

H175694

SUPPLEMENTAL DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTION
KIRKWOOD COUNTRY, SECTION II, HARRIS COUNTY, TEXAS

STATE OF TEXAS 1
COUNTY OF HARRIS 1

197-88-1437

THIS DECLARATION, made on the date hereinafter set forth by McKinney Realty, Co., a Texas Corporation, said corporation having its principal offices in Houston, Harris County, Texas hereinafter called "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property heretofore platted and subdivided into that certain subdivision known as Kirkwood Country, Section II a subdivision in Harris County, Texas described in the plat recorded in Volume 285, Page 20 of the Map Records of Harris County, Texas and

WHEREAS, Declarant desires to hold, sell and convey said property subject to the following covenants, restrictions, reservations, and easements, which are for the purpose of establishing a uniform plan for the development, improvement and sale of said property, and to insure the preservation of such uniform plan for the benefit of both present and future owners of the lots within said subdivision.

NOW THEREFORE, Declarant hereby adopts the following conditions, covenants and restrictions which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subdivision and which shall be applicable to the lots in said subdivision and shall run with the land and shall bind all parties having or acquiring any right, title, or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

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ARTICLE I
DEFINITIONS

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Section 1. "Association" shall mean and refer to Kirwood Country Homeowners Association, Inc. a nonprofit corporation incorporated under the laws of the State of Texas, its successors and assigns.

Section 2. "The Property" shall mean and refer to the surface estate only of the tract of land hereinabove described as Kirwood Country. It is the specific intention of the Declarant to exclude the mineral estate of the property from scope of this definition. Furthermore, "The Property" may also include any additional tracts or parcels of land as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Lot" shall mean and refer both to each plot of land shown upon the recorded subdivision map upon which there has been or will be constructed a single-family residence, and to the residence and improvements constructed or to be constructed thereon, but shall not mean or include any common area.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to the surface estate in any Lot or tract of land which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision plat, except the Lots and the public streets shown thereon, together with such other property as the Association may, at any time or from time to time acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, and dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title.

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References herein to "the Common Properties in The Subdivision" shall mean and refer to Common Properties as defined respectively in the Declaration and all Supplemental Declarations.

Section 6. "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of the Owners of the Lots in the Properties, as well as other Owners in the subdivision, constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of the Declaration. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: structures for recreation, storage or protection of equipment, fountains; statuary; sidewalks; common driveways; landscaping; swimming pools; tennis courts; and other similar and appurtenant improvements. References herein to "the Common Facilities (any Common Facility) in The Subdivision" shall mean and refer to Common Facilities as defined respectively in The Declaration and all Supplemental Declarations.

Section 7. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants and Restrictions bringing additional property within the scheme of the Declaration under the authority provided in The Declaration. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declarations.

Section 8. "Easements" shall mean and refer to the various utility or other easements of record, those shown on the map or plat of the subdivision and such other easements as are created or referred to in this Declaration.

Section 9. "The Declaration" shall mean and refer collectively to the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration.

Section 10. "Board of Directors" and "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 12. "Conveyance" shall mean and refer to conveyance of a fee simple title to a lot.

ARTICLE II

KIRKWOOD COUNTRY HOMEOWNERS ASSOCIATION

Section 1. Duties and Powers. In addition to the duties and powers enumerated in the Articles of Incorporation and By-Law or elsewhere provided for herein, and without limiting the generality hereof, the Association shall also discharge those functions necessary to the general maintenance of the Properties. The Board of Directors of the Association shall be empowered to oversee the activities of the Association to such an extent as they may take whatever reasonable action they, in their sole discretion, deem necessary to provide for the upkeep and aesthetic appearance of the Properties for the common benefit of all members of the Association.

Section 2. Membership. Every person or entity who is a record Owner of any of the Properties which are subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association; save and except any areas reserved by Declarant, its successors or assigns for use as a drill site.

