any calendar year after the calendar year 1978, the Association may increase said maximum amount of the annual assessment for an Assessable Tract, but if any such change increases the maximum amount which can be assessed against an Assessable Tract to more than \$400.00 per year or more than 110% of the amount assessed in the preceding calendar year, whichever is greater, the change must be approved by a majority of the votes cast by each class of Members at a Meeting of Members.

SECTION 5.4. Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on each Assessable Tract on the first day of the calendar month after it becomes an Assessable Tract. The amount of the annual assessment on each such Assessable Tract for the balance remaining in the first year of assessment shall be an amount

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which bears the same relationship to the annual assessment on such Assessable Tract provided for in Section 5.3 hereof as the remaining number of months in that year bears to twelve, and shall be due and payable on the day such Assessable Tract becomes an Assessable Tract. After the first year, the annual assessment on such Assessable Tract for each calendar year shall be due and payable on the first day of January in said year.

SECTION 5.5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any calendar 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 capital improvements upon the Community Property, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of Members.

SECTION 5.6. Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount to be levied as the annual assessment against each Assessable Tract for each calendar year, subject to the criteria and limitations set out in Section 5.3. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Tracts showing the amount of each assessment, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall upon demand at any time furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether or not there are any unpaid assessments against said Owner's property. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.

SECTION 5.7. Effect of Non-payment of Assessment; The Lien, Remedies of Association. If an assessment is not paid on the date it becomes due, such assessment shall thereupon become delinquent and, together with the interest thereon and cost of collection thereof hereinafter provided for, shall thereupon be secured by a continuing lien on the Assessable Tract against which the assessment was levied, including improvements thereon, which shall bind such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. If the assessment is not paid within thirty (30) days after it becomes due, the assessment shall bear interest from the date it becomes due at the rate of ten percent (10%) per annum until it is paid, and the Association may bring an action at law to foreclose the lien securing the assessment, and there shall be added to the amount of such assessment all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit.

SECTION 5.8. Subordination of the Lien to Mortgages. The lien securing any assessment provided for herein shall be subordinate to the lien of any mortgage(s) now or hereafter placed upon the property subject to the assessment for the purpose of securing indebtedness incurred to purchase or improve such property; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a foreclosure by trustee's sale under a deed of trust, or a conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due, nor from the

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lien securing any such subsequent assessment. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

SECTION 5.9. Exempt Property. The assessments and liens created in this Section V shall apply only to the Assessable Tracts, and the remainder of the property in the Subdivision shall not be subject thereto.

SECTION 5.10. Books. The Association shall maintain books of account reflecting all of its income and disbursements. Any Member shall have the right to inspect such books at the office of the Association at any reasonable time.

## ARTICLE VI

### Garbage and Rubbish Pickup

SECTION 6.1 Pickup Service. The Association shall have the right, but not the obligation, to contract for garbage and rubbish pickup service on behalf of all Occupied Lots, and to charge or have the garbage contractor charge the Owner of each Occupied Lot for his pro rata share of the cost thereof (such charge being hereinafter called "garbage charge"), such pro rata share to be determined by dividing the number of Occupied Lots being served into the total cost of such garbage and rubbish pickup service. Payment for such service may be on a monthly, quarterly, or semi-annual basis, at the discretion of the Association, and may be payable in advance.

SECTION 6.2. Effect of Non-Payment of Garbage Charge; The Lien; Remedies of Association. If a garbage charge for any billing period (whether monthly, quarterly or semi-annually) is not paid on or before the first day of the billing period, or within ten (10) days after notice thereof is mailed to the Owner of the Occupied Lot to be charged, whichever is the later, the garbage charge shall bear interest thereafter at the rate of ten percent (10%) per annum until paid. The garbage charge and any interest thereon shall be the personal obligation of the Owner of the Occupied Lot receiving the garbage service (but not of such Owner's successors in title unless expressly assumed by them), and shall be secured by a continuing lien on such Occupied Lot, including improvements thereon, which shall be binding on such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. The Association may bring an action at law to foreclose the lien securing the garbage charge and there shall be added to the amount of the garbage charge the interest thereon and all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit. At its discretion, the Association may discontinue garbage service to any Occupied Lot which is in default hereunder, until all amounts in arrears, including the interest and other expenses provided for herein, have been paid in full.

SECTION 6.3 Subordination of the Lien to Mortgages. With respect to each Occupied Lot, the lien provided for in Section 6.2 shall be subordinate to the same liens to which the assessment provided for in Article V is subordinate pursuant to the provisions of Section 5.8, and may be subordinated to any other lien by the Association, in the discretion of its Board of Directors.

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Architectural Control Committee

SECTION 7.1. Tenure. The persons serving on the Architectural Control Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association have Living Units thereon occupied as residences, at which time the Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association, or its assigns. 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). A majority of the Architectural Control Committee may designate someone serving on the Committee to act for it. No person serving on the Committee shall be entitled to compensation for services performed pursuant to this Article VII. 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 such services as they render to the Committee, together with any interest incurred thereon.

SECTION 7.2. Approval of Plans. No buildings or other improvements, including, but not limited to, streets, driveways, sidewalks, drainage facilities, landscaping, fences, walks, fountains, statuary, outdoor lighting and signs, shall be commenced, constructed, erected, placed, or maintained in the Subdivision, nor shall any exterior addition to or alteration therein be made, unless and until (1) a preliminary site plan showing all uses and dimensions, the location of buildings, entries, streets, driveways, sidewalks, parking areas, pedestrian ways, and storage areas, and a schematic plan for the landscaping and lighting of the property, have been submitted to and approved in writing by the Architectural Control Committee, and thereafter (ii) the final working plans and specifications for the work shown on the preliminary site plan and schematic plan have been submitted to and approved in writing by the Architectural Control Committee as to compliance with this Declaration and as to harmony of external design and location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography. The final working plans and specifications shall not be commenced until the preliminary site plan and schematic plan have been so approved. The final working plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, exterior color scheme, materials, and location of the proposed improvements or alterations thereto. In the event the Architectural Control Committee fails to approve or disapprove the preliminary site plan and Schematic plan within thirty (30) working days after they have been submitted to it, approval thereof will not be required and the provisions of this Section 7.2 will be deemed to have been fully complied with. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration, or repair of any improvement.

Where not otherwise specified herein, the Architectural Control Committee shall also have the right to specify requirements for each building site.



as follows: minimum set-backs; driveway access screening devices; and the orientation of structures with respect to streets, walks, and structures on adjacent property. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in its judgment, with the overall character, design or aesthetics of the Subdivision.

SECTION 7.3. Approved Contractors. No construction of a building, structure, fence, wall, or other improvement shall be commenced in the Subdivision until the contractor to perform such construction shall have been approved in writing by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove a contractor within thirty (30) working days after his name is submitted to it, approval will not be required, and the provisions of this Section 7.2 will be deemed to have been fully complied with.

#### ARTICLE VIII

##### Restrictions

SECTION 8.1. All Lots shall be used solely for single-family residential purposes, and no Lot shall be used (either primarily or secondarily) for any business, professional, commercial or multi-family residential purpose whatsoever of any kind or type.

SECTION 8.2. No building or other structure of any kind or type other than one detached single-family dwelling, not to exceed two and one-half (2-1/2) stories in height, and a private garage for not less than two (2) nor more than three (3) passenger cars and servants' quarters for domestic servants actually employed by the Owner or resident of the Lot and a greenhouse to grow plants for the Owner's or residents' family or household purposes and fences shall be constructed, placed or permitted to remain on any Lot. Carports shall not be allowed unless specifically approved in writing by the Architectural Control Committee.