Other lands may hereafter be annexed into the jurisdiction of the Association in the manner herein described. If annexed, the owners of Lots in each future section so annexed, as well as all Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Community Properties that may become subject to the jurisdiction of the Association as

a result of such annexation, and the facilities thereon, and shall be entitled to the use and benefit of the maintenance fund, hereinabove set forth, provided that each future section must be impressed with and subject to an annual maintenance charge imposed hereby, and further, such sections shall be made by recorded restrictions subject to the jurisdiction of the Association. Upon submission and approval by the Federal Housing Administration or Veterans Administration, such additional stages of development may be annexed by action by the Board of Directors of the Association. Upon a merger or consolidation of the Association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated Association, or alternatively, the properties, rights and obligations of another Association may be added to the properties rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association shall administer the Covenants and Restrictions established by this Declaration, together with the Covenants and Restrictions applicable to the properties of the other Association as one scheme. No such merger or consolidation, however, shall effect any revocation change, or addition to the Covenants established by this Declaration. Provided, that no such merger or consolidation shall be permitted except upon approval of two-thirds vote of each class of members of the Association.

Section J. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and each shall be entitled to one vote for each lot. When more than one person holds an interest in any lot, all such persons shall be members. The vote of such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

Class B. Class B members shall be Declarant or its successors or any person or entity that acquires certain lots within the Properties for purposes of

development and to whom the rights and obligations of Declarant hereunder are specifically assigned by KIRKWOOD COUNTRY, INC. or its successors. Class B members shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happenings of either of the following two events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On January 1, 1988.

The Class A and Class B members shall have no rights as such to vote as a class, except as required by the Texas Non-Profit Corporation Act, and both classes shall vote upon matters as one group.

Section 4. Non-Profit Corporation. KIRKWOOD COUNTRY HOMEOWNERS ASSOCIATION, a non-profit corporation, has been organized, and all duties, obligations, benefits, liens, and rights hereunder in favor of the Association shall vest in said corporation.

Section 5. Bylaws. The Association may make whatever rules or by laws it may choose to govern the organization, provided that same are not in conflict with the terms and provisions hereof.

Section 6. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during the normal business hours.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENT:

Section 1. Creation of the Lien and Personal Obligations of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges, and
- (b) special assessments for capital improvements;

such assessments to be established and collected as hereafter provided.

The regular and special assessments, together with interest, penalty, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, penalty, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Members of the Association and, in particular, for the improvement and maintenance of the Property, the Common Area and the Common Facilities, and for the payment to or reimbursement of other affected parties or governmental entities for the improvement and maintenance thereof.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be One Hundred and Ninety two dollars (\$192.00) per lot; provided, however, that from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Board of Directors of the Association shall be empowered to increase said rate as the needs of the Association require; except that if any such increase shall cause the annual assessment to be greater than the aforesaid \$192 plus the rise, if any, of the Consumer Price Index as published by the United States Department of Labor for the preceding month of July; or more than One Hundred Ten Percent (110%) of the amount assessed in the preceding calendar year, whichever is greater, then shall such an increase require the vote of two-thirds (2/3) of each class of Members of the Association who are voting in person or by proxy, at a meeting duly called for that purpose.

Section 4. Special Assessment of Capital Improvements.

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

Section 5. Rate of Assessment.

The lots in the plat establishing KIRKWOOD COUNTRY, SECTION 16 shall each commence to bear their applicable maintenance fund assessment from and after the certain date for same. Lots that are occupied by residents shall be subject to an annual assessment as determined pursuant to Sections 3 and 4, Article III. Lots that are not occupied by residents and that are owned by the Developer, a builder or a building company shall be assessed at the rate of one-half (1/2) of the annual assessment provided for above. The rate of assessment for an individual lot, within a calendar year, shall change as the character of ownership and the status of occupancy by a resident changes. The applicable assessment for such a lot shall be prorated according to the rate required for each type of ownership.

Section 6. Date of Commencement of Annual Assessments

Due Dates. The annual assessments provided for herein shall commence as to all lots on the date fixed by the Board of Directors to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, the Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period.

The due dates shall be established by the Board of Directors. The Association, upon demand, and for a reasonable charge, shall furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability of any assessments which may thereafter become due or from the lien thereof.

Section 9. Exempt Properties. All properties dedicated to and accepted by a local public authority, all Drill Site Reserves, all Drill Site Easements, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 1. Architectural Approval. The overall plan for the development of Kirkwood Country, has been designed to insure and protect the attractiveness, beauty, and desirability of the area as a whole while at the same time permitting compatible distinctiveness of individual developments within the area. For this purpose, the Declarant hereby reserves and retains the right of architectural control to itself or its assignee as hereinafter provided. The Declarant hereby reserves and retains the right of architectural control to itself or its assignee as hereinafter provided. The Declarant shall initially appoint an Architectural

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Control Committee, consisting of not less than three(3) members, who need not be members of the Association, and who by majority vote may designate a representative to act for them. Any vacancy shall be filled by a successor appointed by the remaining member or members; until such successor(s) shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications, and plot plans submitted or to designate a representative with like authority.

The duties and powers of the Architectural Control Committee and of the designated representative shall cease on and after ten (10) years from the date of this instrument. Thereafter, all power vested in said Committee by this covenant shall be assumed by the Board of Directors of the Association.

It is accordingly covenanted and agreed that no building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration to such structure of the color thereof (including, without limitation, site landscaping and grading plans, patio covers and trellises, plans for off-street parking of vehicles and utility layout), be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee, provided that Declarant, and its successors or assigns, shall not be required to comply with the provisions hereof.

In the event said Committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. All plans and specifications shall be submitted in writing over the signature of the Owner of the property or its authorized agent. The Architectural Control Committee shall have the right to require any Owner to remove or alter any structure which has not received

approval or be built other than per the approved plans. The requirement of this Article is in addition to any approvals or permits required by any appropriate governmental entity. Approval of plans as complying with the applicable Minimum Construction Standards adopted and promulgated from time to time for this subdivision by Declarant or its assigns, shall be only for such purposes and shall not indicate Declarant's approval for any other purpose.

Section 2. No Liability. Neither Declarant, the Association, Board of Directors, or the Architectural Control Committee or the members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of property affected by these regulations by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications and every Owner agrees that he will not bring any action or suit against Declarant, The Association, Board of Directors, the Architectural Control Committee, or any of the members thereof to recover any such damage

ARTICLE V

EASEMENTS

Section 1. General. The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer, water, electricity, gas telephone, and cable television lines and drainage facilities shall be governed by the following:

- (a) Wherever sanitary sewer and/or water house connections or electricity, gas or telephone and cable television lines or drainage facilities are installed within the property, which connection lines or facilities or any portion thereof, lie in or upon Lots owned by the Association or any entity or other than the Owner of a Lot served by said

connections, lines or facilities, such Owners of lots served shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots within the Property in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as to what the same may be necessary as set forth below.

(b) Wherever sanitary sewer and/or water house connections or electricity, gas, telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his Lot.

Section 2. Reservation of Easements. Easements over the Lots and Common Areas for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by Declarant, together with the right to grant and transfer same.

Section 3. Surface Areas of Utility Easements. Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded plat, and no structure shall be erected on any of said easements. Underground electric, gas and telephone service shall be available to all Lots in the subdivision. For so long as such underground service is maintained, the electric service to each Lot shall be uniform and exclusively of the type known as single phase, 120/240 volt 3 wire, 60 cycle, alternating current. Easements for the underground service may be crossed by driveways and walkways provided the Declarant or Builder makes prior arrangements with the utility companies furnishing electric, gas and telephone service and provides and installs any necessary conduit of approved type and size under such driveways or walkways prior to construction thereof. Such easements for the

underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, and neither grantor 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 (other than crossing driveways or walkways providing conduit has been installed as outlined above) of the Owner located on the land covered by said easements. In addition hereto, the utility easements shall not be used as alleyways or access easements.

Section 4. Public and Private Streets. All Lots within the subdivision shall abut and have access to a public or private street. Public and private street rights-of-way are shown on the recorded plat of Kirkwood Country.

Section 5. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service vehicles to enter upon the Common Area, including but not limited to private streets, in the performance of their duties and further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Common Area to render any service.

Section 6. Universal Easement. Each Lot and its Owner within the Properties is hereby declared to have an easement, and the same is hereby granted to Declarant, over adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settling or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said

encroachments so long as they shall exist. In addition, each Lot within the Properties is hereby declared to have an easement for overhanging roofs and eaves as originally constructed over each adjoining Lot and/or Common Area and for the maintenance thereof. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot.

Section 7. Wall Maintenance Easements. All Lots within the subdivision shall be conveyed subject to a five-foot (5') wide easement adjacent to one (1) side Lot line of the adjacent Lot, and shall be appurtenant to the zero lot line of the adjacent Lot as provided in Article VIII, Section 4, hereof. The right to create, grant and reserve such easements is hereby reserved by Declarant for itself and its successors in interest. Said easements, the uses and purposes of which are set out below shall be granted or reserved by reference to this Section. The following rules prescribe the terms, conditions and use of said easements, both by the Owner of the easement (the dominant tenement) and the Owner of the land under the easement (the servient tenement).