SECTION 8.3 All buildings, structures, and other improvements erected, altered, or placed in the Subdivision shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or outbuilding shall be used in the Subdivision at any time as a residence, either temporarily or permanently. Unless the Architectural Control Committee otherwise agrees in writing, the exterior finish or construction of any Living Unit and each outside wall of each structure within the Living Unit shall be at least fifty-one percent (51%) brick, stone, or other masonry; in computing such percentage, roof areas and windows shall be excluded, but attached garages, servants quarters, greenhouses, porches, and other structures constituting part of the Living Unit shall be included.

SECTION 8.4. No temporary building shall be erected or maintained on any lot except during actual construction of a dwelling being erected thereon, and, then such temporary building must be on the Lot on which construction is in progress and not on adjoining Lots, streets, or easements and, at completion of construction, the temporary building must be removed immediately. No such temporary building or structure shall be used for residential purposes during construction or at any other time.

SECTION 8.5. No garage apartments for rental purposes shall be permitted in the Subdivision. Living quarters on any Lot other than in the main dwelling may be used for bona fide servants only which are actually employed by the Owner or resident of such Lot.

SECTION 8.6. All improvements shall be constructed on the Lot so as to front the street upon which such Lot faces. A Lot shall be deemed to face the street which has its building set back line the farthest from said street.

SECTION 8.7. All improvements on Corner Lots shall have a presentable frontage on all streets on which that particular Corner Lot abuts.

SECTION 8.8. A one story dwelling in any Living Unit shall contain not less than 1,700 square feet of living area, and the total living area of a one and one-half story, two story or two and one-half story dwelling shall contain not less than 2,000 square feet. All computations of living area shall be exclusive of open or screened porches, terraces, patios, driveways, garages, servants' quarters and/or greenhouse. Measurements shall be to the face of the outside walls of the living area.

SECTION 8.9. Unless the Architectural Control Committee specifically agrees otherwise in writing, no roof of any structure in the Subdivision shall be constructed or covered so that the exposed material is asphalt shingles or composition type shingles having a weight per square of less than 240 pounds or wood shingles having a grade of less than No. 1.

SECTION 8.10. Unless the Architectural Control Committee specifically agrees otherwise in writing, each Living Unit shall have an attached or detached enclosed private garage for not less than two nor more than three passenger cars.

SECTION 8.11. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building, fence, or other structure (i) shall be placed or built on any Lot nearer to the front lot line or nearer to a side street line than the building lines therefor shown on the Subdivision Plat, or (ii) shall encroach on any easement shown on the Subdivision Plat.

SECTION 8.12. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building shall be located nearer than five feet (5') to any interior lot line, except that a detached garage or other permitted building located seventy feet (70') or more from the front lot line may be located as near as three feet (3') to an interior side lot line. No detached garage shall be located nearer than fifty feet (50') to a front lot line and no servants' quarters or greenhouse shall be located nearer than seventy feet (70') to a front lot line.

SECTION 8.12. Any garage located on an interior Lot which has any part thereof located within fifty feet (50') from the front lot line must open or face onto an interior side or rear lot line. Unless the Architectural Control Committee specifically agrees otherwise in writing, any garage located on a Corner Lot must open or face onto an interior side or rear lot line, and all approved plans with a garage facing any street must provide that such garage shall be equipped with automatic garage door openers/closers.

SECTION 8.14. No nuisance shall ever be erected, placed, or suffered to

remain upon any property in the Subdivision, and no Owner of or resident on any property in the Subdivision shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. No Owner or other person shall discharge any firearm within the Subdivision. The Association is hereby authorized to determine what constitutes a violation of this restriction.

SECTION 8.15. No sheep, goats, horses, cattle, swine, poultry, dangerous animals (the determination as to what is a dangerous animal shall be in the sole discretion of the Association), snakes, livestock or other animals or fowl of any kind shall ever be kept in the Subdivision except that dogs, cats or other common household pets (not to exceed a total of three adult animals) may be kept by the Owner or tenant of any Living Unit, provided they are not kept, bred or maintained for any commercial purpose.

SECTION 8.16. No trash, rubbish, garbage, manure, building materials or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street. Reasonable amounts of construction materials and equipment may be stored upon a Lot or between that Lot and the street abutting same for reasonable periods of time during the construction of improvements on such Lot, but no such material or equipment shall ever be placed or stored on any street.

SECTION 8.17. No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted in the Subdivision.

SECTION 8.18. No water well, privy, cesspool or septic tank shall be drilled, constructed, placed or maintained on any Lot.

SECTION 8.19. No boat, trailer, camping unit, motor home, bus, truck, or self-propelled or towable equipment, consumer goods or machinery of any sort shall be permitted to park on any street or any Lot except in a garage or other enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street, except that (i) during the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of necessity therefor, and (ii) this restriction shall not apply to automobiles and pick-up trucks in good repair and attractive condition parked farther from the street than the building setback lines as shown on the Subdivision Plat; and (iii) this restriction shall not apply to the mere temporary parking of any such equipment or consumer goods which is in good repair and attractive condition. The Association is hereby authorized to determine what constitutes temporary parking.

SECTION 8.20. No clothing or other materials shall be aired or dried in the Subdivision except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot.

SECTION 8.21. 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 after 7:00 A. M. and before 9:00 P. M.

SECTION 8.22. Without the prior written authorization of the Architectural Control Committee, no television or radio antenna of any sort shall be placed, allowed, or maintained outside a Living Unit or on the exterior of any building or other improvement located on a Lot.

SECTION 8.23. All electrical, telephone and other utility lines and facilities which (i) are located on a Lot, (ii) are not within or a part of any building, and (iii) are not owned by a government entity, a public utility company, or the Association, shall be installed in underground conduits or other underground facilities. Lighting Fixtures may be installed above ground if approved in writing by the Architectural Control Committee.

The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical 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 Subdivision the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 240/120 volt, three wire, 60 cycle alternating current.

SECTION 8.24. Easements for the underground service may be crossed by driveways, fences and walkways provided that the Owner of each Lot affected makes prior arrangements satisfactory with the utility company furnishing electric service and any other owner or user of such easement and provides and installs the necessary electric conduit and other structures of approved type and size under such driveways, fences or walkways and 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 the Developer 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, flowers, or other improvements located on the land covered by said easements.

SECTION 8.25. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community and the decision of the Architectural Control Committee that any such matter is not harmonious shall be final.

SECTION 8.26. Except for one sign of not more than five (5) square feet advertising the Lot on which it is located for sale, no billboards or other

signs of any kind or type may be erected in the Subdivision without the prior written consent of the Architectural Control Committee. In no event shall the use of flags or banners be permitted in the promotion or sale of any Living Unit in the Subdivision.

**SECTION 8.27.** The Owner of each Lot shall maintain the same, and the improvements, grass, trees, hedges, and plantings thereon, in a neat and attractive condition. The Association shall have the right, after seven (7) days' notice to the Owner of any Lot, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner, (i) to mow the grass thereon, (ii) to remove any debris therefrom, (iii) to remove, trim or prune any tree, hedge, or planting that, in the opinion of the Association, by reason of its location or height, or the manner in which it has been permitted to grow, or disease, decay or other condition, is detrimental to the enjoyment of adjoining property, is unattractive in appearance or obstructs the view of traffic, (iv) to repair or paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent property in the Subdivision, and (v) to do any and all things necessary or desirable in the opinion of the Association to place such property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such property at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) days after it is performed by the Association, and if such amount is not paid within said period of time, such Owner shall be obligated thereafter to pay interest thereon at the rate of ten percent (10%) per annum, and to pay any attorneys' fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on such Owner's property, subject only to liens then existing thereon.

**SECTION 8.28.** Unless the Architectural Control Committee agrees otherwise, each Lot shall have driveway access to the street on which the Lot faces and shall not have driveway access to a street on which it may side. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street, including the portion in the street easement, and he shall repair at his expense any damage to the street occasioned by connecting his driveway thereto.