- (a) The dominant tenement, except as otherwise provided in this Section, shall have the exclusive use of the surface of the easement area for the sole and only purpose of the maintenance, painting, repairing and rebuilding of the side wall, which is situated adjacent to and abutting the easement area.
- (b) The servient tenement shall have the right at all reasonable times to enter upon the easement area for the purposes of maintaining the lawn and/or trees located within such easement area, which maintenance shall be the obligation of the servient tenement.
- (c) Both the dominant tenement and the servient tenement shall have the right of surface drainage over, along and upon the easement area, and neither

tenement shall use the easement area in such a manner as will interfere with such drainage.

(d) Neither tenement shall attach any object to the side of the wall, facing onto the easement area. In addition, no structure shall be constructed or placed upon the easement area by either the dominant or servient tenement, except a fence by the servient tenement which allows drainage; however, access to the easement must be preserved for the dominant tenement.

(e) The Owner of the servient tenement, as a condition to the exercise of the right of access provided for, shall indemnify and hold harmless the Owner of the dominant tenement from damage to shrubs, plants, flowers, trees, lawn, sprinklers, hose bibs and other landscaping directly resulting from the exercise of the dominant tenement's right of access for maintenance.

Section 8. Public Easement. There is hereby reserved to Declarant, its successors and assigns, an easement for public ingress and egress over the public bicycle and pedestrian pathways. This easement shall not imply any right of public use of the Common Area or improvements thereon, owned by the Association.

Section 9. Audio and Video. In the event that audio and video communication services and utilities are made available to any said lots by means of an underground coaxial cable system, the company furnishing such services and facilities shall have a two (2') foot wide easement along and centered on the underground wire or cable when and as installed by said company from the utility easement nearest to the point of connection on the permanent improvement or structure, or to be constructed upon said lot, and in a direct line from said nearest utility easement to said point of connection.

Section 10. Underground Electric Distribution System.

An underground electric distribution system will be installed in that part of Kirkwood Country, designated herein as "Underground Residential Subdivision", which underground service area embraces all of the lots which are platted in Kirkwood Country. In the event that there are constructed within the Underground Residential

Subdivision structure: containing multiple dwelling units such as townhouses, duplexes or apartments, then the underground service area embraces all of the dwelling units involved. The Owner of each Lot containing a single dwelling unit, or, in the case of a multiple dwelling unit structure, the Owner/Developer shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of the local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the 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. Developer has, either by designation on the plat of the Subdivision or by separate instrument, granted necessary easements to the electric company providing for the installation. Maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit, or, in the case of a multiple dwelling unit structure, the Owner/Developer shall, at his or its 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 each dwelling unit involved. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each dwelling unit 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.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision.

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at no cost to Developer (except for certain conduits, where applicable, and except as hereinafter provided) upon Developer's representation that the Underground Residential Subdivision is being developed for residential dwelling units, including homes, and, if permitted by the restrictions applicable to such subdivision, townhouses, duplexes and apartment structures, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent and all of which multiple dwelling unit structures are wired so as to provide for separate metering to each dwelling unit. Should the plans of the developer or the lot owner in the Underground Residential Subdivision be changes so as to per the erection therein to provide electric service to any such mobile home unless (a) Developer has paid to the Company an amount representing the excess in cost, for the entire Underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of such affected lot, or the applicant for service to any mobile home, shall pay to the Company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by Company to be necessary.

The provisions of the two preceding paragraphs also apply to any future residential development in Reserve(s) shown on the plat of Kirkwood Country, as such plat exists at the execution of the agreement for underground electric service between the electric company and Developer or thereafter. Specifically, but not by way of limitation, if a lot owner in a former Reserve undertakes some action which would have invoked the above

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Reserve undertaken some action which would have invoked the above per front lot foot payment if such action had been undertaken in the Underground Residential Subdivision, such owner or applicant for service shall pay the electric company \$1.75 per front lot foot, unless Developer has paid the electric company as above described. The provisions of the two preceding paragraphs do not apply to any future non-residential development in such Reserve(s).

ARTICLE VI

UTILITY BILLS, TAXES AND INSURANCE

Section 1. Obligations of the Owners. Owners utility bills, taxes and insurance shall be governed by the following:

(a) Each Owner shall have his separate electric, gas and water meter and shall directly pay at his own cost and expense for all electricity, gas, water, sanitary sewer service, telephone service, cable television and other utilities used or consumed by him on his Lot.

(b) Each Owner shall directly render for taxation his own lot and improvements thereon, and shall at his own cost and expense directly pay all taxes levied or assessed against or upon his Lot and his improvements and property thereon.

(c) Each Owner shall be responsible at his own cost and expense for his own property insurance on the building and contents of his own residence, and his additions and improvements thereto, including decorations, furnishings and personal property therein, and also for his personal liability not covered by liability insurance for all Owners which may be obtained by the Association as part of the common expense in connection with the Common Area.

Section 2. Obligation of the Association. The Association shall have the following responsibilities regarding utility bills, taxes and insurance:

(a) The Association shall pay as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Area or any part thereof.

(b) The Association shall render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon the Common Area and the improvements and the property appertaining thereto.

(c) The Association shall have authority to obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities in the common area and the contents thereof and the Association against the risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable.

The Association shall also have the authority to obtain comprehensive public liability insurance, in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Area.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid out of the maintenance fund as a common expense of all Owners and shall be a part of the maintenance assessment.

ARTICLE VII

MAINTENANCE AND REPAIRS

Section 1. By the Owners. It shall be the duty, responsibility and obligation of each Owner at his own cost and expense, to care for, maintain and repair the exterior and interior of his residence house and improvements on his Lot and the fixtures, appliances, equipment and other appurtenances thereto and also including the private driveway appurtenant to his residence house and situated on his Lot. The Association shall have no duty or obligation to any Owner in this regard.

Section 2. By the Association. The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Area and all parts thereof, including but not limited to, the private streets, landscaped lawns, parking areas in the private streets and improvements and facilities owned by the Association, except that it shall be the obligation of each Owner, and not the obligation of the Association, to pay for the cost of repair and maintenance of private driveway, sidewalk, and fence or fences which are appurtenant to his residence house.

ARTICLE VIII

RESTRICTIONS OF USE

Section 1. Single Family Residential Construction. No building shall be erected, altered or permitted to remain on any single Lot, other than one detached single-family residential 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) cars and bona fide servants' quarters, which structure shall not exceed the main dwelling in height or number of stories. No such residence shall be constructed on less than the equivalent of one full Lot as defined on the recorded subdivision plat or any recorded replat thereof approved by the Declarant, but in case shall any residence be constructed on any Lot having a total area of less than 4,000 square feet.

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Section 2. Commercial Use. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing mercantile, storing, vending, or other such non-residential purposes, except Declarant, its successors or assigns, may use the Property for a model home site, and display and sales office during the construction and sales period.

Section 3. Minimum Square Footage. The living area of the main residential structure shall not be less than 900 square feet for any dwelling constructed within the properties. One and a half or two story dwellings shall contain a minimum of 1,200 square feet.

The Architectural Control Committee, or its assignee, at its sole discretion, and with the approval of Declarant, is hereby permitted to approve deviations in the building area and permitted in instances where, in their judgment, such deviation will result in a more common beneficial use.

Section Location of Improvements Upon the Lot. No building shall be located on any Lot nearer to the front Lot line or side street lot line than the minimum building setback lines shown on the recorded plat. If no building setback lines are shown on the recorded plat, the building may not be located closer than ten (10') feet to front or side street building setback lines. Garage, which face the street may not be located closer than twenty (20') feet from the front Lot line. Garages which are constructed so as to face ninety (90°) or more coincident to the street may not be located closer than ten (10') feet from the front Lot line. Each residence dwelling shall be designed so as to provide that a minimum of fifty percent (50%) of the linear distance of one (1) wall of the residence structure shall be constructed adjacent to and abutting a side Lot line. This side lot line shall be hereinafter referred to as the "Zero/Lot Line". Provided, however, that an open court or patio may be built adjacent and abutting the aforementioned Zero Lot Line but said open court or patio must be enclosed by a masonry wall having a minimum height of eight (8') feet. This

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wall must, as in the case with the residence wall, be constructed adjacent to and abutting the Zero Lot Line and enclose the court or patio in such a manner as to appear to be an extension of the residence dwelling. In addition, a masonry or wood fence having a minimum height of Six (6') feet shall be constructed adjacent and abutting the Zero Lot Line and extend from the rear of the residence or court/patio wall to the rear Lot Line. The Zero Lot line walls shall have no exterior objects or appurtenances such as, for example, electric panels, vents, plumbing cleanouts, windows or openings of any kind.