**SECTION 8.29.** Before the residence constructed on the Lot is completed and occupied, the Owner shall construct and complete in the adjacent street right(s)-of-way a concrete sidewalk four feet (4') in width parallel to the street curb, with the edge of such sidewalk closest to the curb being located four feet (4') away from the back of the curb. The sidewalk shall extend along the entire common boundary between the Lot and the adjacent street right(s)-of-way. In the case of a corner Lot, the front and side sidewalks shall each extend to the street curb, and shall provide curb ramps for the handicapped and must be constructed in full compliance with Section 228 of the Highway Safety Act of 1973, and all amendments thereto, and all rules, regulations and interpretations thereunder. Additionally the plans required to be submitted to the Architectural Control Committee under SECTION 7.2. of these restrictions shall include plans and specifications for such sidewalks.

**SECTION 8.30.** Prior to the initial occupancy of any Living Unit on any Lot in the Subdivision, the Owner of such Lot shall require the contractor or builder erecting the Living Unit, as a minimum, to spot sod or sprig

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with grass the area between his Living Unit and the curb line(s) of the abutting street(s), and to plant in the same area at least two trees, each having a minimum diameter of three inches (3") at a height twelve inches (12") above finished grade. The grass and trees shall be of a type and within standards prescribed by the Architectural Control Committee, and the proposed locations of such trees shall be set forth in the plans and specifications required to be submitted to the Architectural Control Committee under SECTION 7.2 of these restrictions, and shall be approved in writing prior to commencement of any construction on the Lot.

SECTION 8.21. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above any street shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree, hedge or shrubbery shall be permitted to remain within such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

SECTION 8.32. All fences, walls and other barriers to be erected between Living Units on any Lot or Lots shall first be approved in writing by the Architectural Control Committee. No such fence, wall or barrier shall exceed more than eight feet (8') in height from finished grade, and each such fence, wall or barrier shall be of an architectural style and material which harmonizes with other improvements constructed within the Subdivision, and the decision of the Architectural Control Committee in this matter shall be final. Fences, walls and barriers may be of wood or masonry, but no wire or chain link or similar fence, wall or barrier shall be erected or permitted to remain in the Subdivision.

SECTION 8.22. Notwithstanding the foregoing provisions of this Article VIII, Developer and its permittees shall have the exclusive right to erect, place, and maintain on their respective properties in the Subdivision such facilities (including but not limited to, offices, storage areas, model units, and signs) as in Developer's sole discretion may be necessary or convenient to improve and/or sell properties in the Subdivision.

#### ARTICLE IX

##### Extension of Declaration to Additional Land

SECTION 9.1. Additions to the Subdivision. Notwithstanding the provisions of Section 10.2, and notwithstanding any other provisions of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or anyone else, Developer shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1988, to file for record in the Office of the County Clerk of Fort Bend County, Texas, an Amendment to this Declaration which:

- (a) Expands the definition of "Subdivision Plat" herein so that it covers and includes not only the subdivision plat(s) then covered by said definition but also the recorded plat(s) of one or more additional subdivisions; expands the definition of "Subdivision" herein so that it covers and includes not only the land then covered by said definition but also all or any part of the land subdivided into numbered lots in the plat(s) of said additional subdivision(s); and/or expands the definition of "Lots" in the first sentence of Subsection 1.1(c) hereof so that it covers and includes not only the Lots then covered on the plat(s) of said additional subdivision(s) and/or (ii) one or more tracts described by metes and bounds in said Amendment and designated therein as residential lots. After the filing for record of any such Amendment, the provisions of the second and third sentences of Subsection 1.1(c) hereof shall apply not only to the Lots to which such provisions previously applied but also to the Lots which become such pursuant to such Amendment;
- (b) Makes such additional Lots subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth in this Declaration, except that said Amendment may alter, amend, change or delete such of the reservations, covenants, obligations, assessments, liens, terms and provisions herein as to such additional Lots, as Developer deems reasonable or desirable, including, but not limited to, allowing such additional Lots to be for multi-family residences or patio homes;
- (c) Grants to such additional Lots and the Owners thereof the benefits of this Declaration; and
- (d) Sets forth any additional restrictions which Developer wishes to impose on said additional Lots.

Each such Amendment shall be executed by Developer, and if Developer is not the Owner of the additional Lots added by the Amendment, or is not the Owner of some of such Lots, then the Amendment shall also be executed by the Owner(s) of such of the additional Lots added by that Amendment as are not owned by Developer. Each such Amendment shall be effective as an Amendment to this Declaration from and after the date it is filed for record in the Office of the County Clerk of Fort Bend County, Texas, and all rights and obligations accruing therefrom shall commence and be measured as of and from said filing date.

SECTION 9.2. Merger of Associations. Notwithstanding the provisions of Section 10.2, and notwithstanding any other provision of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or any one else, the Board of Directors of the Association shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1983, to merge or consolidate the Association with another non-profit corporation, and transfer all or substantially all of the Association's

properties, if any, rights, duties and obligations to any such other surviving non-profit corporation, or, if the Association is the surviving corporation, accept all or substantially all of the properties, if any, rights, duties and obligations of such other non-profit corporation, and the surviving corporation shall thereupon administer the covenants and restrictions established by this Declaration together with the covenants and restrictions theretofore administered by the non-surviving corporation as one scheme; provided, however, no such merger or consolidation shall in any manner revoke, modify or otherwise alter any of the covenants and restrictions established by this Declaration. In the event of any such merger or consolidation, the term "Association" where used in this Declaration shall thereafter mean and refer to the surviving corporation.

Each Owner of an Assessable Tract by accepting title to any Lot appoints Developer such Owner's proxy, with full power of substitution, to vote all votes entitled to be cast by such Owner in connection with any such merger or consolidation or the transfer of all or substantially all of the properties, if any, of the Association, and each such Owner agrees that this proxy shall be irrevocable so long as Developer is a Class B member of the Association.

ARTICLE X

General Provisions

SECTION 10.1 Incorporation. The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter executed by Developer conveying all or any part of the land in the Subdivision, whether or not referred to therein, and all estates conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Declaration.

SECTION 10.2. Amendments. This Declaration may be amended in whole or in part by an instrument executed by the President of the Association when approved by a majority of the votes cast by each Class of Members at a Meeting of Members. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration as so amended.

SECTION 10.3 Duration. This Declaration shall remain in full force and effect for a term of forty (40) years from the date this Declaration is recorded in the Office of the County Clerk of Fort Bend County, Texas, after which time this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the holders of a majority of the votes of each Class of Members with voting privileges has been filed for record in the Office of the County Clerk of Fort Bend County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or the date it is so filed for record, whichever is the later date.

SECTION 10.4 Enforcement. The terms and provisions of this Declaration shall run with and bind the land in the Subdivision, and shall inure to the benefit of and be enforceable by Developer, the Association, or the Owner of any Lot, and by their respective legal representatives, heirs, successors



and assigns. This Declaration may be enforced in any proceeding at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain violation or to recover damages, and against the property to enforce any lien created by this Declaration, and failure of Developer, the Association, or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the right to do so thereafter.

SECTION 10.5. Severability. Invalidation of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated.

SECTION 10.6. 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 10.7. Titles. The titles of this Declaration and of Articles and Sections 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 10.8. Successors in Title. The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Developer and the Association and all Owners and occupants of any Lot and their respective heirs, devisees, successors, legal representatives and assigns.

IN WITNESS WHEREOF, this Declaration is executed this the 23<sup>rd</sup> day of March, 1978, A. D.

ATTEST:

No Seal  
John M. Johnson  
Secretary

FAIRTEX CORPORATION

By William W. Wong  
President

THE STATE OF TEXAS 0

COUNTY OF HARRIS 0

BEFORE ME, the undersigned authority, on this day personally appeared William Wong, President of Fairtex Corporation, a corporation, 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 23<sup>rd</sup> day of March, 1978.