There shall be established, a ten foot (10') setback line between the Zero Lot Line and the Residence dwelling situated upon the adjoining Lot.

No residence shall be constructed on any lot nearer than ten feet (10') to the rear Lot Line, excluding patios, patio covers, trellises and similar improvements.

A masonry or wood fence having a minimum height of six (6') feet shall be constructed along the entire length of each rear property line. During original construction, the Architectural Control Committee, or its assignee, at its sole discretion, is hereby permitted to approve deviations in the location of improvements upon the Lot, subject to setbacks shown on the recorded plat and previous recorded instruments.

Section 5. Signs, Advertisements, Billboards. No sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view on any portion of the properties or any Lot except one sign for each building site, of not more than five-hundred and seventy-six (676) square inches for the purpose of advertising the property for sale or rent, provided, however, that Declarant, its agents and assigns, may erect and maintain such signs and other advertising devices or structures as it may deem necessary or proper in connection with the conduct of its operations for the development, improvement, subdivision, and sale of said Property. Declarant shall have the right to remove any such sign, advertisement or billboard or structure which is placed on said Lots in violation of this Section and in so doing

shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

Furthermore, the Association, or its agents, may erect and maintain any signs it may deem necessary or proper for identifying, directing and/or providing information pertaining to the recreation facilities, etc.

Section 6. Prohibition of Offensive Activities. No noxious or offensive trade or activity shall be conducted, whether for profit or not, on any lot which is not related to single-family residence purposes, except on those lots which may be designated by Declarant to be used for Sales Offices or Model Homes for a maximum period of seven (7) years from the date hereof. No activity, which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance, or which will degrade property values, or distract from the aesthetic beauty of the subdivision shall be conducted.

Section 7. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shower, garage, barn or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any lot at any time as a residence or other use, either temporarily or permanently except such buildings or structures as may be hereafter permitted. Temporary structures may be used as building offices, sales offices and for other related purposes during the construction period.

Section 8. Animal Husbandry. Dogs, cats, or usual and ordinary household pets may be kept in any dwelling unit upon a lot, (not to exceed a total of two (2) pets, provided they are not kept, bred, or maintained for any commercial purpose). Notwithstanding the foregoing, no animals or fowl may be kept on the property which results in an annoyance or are obnoxious to residents in the vicinity.

Section 9. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment. No mobile home, trailer, camper, boat, or truck larger than a three-quarter (3/4) ton pickup, or similar

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equipment shall be parked or stored permanently or semi-permanently on any public street, right-of-way or on driveways. Permanent or semi-permanent storage of such vehicles or items must be screened from public view within the garage. The Board of Directors of the Association may adopt rules for the regulation of the admission and parking of vehicles within the Common Area, including the assessment of charges to Owners who violate, or whose invitees violate, such rules.

Section 10. Walls, Fences and Hedges. No fence or wall shall be erected, placed or altered on any Lot nearer to the street than the minimum building setback lines as shown on the Subdivision Plat, or established by the Deed Restrictions. The erection of chain link fences on any portion of the property is expressly prohibited. A solid wood or masonry fence, at least six feet (6') in height, shall be constructed and thereafter maintained in a good state of repair along the rear Lot lines of Lots One (1) through Fifteen (15) and Seventy-Nine (79) through Eighty-Two (82), Block Four (4); Lots Eighteen (18) through Thirty-Four (34), Block Eight (8); all of the above Lots being inclusive.

Section 11. Visual Obstructions at the Intersections of Public Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways within the triangular area formed by the junction of street curb lines and a line connecting them at points twenty-five (25) feet from the junction of the street curb lines (or extensions thereof) shall be placed, planted or permitted to remain on any corner lots.

Section 12. Visual Screening on Lots. The drying of clothes in public view is prohibited, and the Owners or occupants of any Lots at the intersections of streets or occupants of any lots at the intersections of streets or adjacent to parks, playgrounds, greenbelts, or other facilities where the rear or side yard or portion of the Lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view. Similarly, all yard equipment,

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woodpiles or storage piles shall be kept screened by a screen yard or other similar facility as herein otherwise provided, as to conceal them from view of neighboring lots.