Mary Ellen Ambrose  
Notary Public in and for  
Harris County, Texas

- 19 -  
MARY ELLEN AMBROSE  
HARRIS COUNTY, TEXAS  
MY COMMISSION EXPIRES  
JULY, 1979

Filed for HARRIS Co. at 11 A M March 23 1978  
Pearl Ellett, Clerk County Court, Fort Bend Co. Texas  
By [Signature] Deputy

Duly recorded this the 28 day of March A.D. 1978 at 4:30 O'Clock P.M.  
By [Signature] Deputy Pearl Ellett, County Clerk  
Fort Bend County, Texas

3122  
**COMPARED  
22709**

WONACO DEVELOPMENT, INC.

DEED

DECLARATION OF WONACO DEVELOPMENT, INC. VOL  
COVERING MISSION BEND, SAN MIGUEL, SECTION FIVE

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THE STATE OF TEXAS                   X  
COUNTY OF FORT BEND               X

WONACO DEVELOPMENT, INC., a Texas corporation, acting herein by and through its duly authorized officers, the owner of the following described real property in Fort Bend and Harris Counties, Texas:

Lots 1 through 57, both inclusive, in Block 1  
Lots 1 through 65, both inclusive, in Block 2  
Lots 9 through 27, both inclusive, in Block 3

all in MISSION BEND, SAN MIGUEL, SECTION FIVE (5), a subdivision in Fort Bend and Harris Counties, Texas, according to the map or plat thereof recorded in Volume 22, Page 20, and Volume 280, Page 1, of the Map Records of Fort Bend and Harris Counties, Texas, respectively;

hereby declares that said real property, to the extent provided herein, shall be held, sold, transferred, and conveyed subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property, with the exception of Lots 22 through 25, both inclusive, in Block 1, which are hereby designated as reserve acreage for the construction of recreational amenities and not subject to this Declaration of Restrictions, and with the exception of Lots 1 through 5, both inclusive, in Block 1, which are hereby designated as reserve acreage and not subject to this Declaration of Restrictions and said lots may be used for commercial purposes or for religious church purposes.

ARTICLE I

Definitions

SECTION 1.1 Definitions. The following words, when used in this Declaration, shall have the following meanings (unless the context clearly indicates otherwise):

- (a) "Developer" shall mean and refer to WONACO DEVELOPMENT, INC., declarant herein, and to any corporation which succeeds to all or substantially all of its assets by any merger, consolidation or conveyance of assets.
- (b) "Subdivision Plat" shall mean and refer to the plat of Mission Bend, San Miguel, Section Five (5), recorded in Volume 22, Page 20, and Volume 280, Page 1, of the Map Records of Fort Bend and Harris Counties, Texas, respectively; and "Subdivision" shall mean and refer to the land subdivided into numbered lots shown on said Map.
- (c) "Lot" shall mean and refer initially to any of the 132 lots shown on the Subdivision Plat, being the Lots described hereinabove in this Declaration. If a subdivision plat is hereafter filed for record by Developer in the Office of the County Clerk of Fort Bend County, Texas, replatting the area only, the term "Lot" shall thereafter mean and refer to any of the numbered lots shown on such subdivision plat. If building sites are created pursuant to Section 2.4 herein, the term "Lot" shall also thereafter mean and refer to any building site so created. The term "Lot" shall also include any numbered lot shown on the recorded plat of any additional properties brought within the scheme of this Declaration.
- (d) "Corner Lot" shall mean any Lot that abuts on more than one street.

- (e) "Interior Lot" shall mean any Lot which is not a Corner Lot.
- (f) "Street" shall mean any street, drive, boulevard, road, lane or avenue shown on the Subdivision Plat.
- (g) "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person or by a single family, including the dwelling, garage, and any greenhouse and servants quarters.
- (h) "Assessable Tract" shall mean and refer to any Lot from and after the date on which such Lot is conveyed by the Developer.
- (i) "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.
- (j) "Owner" shall mean and refer to the Owner(s), whether one or more persons or entities, of the fee simple record title to any Lot, but shall not mean or refer to any person or entity holding only a lien, easement, mineral interest, or royalty interest burdening the title thereto.
- (k) "Association" shall mean and refer to San Miguel Civic Association, a Texas non-profit corporation, and to any non-profit corporation which succeeds to all or substantially all of its assets, rights or powers by any merger, consolidation, or conveyance of assets, rights or powers.
- (l) "Member" shall mean and refer to a member of the Association during the period of such membership, and shall include the Owner (during the period of his ownership) of each Assessable Tract, and the Developer as set forth in Article III hereof.
- (m) "Meeting of Members" shall mean and refer to a meeting of Members duly called in the manner prescribed in the By-Laws of the Association, of which notice shall have been sent to all Members at least ten (10) days in advance of the meeting, stating the purpose(s) of the meeting, and at which a quorum shall be present. At the first Meeting of Members called to act on any matter(s) requiring a vote of Members by the provisions of this Declaration or the By-Laws of the Association, the presence at the meeting in person or by proxies of Members holding fifty percent (50%) of the aggregate of all the votes entitled to be cast shall constitute a quorum. If the required quorum is not present at any meeting called to act on any such matter(s), another meeting may be called to act on the same matter(s), subject to the notice requirement mentioned above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, except that such reduction in the quorum requirements shall not be applicable if the subsequent meeting is held more than sixty (60) days following the preceding meeting.
- (n) "Community Properties" shall mean and refer to such properties, real or personal, as are hereafter conveyed to or otherwise acquired by the Association. The Association's title to any property may cover the fee title thereto or only a leasehold estate therein, and may be subject to easements, reservations, restrictions, liens, indebtedness, obligations and other encumbrances.
- (o) "Architectural Control Committee" shall mean and refer to Mary Ellen Ambrose, William Wong, and John M. Robinson, all of Harris County, Texas, and their successors, who shall act as the Architectural Control Committee.

ARTICLE II

DEED

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Subdivision Plat; Easements; Rights Reserved; Mineral Reserved;  
Building Sites; Adjacent Property; Community Properties; Waivers.

SECTION 2.1 Subdivision Plat. All dedications, easements, limitations, restrictions, and reservations shown on the Subdivision Plat are incorporated herein for all purposes, insofar as they relate to the Lots.

SECTION 2.2 Easements. Developer hereby reserves the right to dedicate, convey or reserve easements over, on, or under any part of land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities, at or prior to the time Developer parts with title to the land within the easement(s).

SECTION 2.3 Reservations. The title conveyed by Developer to any Lot by contract, deed, or other conveyance shall never be intended, construed or held to include the title to any of the Community Properties, if any, or any of the easements referred to in Sections 2.1 or 2.2, or any improvements at any time located over, on, or under the Community Properties, if any, or any such easement, and title to all of the same shall be considered as excluded from any such conveyance, except to the extent that any of the same are specifically referred to in the instrument of conveyance and are stated therein to be conveyed thereby. Developer reserves the right (but shall have no obligation) to construct, install, use, repair and maintain the public utilities, including but not limited to, the water, sewer, electric and telephone lines, conduits and equipment necessary in connection therewith, and the right of access necessary or convenient thereto, and any system of utility lines and facilities constructed by Developer over, on, or under any such easement may be given, sold or leased by Developer to any public authority, utility company, or holder of a public franchise.

SECTION 2.4 Building Sites. With the written approval of the Architectural Control Committee, the Owner(s) of a group of Lots, each of which is adjacent to one or more of the other Lots in the Subdivision, may designate a part of a Lot, or any combination of Lots or portions of Lots to be a building site or building sites. The front, rear and side lines of the Lots affected by any such action, as such lines are designated on the Subdivision Plat, shall be adjusted to conform to the front, rear and side lines of the new building sites for building and other purposes. Improvements may be constructed on any such building site in accordance with the new front, rear and side lines thereof. No such building site shall have an average width of less than Fifty-five (55') feet, nor shall any such building site have a total area less than Six Thousand (6,000) Square Feet, without the written approval of the Architectural Control Committee. Each such building site, upon being designated as such by the Owner(s), shall thereafter be a Lot for all purposes of this Declaration.

SECTION 2.5 No Obligation as to Adjacent Property. The Subdivision is a part of a larger tract or block of land which is now or may hereafter be owned by Developer or others. While Developer or such other owners may subdivide other portions of its or their property now owned or hereafter acquired, or may subject the same to a declaration such as this Declaration, Developer shall have no obligation to do so, and if Developer or such other owners elect to do so, any subdivision plat or declaration executed by Developer or such other owners with respect to any of its or their other property may be the same as or similar or dissimilar to any subdivision plat covering the Subdivision, or any part thereof, or to this Declaration. The tracts shown as "Acreage" on the Subdivision Plat are parts of the other property of Developer or others referred to in this Section 2.5. Any advertisement, preliminary plan, drawing or other writing shown or referring to any other property shall not be binding on the Developer or such other owners unless and until such plan, drawing or other writing is duly executed by Developer or such other owners and recorded by Developer or such other owners in the Map Records or the Official Public Records of Real Property of Fort Bend County, Texas, and shall then only be binding as to the property actually within the boundary of the property intended by the Developer or such other owners to be included therein.

SECTION 2.6 No Obligation as to Community Properties. Unless the Subdivision Plat actually designates property therein as Community Properties, Developer shall have no obligations to acquire, furnish, construct, install, repair, maintain or convey to the Association any Community Properties; and in no event shall Developer be obligated to acquire, furnish, construct, install, repair or maintain any structures, improvements or other property (real or personal) on any property

that may be designated on the Subdivision Plat as Community Properties.

SECTION 2.7 Waivers. Each Owner acquiring any Lot from Developer, its successors or assigns, warrants to Developer by accepting title to said Lot that they have inspected the Lot and the surrounding area and accept the Lot in the condition it is in at the time of acquiring title thereto, and waives, releases and renounces any and all claims, rights, demands, and causes of action in this manner arising out of or connected with the condition or location of said Lot or the merchantability thereof or its fitness for a particular purpose, or any damage caused in whole or in part by flooding, earthquake or other natural phenomena.

#### ARTICLE III

##### Membership And Voting Rights in the Association

SECTION 3.1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

SECTION 3.2. The Association shall have two classes of voting membership with the following rights:

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 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 vote be cast with respect to any Lot.

CLASS B. The Class B member(s) shall be the Declarant and 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 December 31, 1987.

#### ARTICLE IV

##### Property Rights in the Community Properties

SECTION 4.1 Members' Easements of Enjoyment. Subject to the provisions of Section 4.2, every Member shall have a common right and easement of enjoyment in the Community Properties, if any, and any such right and easement shall be appurtenant to and shall pass with the title to every Assessable Tract.

SECTION 4.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Developer or others as referred to or provided for in Article II, and shall also be subject to the following rights of the Association (which may be exercised by the officers of the Association when so authorized by its Board of Directors):

- (a) The Association shall have the right to construct, install, repair and maintain the Community Properties, if any, and to borrow money and in aid thereof to mortgage the Community Properties, if any, or any part thereof.
- (b) The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties, if any, against foreclosure or forfeiture of any mortgage, lien or other encumbrance thereon.
- (c) The Association shall have the right to suspend the enjoyment

rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid.

- (d) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (e) The Association shall have the right to assess and collect the assessments provided for herein, and in addition shall have the right to charge reasonable admission and other fees for the use of any recreational or other facilities which are a part of the Community Properties, if any, such as (but not limited to) a separate charge for the use of any swimming facilities, tennis facilities, or clubhouse facilities.
- (f) The Association shall have the right to transfer or convey all or any part of the Community Properties, if any, or interests therein, to any public authority, subject to this Declaration.
- (g) The Association shall have the right to rent or lease any part of any Community Properties.
- (h) The Association shall have the right to extend the enjoyment of any of the Community Properties, if any, to persons other than members.

#### ARTICLE V

##### Assessments and Lien Therefor; Books

**SECTION 5.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a Lot which shall be or shall hereafter become subject to the assessments hereinafter provided for, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments fixed, established, and collected from time to time as hereinafter provided, together with such interest thereon and cost of collection thereof as are hereinafter provided for, all of which shall be a charge on and secured by a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided for, shall also be and remain the personal obligation of the person who is the Owner of such property at the time the assessment becomes due and payable, notwithstanding any subsequent transfer of title to such property. Such personal obligation shall not pass to such Owner's successors in title unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

**SECTION 5.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively (i) to improve, beautify, manage, operate, care for and maintain the Community Properties, if any, the entrances to the Subdivision, the esplanades and streets in or adjacent to the Subdivision, and any guard house facilities and vacant Lots in the Subdivision, the flood control of rights-of-way in or adjacent to the Subdivision, and such other areas as the Board of Directors of the Association shall determine, (ii) to pay taxes and insurance premiums on any of such properties or improvements, and (iii) to promote the health, safety, convenience, enjoyment and welfare of the Members, such benefits to include, by way of illustration but not limitation, providing patrol or watchman service, fogging for insect control, enforcing the provisions contained in this Declaration, employing at the request of the Architectural Control Committee one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committee or the Directors of the Association, for the maintenance and/or improvement of the Community Properties, if any, or for the benefit of the Members, the foregoing uses and purposes being permissive and not mandatory, and the decisions of the Board of Directors of the Association being final as long as made in good faith and in accordance with the By-Laws of the Association and governmental laws, rules and regulations.

**SECTION 5.3 Annual Assessments.** The Association, by action of its Board of Directors, shall levy annual assessments against the Assessable Tracts to obtain

funds reasonably anticipated to be needed for the purposes stated in Section 5.2, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs. The amount of the annual assessment for an Assessable Tract shall not exceed \$300.00, except that for any calendar year after the calendar year 1981, the Association may increase said maximum amount of the annual assessment for an Assessable Tract, but if any such change increases the maximum amount which can be assigned against an Assessable Tract to more than \$400.00 per year or more than 110% of the amount assessed in the preceding calendar year, whichever is greater, the change must be approved by a majority of the votes cast by each class of Members at a Meeting of Members.

SECTION 5.4 Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on each Assessable Tract on the first day of the calendar month after it becomes an Assessable Tract. The amount of the annual assessment on each such Assessable Tract for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment on such Assessable Tract provided for in Section 5.3 hereof as the remaining number of months in that year bears to twelve, and shall be due and payable on the day such Assessable Tract becomes an Assessable Tract. After the first year, the annual assessment on such Assessable Tract for each calendar year shall be due and payable on the first day of January in said year.

SECTION 5.5 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any calendar 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 capital improvements upon the Community Property, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of Members.

SECTION 5.6 Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount to be levied as the annual assessment against each Assessable Tract for each calendar year, subject to the criteria and limitations set out in Section 5.3. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Tracts showing the amount of each assessment, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall upon demand at any time furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether or not there are any unpaid assessments against said Owner's property. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.

SECTION 5.7 Effect of Non-payment of Assessment; The Lien, Remedies of Association. If an assessment is not paid on the date it becomes due, such assessment shall thereupon become delinquent and, together with the interest thereon and cost of collection thereon hereinafter provided for, shall thereupon be secured by a continuing lien on the Assessable Tract against which the assessment was levied, including in payments thereon, which shall bind such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. If the assessment is not paid within thirty (30) days after it becomes due, the assessment shall bear interest from the date it becomes due at the rate of ten percent (10%) per annum until it is paid, and the Association may bring an action at law to foreclose the lien securing the assessment, and there shall be added to the amount of such assessment all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit.