Section 13. Lot Maintenance. All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupants of all Lots shall keep all weeds and grass thereon cut and shall in no event use any Lot for storage of material and equipment except for normal residential requirements or incident to construction of improvements thereof as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish except by use of an incinerator approved by Declarant, and then only during such condition as permitted by law. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements, or any of them, such default continuing after thirty (30) days written notice thereof, Declarant, or its assignee may without liability to the Owner or occupant, in trespass or otherwise,

enter upon said Lot, cut, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the property to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's lien is herein and hereby retained against the above described property in favor of Declarant or its assignee but inferior to purchase money lien or mortgage. Such vendor's lien shall be applicable and effective whether mentioned specifically in each deed or conveyance by Declarant or not.

Section 14. Antennas. No electronic antenna or device of any type other than an antenna for receiving normal television signals and/or FM signals shall be erected, constructed, placed or permitted to remain on any Lots, houses or buildings constructed in this subdivision. Television antennas may be attached to the house; however, the antenna's location shall be restricted to the rear of the house or to the rear of the roof ridge line, gable or

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center line of the principal dwelling so as to be hidden from sight when viewed from the fronting street. No antennas shall be erected as a free-standing structure.

Section 15. Removal of Dirt and Trees. The digging of dirt or the removal of any dirt from any lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such lot. No trees shall be cut except to provide room for construction of improvements or to remove dead or unsightly trees.

Section 16. Roofing Materials. The roof of any building shall be constructed or covered with wood shingles or composition shingles not less than two hundred thirty-five (335) pounds per one hundred (100) square feet and dark gray in color similar to "Weathered Wood" by GAF. Any other type roofing material and color must be approved by the Architectural Control Committee.

Section 17. Lot Drainage. All drainage of water from any lot and the improvements thereon shall drain or flow as set forth below:

(a) Any such water shall drain or flow from the rear Lot line to the front Lot line into adjacent streets and shall not be allowed to drain or flow upon adjoining Lots or Common Areas unless an easement for such purpose is granted.

The Builder and/or Owner shall provide drains or swales to effect such drainage upon construction of the dwelling unit on the Lot.

(b) All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

(c) No structure, planting or other material shall be placed or permitted to remain or other activities undertaken within the Property or any portion thereof by any Owner which might damage or interfere with established slope ratios or

interfere with established drainage functions or facilities.

(d) No drainage shall be allowed from the residence roof along the Zero lot Line which would allow water to drain onto the adjacent lot.

Section 18. Roof Projections. No projections of any type shall be placed or permitted to remain above the roof of any residential building with the exception of one or more chimneys and one or more vent stacks without the written permission of the Architectural Control Committee.

Section 19. Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any residential building on any part of the property.

Section 20. Greenbelts and Common Areas. The Common Areas shall be used for park, recreational, social and other purposes directly related to the uses authorized under this Declaration and such Supplementary Declarations as may be filed and shall be restricted to pedestrian and non-motorized vehicle use and shall be open for the use of all Members and their guests during reasonable hours, as established by the Board of Directors.

Section 21. Landscape Maintenance. All landscaping of every kind and character including shrubs, trees, grass, and other plantings, shall be neatly trimmed, properly cultivated and maintained continuously by the Owner thereof in a neat and orderly condition and in a manner to enhance its appearance.

Section 22. Construction Materials. No residence shall have less than twenty-five percent (25%) masonry construction on its exterior wall area with the exception of the Zero Lot Line Wall which must be of total masonry construction on the first story level. All window frames on front elevations of all residences shall be bronze or dark tone color, unless otherwise approved by the Architectural Control Committee.

Section 23. Garbage Disposals All residences shall be equipped with garbage disposals, and said disposals shall be kept

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in good working order at all times.

Section 24. Garages - Entrances. No carports shall be constructed upon any lot without the written consent of the Architectural Control Committee.

Section 25. Mailboxes. 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 Committee that any such matter is not harmonious shall be final.