SECTION 5.8 Subordination of the Lien to Mortgages. The lien securing any assessment provided for herein shall be subordinate to the lien of any mortgage(s) now or hereafter placed upon the property subject to the assessment for the purpose of securing indebtedness incurred to purchase or improve such property; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a foreclosure by trustee's sale under a deed of trust, or a conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due, nor from the lien securing any such subsequent assessment. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such

limitations, if any, as such Board may determine.

SECTION 5.9 Exempt Property. The assessments and liens created in this Section V shall apply only to the Assessable Tracts, and the remainder of the property in the Subdivision shall not be subject thereto.

SECTION 5.10 Books. The Association shall maintain books of account reflecting all of its income and disbursements. Any Member shall have the right to inspect such books at the office of the Association at any reasonable time.

#### ARTICLE VI

##### Garbage and Rubbish Pickup

SECTION 6.1 Pickup Service. The Association shall have the right, but not the obligation, to contract for garbage and rubbish pickup service on behalf of all Occupied Lots, and to charge or have the garbage contractor charge the Owner of each Occupied Lot for his pro rate share of the cost thereof (such charge being hereinafter called "garbage charge"), such pro rate share to be determined by dividing the number of Occupied Lots being served into the total cost of such garbage and rubbish pickup service. Payment for such service may be on a monthly, quarterly, or semi-annual basis, at the discretion of the Association, and may be payable in advance.

SECTION 6.2 Effect of Non-Payment of Garbage Charge; The Lien; Remedies of Association. If a garbage charge for any billing period (whether monthly, quarterly, or semi-annually) is not paid on or before the first day of the billing period, or within ten (10) days after notice thereof is mailed to the Owner of the Occupied Lot to be charged, whichever is the later, the garbage charge shall bear interest thereafter at the rate of ten percent (10%) per annum until paid. The garbage charge and any interest thereon shall be the personal obligation of the Owner of the Occupied Lot receiving the garbage service (but not of such Owner's successors in title unless expressly assumed by them), and shall be secured by a continuing lien on such Occupied Lot, including improvements thereon, which shall be binding on such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns. The Association may bring an action at law to foreclose the lien securing the garbage charge and there shall be added to the amount of the garbage charge the interest thereon and all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of suit. At its discretion, the Association may discontinue garbage service to any Occupied Lot which is in default hereunder, until all amounts in arrears, including the interest and other expenses provided for herein, have been paid in full.

SECTION 6.3 Subordination of the Lien to Mortgages. With respect to each Occupied Lot, the lien provided for in Section 6.2 shall be subordinate to the same liens to which the assessment provided for in Article V is subordinate pursuant to the provisions of Section 5.8, and may be subordinated to any other lien by the Association, in the discretion of its Board of Directors.

#### ARTICLE VII

##### Architectural Control Committee

SECTION 7.1 Tenure. The persons serving on the Architectural Control Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association have Living Units thereon occupied as residences, at which time the Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association, or its assigns. 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). A majority of the Architectural Control Committee may designate someone serving on the Committee to act for it. No person serving on the Committee shall be entitled to compensation for services performed pursuant to this Article VII. 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 such services as they render to the Committee, together with any interest incurred thereon.



**SECTION 7.2 Approval of Plans.** No buildings or other improvements shall be commenced, constructed, erected, placed or maintained in the Subdivision, unless and until same have been to and approved in writing by the Architectural Control Committee. The final working plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical and plumbing details and the nature, kind, shape and height, materials and locations and exterior color scheme or schemes. Once the Architectural Control Committee has approved a building or other improvements, the same builder or individual may duplicate the identical building or improvements upon another lot or lots without further or additional approval of the Architectural Control Committee. No buildings or improvements including but not limited to streets, driveways, sidewalks, drainage facilities, landscaping, fences, walls, fountains, statuary, outdoor lighting and signs shall be commenced, constructed, erected, placed in the Subdivision, until the building plans from the first building has been approved by the Architectural Control Committee. No exterior addition to or alteration therein may be made, unless the working plans and specifications have been approved by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove the preliminary site plan and Schematic plan within thirty (30) working days after they have been submitted to it, approval thereof will not be required and the provisions of this Section 7.2 will be deemed to have been duly complied with. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration, or repair of any improvement.

Where not otherwise specified herein, the Architectural Control Committee shall also have the right to specify requirements for each building site as follows: minimum set-backs; driveway access screening devices; and the orientation of structures with respect to streets, walks, and structures on adjacent property. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in its judgment, with the overall character, design or aesthetics of the Subdivision.

**SECTION 7.3 Approved Contractors.** No construction of a building, structure, fence, wall, or other improvement shall be commenced in the Subdivision until the contractor to perform such construction shall have been approved in writing by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove a contractor within thirty (30) working days after his name is submitted to it, approval will not be required, and the provisions of this Section 7.3 will be deemed to have been fully complied with. This paragraph shall apply only in the event there is more than one contractor in this subdivision.

#### ARTICLE VIII

##### Restrictions

**SECTION 8.1.** All Lots shall be used solely for single-family residential purposes, and no Lot shall be used (either primarily or secondarily) for any business, professional, commercial or multi-family residential purpose whatsoever of any kind or type.

**SECTION 8.2.** No building or other structure of any kind or type other than one detached single-family dwelling, not to exceed two and one-half (2-1/2) stories in height, and a private garage for not less than two (2) nor more than three (3) passenger cars and servants' quarters for domestic servants actually employed by the Owner or resident of the Lot and a greenhouse to grow plants for the Owner's or residents' family or household purposes and fences shall be constructed, placed or permitted to remain on any Lot. Carports shall not be allowed unless specifically approved in writing by the Architectural Control Committee.

**SECTION 8.3.** All buildings, structures, and other improvements erected, altered, or placed in the Subdivision shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or out-building shall be used in the Subdivision at any time as a residence, either temporarily or permanently. Unless the Architectural Control Committee otherwise agrees in writing, the exterior finish or construction of any Living Unit and each outside wall of each structure within the Living Unit shall be at least fifty-one (51%) brick, stone, or other masonry; in computing such percentage, roof areas and windows shall be excluded, but attached garages, servants quarters, greenhouses, porches, and other structures constituting part of the Living Unit

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shall be included.

SECTION 8.4. No temporary building shall be erected or maintained on any lot except during actual construction of a dwelling being erected thereon, and, then such temporary building must be on the Lot on which construction is in progress and not on adjoining lots, streets, or easements and, at completion of construction, the temporary building must be removed immediately. No such temporary building or structure shall be used for residential purposes during construction or at any other time.

SECTION 8.5. No garage apartments for rental purposes shall be permitted in the Subdivision. Living quarters on any Lot other than in the main dwelling may be used for bona fide servants only which are actually employed by the Owner or resident of such Lot.

SECTION 8.6. All improvements shall be constructed on the Lot so as to front the Street upon which such Lot faces. A Lot shall be deemed to face the street which has its building set back line the farthest from said street.

SECTION 8.7. All improvements on Corner Lots shall have a presentable frontage on all streets on which that particular Corner Lot abuts.

SECTION 8.8. A one story dwelling in any Living Unit shall contain not less than 1,400 square feet of living area; and the total living area of a one and one-half, two story or two and one-half story dwelling shall contain not less than 1,700 square feet with the exception of Lots 21, 26, 27, Block 1; Lots 40 through 51, both inclusive, Block 2; and Lots 9, 10, Block 3. A one story dwelling in any Living Unit on Lots 26, 27, Block 1; Lots 41 through 51, both inclusive, Block 2, and Lot 9, Block 3 shall contain not less than 1,600 square feet of living area; and 1,500 square feet of living area on Lot 21, Block 1, Lot 40, Block 2, and Lot 10, Block 3. A one and one-half story, two story or two and one-half story dwelling in any Living Unit on Lots 26, 27, Block 1; Lots 41 through 51, both inclusive, Block 2, and Lot 9, Block 3 shall contain not less than 1,900 square feet of living area; and 1,800 square feet of living area on Lot 21, Block 1, Lot 40, Block 2, and Lot 10, Block 3. All computations of living area shall be exclusive of open or screened porches, terraces, patios, driveways, garages, servants quarters and/or greenhouses. Measurements shall be to the face of the outside walls of the living area.