Section 26. Sidewalks. A concrete sidewalk four feet (4') wide shall be constructed parallel to the curb along the entire fronts of all lots. In addition thereto, four feet (4') wide sidewalks shall be constructed parallel to the curb along the entire side of all corner lots, and the plans for each residential building on each of said lots shall include plans and specifications for such sidewalks and same shall be constructed and completed before the main residence is occupied. Furthermore, at each street intersection and/or pedestrian crosswalk where a sidewalk shall abut the curb, there shall be provided curb ramps with a rough, non-skid surface to accommodate handicapped individuals in wheel chairs. The type of construction and the specifications for said curb ramps shall be as provided by the Harris County Engineering Department.

Section 27. Right of Inspection. During reasonable hours and after reasonable notice, the Association shall have the right to enter upon and inspect the Property or any portion thereof and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reasons thereof.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner

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

Section 2. Severability. Invalidity of any one of these covenants or restrictions shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety (90%) percent of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendment must be recorded.

Section 4. Amendments by Declarant. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by The Declaration, and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

Section 5. Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any member or members will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and

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the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 6. Annexation. Other lands may hereafter be annexed into the jurisdiction of the Association in the manner herein described. If annexed, the owners of lots in each future section so annexed as well as all owners subject to the jurisdiction of the Association shall be entitled to the use and benefit of all Common Properties that may become subject to the jurisdiction of the Association as a result of such annexation, and the facilities thereon, and shall be entitled to the use and benefit of the maintenance load, hereinabove set forth, provided that each future section must be impressed with and subject to an annual maintenance charge imposed hereby, and further such sections shall be made by recorded restrictions subject to the jurisdiction of the Association. Such additional stages of development may be annexed by action of the Board of Directors of the Association. Upon a merger or consolidation of the Association with another Association, the Associations' properties, rights, and obligations may be transferred to another surviving or consolidated Association, or alternatively, the properties, rights, and obligations of another Association may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association shall administer the Covenants and Restrictions established by this Declaration, together with the Covenants and Restrictions applicable to the properties of the other Association as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the Covenants established by this Declaration.

Section 7. FHA/VA Approval. So long as these covenants, conditions and restrictions shall remain in full force and effect, the following actions will require the prior approval of the

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Federal Housing Administration or the Veterans Administration;
(i) annexation of additional properties; (ii) dedication of common
area, and (iii) amendment of this Declaration of Covenants, Condi-
tions and Restrictions.

ARTICLE X

RESERVATION OF MINERALS

There is hereby excepted from the land encompassed by
the boundaries of this subdivision, and Declarant will hereafter
except from all its sales and conveyances of said land, or an
part thereof, including the Common Area, all oil, gas and other
minerals, provided that Declarant hereby retains and reserves
and by each conveyance will retain and reserve the right to pool
the land with other lands, together with the right to drill under
and through the subsurface of the land for development of oil, gas
and other minerals. Such exceptions and such retained rights
and reservations shall inure to the benefit of Declarant and
its successors and assigns.

ARTICLE XI

APPROVAL OF LIENHOLDERS

Mortgage & Trust Co., Inc. a mortgage corporation with
offices in Houston, Harris County, Texas, as lienholder of the
herinabove described land, have heretofore caused their name to
be signed and their seal to be affixed, and the same to be done
and attested by the signatures of their duly authorized officers
for the purpose of consenting to ratifying, confirming and
adopting this Declaration of Covenants, Conditions, and Restri-
ctions and for the purpose of subordinating their lien to the
same.

IN WITNESS WHEREOF, the undersigned, being the
Declarant herein, has heretofore set its hand and seal this
5th day of October, A.D., 1981.

Dick Redman
COUNTY CLERK
HARRIS COUNTY, TEXAS

OCT 7 1 10 PM '81

FILED

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ATTEST

McKINNEY REALTY CO.

[Signature]
CRIST KOSZUNK, Asst. Sec.

BY: *[Signature]*
CHARLES M. LUSK, III, Asst. V.P.

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared CHARLES M. LUSK, III, known to me to be the person whose name is subscribed to the foregoing instrument, as ASST. VICE-PRESIDENT of McKINNEY REALTY CO., a corporation, and acknowledge to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5th day of October, 1981.



[Signature]
Cordia Walters
My Commission Expires 4-20-85

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, as _____ of _____, a corporation, and acknowledge to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 1981.

STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS

OCT 7 - 1981



[Signature]
COUNTY OF
HARRIS COUNTY, TEXAS