SECTION 8.9. Unless the Architectural Control Committee specifically agrees otherwise in writing, no roof of any structure in the Subdivision shall be constructed or covered so that the exposed material is asphalt shingles or composition type shingles having a weight per square of less than 235 pounds or wood shingles having a grade no less than No. 1.

SECTION 8.10. Unless the Architectural Control Committee specifically agrees otherwise in writing, each Living Unit shall have an attached garage or detached enclosed private garage for not less than two nor more than three passenger cars.

SECTION 8.11. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building, fence, or other structure (i) shall be placed or built on any Lot nearer to the front lot line or nearer to a side street line than the building lines therefor shown on the Subdivision Plat.

SECTION 8.12. Unless the Architectural Control Committee specifically agrees otherwise in writing, no building shall be located nearer than five (5') feet to any interior lot line, except that a detached garage or other permitted building located seventy (70') feet or more from the front lot line may be located as near as three (3') feet to an interior side lot line. No servants' quarters or greenhouse shall be located nearer than seventy (70') feet to a front lot line.

SECTION 8.13. No nuisance shall ever be erected, placed, or suffered to remain upon any property in the Subdivision, and no Owner or resident on any property in the Subdivision shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. No Owner or other person shall discharge any firearm within the Subdivision. The Association is hereby authorized to determine what constitutes a violation of this restriction.

SECTION 8.14. No sheep, goats, horses, cattle, swine, poultry, dangerous animals (the determination as to what is a dangerous animal shall be in the sole discretion of the Association), snakes, livestock or other animals or fowl of any kind shall ever be kept in the Subdivision except that dogs, cats or other common

household pets (not to exceed a total of three adult animals) may be kept by the Owner or tenant of any Living Unit, provided they are not kept, bred or maintained for any commercial purposes.

SECTION 8.15. No trash, rubbish, garbage, manure, building materials or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street. Reasonable amounts of construction materials and equipment may be stored upon a Lot or between that Lot and the street abutting same for reasonable periods of time during the construction of improvements on such Lot, but no such materials or equipment shall ever be placed or stored on any street.

SECTION 8.16. No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted in the Subdivision.

SECTION 8.17. No water well, privy, cesspool or septic tank shall be drilled, constructed, placed or maintained on any Lot.

SECTION 8.18. No boat, trailer, camping unit, motor home, bus, truck or self-propelled towable equipment, consumer goods or machinery of any sort shall be permitted to park on any street or any Lot except in a garage or other enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot or any street, except that (i) during the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of necessity therefor, and (ii) this restriction shall not apply to automobiles and pick-up trucks in good repair and attractive condition parked farther from the street than the building setback lines as shown on the Subdivision Plat; and (iii) this restriction shall not apply to the mere temporary parking of any such equipment or consumer goods which is in good repair and attractive condition. The Association is hereby authorized to determine what constitutes temporary parking.

SECTION 8.19. No clothing or other materials shall be aired or dried in the Subdivision except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from any other Lot.

SECTION 8.20. 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 after 7:00 A.M. and before 9:00 P.M..

SECTION 8.21. Without the prior written authorization of the Architectural Control Committee, no television or radio antenna of any sort shall be placed, allowed, or maintained outside a Living Unit or on the exterior of any building or other improvement located on a Lot.

SECTION 8.22. All electrical, telephone and other utility lines and facilities which (i) are located on a Lot, (ii) are not within or a part of any building, and (iii) are not owned by a government entity, a public utility company, or the Association, shall be installed in underground conduits or other underground facilities. Lightin Fixtures may be installed above ground if approved in writing by the Architectural Control Committee.

The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from 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 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.

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For so long as underground service is maintained in the Subdivision the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 240/120 Volt, three wire, 60 cycle alternating current.

SECTION 8.23. Easements for the underground service may be crossed by driveways, fences and walkways provided that the Owner of each Lot affected makes prior arrangements satisfactory with the utility company furnishing electric service and any other owner or user of such easement and provides and installs the necessary electric conduit and other structures of approved type and size under such driveways, fences or walkways and 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 the Developer 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, flowers, or other improvements located on the land covered by said easements.

SECTION 8.24. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community and the decisions of the Architectural Control Committee that any such matter is not harmonious shall be final.

SECTION 8.25. Except for one sign of not more than five (5) square feet advertising the Lot on which it is located for sale, no billboards or other signs of any kind or type may be erected in the Subdivision without the prior written consent of the Architectural Control Committee. In no event shall the use of flags or banners be permitted in the promotion or sale of any Living Unit in the Subdivision.

SECTION 8.26. The Owner of each Lot shall maintain the same, and the improvements, grass, trees, hedges, and plantings thereon, in a neat and attractive condition. The Association shall have the right, after seven (7) days' notice to the Owner of any Lot, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner, (i) to mow the grass thereon, (ii) to remove any debris therefrom, (iii) to remove, trim or prune any tree, hedge, or planting that, in the opinion of the Association, by reason of its location or height, or the manner in which it has been permitted to grow, or disease, decay or other condition, is detrimental to the enjoyment of adjoining property, is unattractive in appearance or obstructs the view of traffic, (iv) to repair or paint any fence thereon that is out of repair or not in harmony with respect to color, with fencing on adjacent property in the Subdivision, and (v) to do any and all things necessary or desirable in the opinion of the Association to place such property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such property at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) days after it is performed by the Association, and if such amount is not paid within said period of time, such Owner shall be obligated thereafter to pay interest thereon at the rate of ten percent (10%) per annum, and to pay any attorneys' fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on such Owner's property, subject only to liens then existing thereon.

SECTION 8.27. Unless the Architectural Control Committee agrees otherwise, each Lot shall have driveway access to the street on which the Lot faces and shall not have driveway access to a street on which it may side. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street, including the portion in the street easement, and he shall repair at his expense any damage to the street occasioned by connecting his driveway thereto.

SECTION 8.28. Before the residence constructed on the Lot is completed and occupied, the Owner shall construct and complete in the adjacent street right(s)-of-way a concrete sidewalk four feet (4') in width parallel to the street curb, with the edge of such sidewalk closest to the lot line being located two feet (2') away from the lot line. The sidewalk shall extend along the entire common boundary between the Lot and the adjacent street right(s)-of-way. In case of a Corner Lot, the front and side sidewalks shall each extend to the street curb, and shall provide curb ramps for the handicapped and must be constructed in full compliance with Section 228 of the Highway Safety Act of 1973, and all amendments thereto, and all rules, regulations and interpretations thereunder. Additionally, the plans required to be submitted to the Architectural Control Committee under SECTION 7.2 of these restrictions shall include plans and specifications for such sidewalks.

SECTION 8.29. Prior to the initial occupancy of any Living Unit on any Lot in the Subdivision, the Owner of such Lot shall require the contractor or builder erecting the Living Unit, as a minimum, to spot sod or sprig with grass, and to plant tree(s) in the same area, in such a manner as to satisfy the minimum requirements of F. H. A. and V. A. regulations.

SECTION 8.30. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2') feet and six (6') feet above any street shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10') feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree, hedge or shrubbery shall be permitted to remain within such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

SECTION 8.31. All fences, walls and other barriers to be erected between Living Units on any Lot or Lots shall first be approved in writing by the Architectural Control Committee. No such fence, wall or barrier shall exceed more than eight (8') feet in height from finished grade, and each such fence, wall or barrier shall be of an architectural style and material which harmonizes with other improvements constructed within the Subdivision, and the decision of the Architectural Control Committee in this matter shall be final. Fences, walls and barriers may be of wood or masonry, but no wire or chain link or similar fence, wall or barrier shall be erected or permitted to remain in the Subdivision.

SECTION 8.32. Notwithstanding the foregoing provisions of this Article VIII, Developer and its permittees shall have the exclusive right to erect, place, and maintain on their respective properties in the Subdivision such facilities (including but not limited to, offices, storage areas, model units, and signs) as in Developer's sole discretion may be necessary or convenient to improve and/or sell properties in the Subdivision.

#### ARTICLE IX

##### Extension Of Declaration To Additional Lands

SECTION 9.1 Additions to the Subdivision. Notwithstanding the provisions of Section 10.2, and notwithstanding any other provisions of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or anyone else, Developer shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1987, to file for record in the Office of the County Clerk of Fort Bend County, Texas, an Amendment to this Declaration which:

- (a) Expands the definition of "Subdivision Plat" herein so that it covers and includes not only the subdivision plat(s) then covered by said definition but also the recorded plat(s) of one or more additional subdivisions; expands the definition of "Subdivision" herein so that it covers and includes not only the land then covered by said definition but also all or any part of the land subdivided into numbered lots in the plat(s) of said additional subdivision(s); and/or expands the definition of "Lots" in the first sentence of Subsection 1.1(c) hereof so that it covers and includes not only the Lots then covered on the plat(s) of said additional subdivision(s) and/or (ii) one or more tracts described by metes and bounds in said Amendment and designated therein as residential lots. After the filing for record of any such Amendment, the provisions of the second and third sentences of Subsection 1.1(c) hereof shall apply not only to the Lots to which such provisions previously applied but also to the Lots which become such pursuant to such Amendment;
- (b) Makes such additional Lots subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth in this Declaration, except that said Amendment may alter, amend, change or delete such of the reservations, covenants, obligations, assessments, liens, terms and provisions herein as to such additional Lots, as Developer deems reasonable or desirable, including, but not

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limited to, allowing such additional Lots to be for multi-family residences or patio homes;

- (c) Grants to such additional Lots and the Owners thereof the benefits of this Declaration; and
- (d) Sets forth any additional restrictions which Developer wishes to impose on said additional Lots.

Each such Amendment shall be executed by Developer, and if Developer is not the Owner of the additional Lots added by the Amendment, or is not the Owner of some of such Lots, then the Amendment shall also be executed by the Owner(s) of such of the additional Lots added by that Amendment as are not owned by Developer. Each such Amendment shall be effective as an Amendment to this Declaration from and after the date it is filed for record in the Office of the County Clerk of Fort Bend County, Texas, and all rights and obligations accruing therefrom shall commence and be measured as of and from said filing date.

**SECTION 9.2 Merger of Associations.** Notwithstanding the provisions of Section 10.2, and notwithstanding any other provision of this Declaration to the contrary, and without the joinder, consent, vote or approval of the persons and parties who are then Members of the Association and/or Owners of Lots under this Declaration, or any one else, the Board of Directors of the Association shall have the right and option (but not the obligation or duty), at any time or from time to time between the date of this Declaration and December 31, 1987, to merge or consolidate the Association with another non-profit corporation, and transfer all or substantially all of the Association's properties, if any, rights, duties and obligations to any such other surviving non-profit corporation, or, if the Association is the surviving corporation, accept all or substantially all of the properties, if any, rights, duties and obligations of such other non-profit corporation, and the surviving corporation shall thereupon administer the covenants and restrictions established by this Declaration together with the covenants and restrictions theretofore administered by the non-surviving corporation as one scheme; provided, however, no such merger or consolidation shall in any manner revoke, modify or otherwise alter any of the covenants and restrictions established by this Declaration. In the event of any such merger or consolidation, the term "Association" where used in this Declaration shall thereafter mean and refer to the surviving corporation.

Each Owner of an Assessable Tract by accepting title to any Lot appoints Developer such Owner's proxy, with full power of substitution, to vote all votes entitled to be cast by such Owner in connection with any such merger or consolidation or the transfer of all or substantially all of the properties, if any, of the Association, and each such Owner agrees that this proxy shall be irrevocable so long as Developer is a Class B member of the Association.

#### ARTICLE X

##### General Provisions

**SECTION 10.1 Incorporation.** The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter executed by Developer conveying all or any part of the land in the Subdivision, whether or not referred to therein, and all estates conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Declaration.

**SECTION 10.2 Amendments.** This Declaration may be amended in whole or in part by an instrument executed by the President of the Association when approved by a majority of the votes cast by each Class of Members at a Meeting of Members. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration so amended.

**SECTION 10.3 Duration.** This Declaration shall remain in full force and effect for a term of forty (40) years from the date this Declaration is recorded in the office of the County Clerk of Fort Bend County, Texas, after which time this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the holders of a majority of the votes of each Class of Members with voting privileges has been filed for record in the Office of the County Clerk of Fort Bend County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or the date it is so filed for record, whichever is the later date.

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SECTION 10.4 Enforcement. The terms and provisions of this Declaration shall run with and bind the land in the Subdivision, and shall inure to the benefit of and be enforceable by Developer, the Association, or the Owner of any Lot, and by their respective legal representatives, heirs, successors and assigns. This Declaration may be enforced in any proceeding at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain violation or to recover damages, and against the property to enforce any lien created by this Declaration, and failure of Developer, the Association, or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the rights to do so thereafter.

SECTION 10.5 Severability. Invalidation of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any term and provisions which are invalidated.

SECTION 10.6 Gender and Grammar. The singular wherever used herein shall be construed to mean or include the plural where 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 10.7 Titles. The titles of this Declaration and of Articles and Sections 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 10.8 Successors in Title. The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Developer and the Association and all Owners and occupants of any Lot and their respective heirs, devisees, successors, legal representatives and assigns.

SECTION 10.9 F.H.A., V.A. Approval. As long as there is a Class B Membership, the following action will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenant, Condition and Restriction.

IN WITNESSETH WHEREOF, this Declaration is executed this the 14 day of July, 1980 A. D..

WONACO DEVELOPMENT, INC.

ATTEST:

*no seal*  
John M Robinson  
Secretary

BY: [Signature]  
President

LIENHOLDER

ATTEST:

HOUSTON FIRST AMERICAN SAVINGS

[Signature]  
Joe A. Charles Asst. Secretary

BY: [Signature]  
Vice Pres

THE STATE OF TEXAS  
COUNTY OF HARRIS

X  
X

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BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM WONG, President of WONACO DEVELOPMENT, 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 14<sup>TH</sup> day of July, 1980, A. D..



*Cathy D. Hill*

Notary Public in and for  
Harris County, T E X A S

CATHY D. HILL  
Notary Public in and for Harris County, Texas  
My Commission Expires 3/14 1981

THE STATE OF TEXAS  
COUNTY OF HARRIS

X  
X

BEFORE ME, the undersigned authority, on this day personally appeared C. Robert Woolsey, Vice President of HOUSTON FIRST AMERICAN SAVINGS, 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 15<sup>TH</sup> day of July, 1980 A. D..



*Cathy D. Hill*

Notary Public in and for  
Harris County, T E X A S

CATHY D. HILL  
Notary Public in and for Harris County, Texas  
My Commission Expires 3/14 1981

FILED FOR RECORD  
TIME 2 P.M.

JUL 29 1980

*Pearl Elliott*  
COUNTY CLERK, FORT BEND COUNTY, TEX.

Duly recorded this the 30th day of July 1980 A.D. at 4:30 O'Clock P.M.  
By Dana Mission deputy Pearl Elliott, County Clerk  
Fort Bend County, Texas