

504-73-3753

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**R505202**

**COLONY CROSSING, VILLAGE OF SAWYERS CROSSING**

**THE STATE OF TEXAS   §  
                                  §  
COUNTY OF HARRIS   §**

**07/31/95 100027462 R 505202**

**\$105.00**

**THIS DECLARATION is made on the date hereinafter set forth by  
KIMBALL HILL TEXAS DEVELOPMENT, L.C., a Texas limited liability  
company, hereinafter called "Declarant";**

**W I T N E S S E T H:**

**WHEREAS, Declarant is the owner of that certain real property  
known as Colony Crossing, Village of Sawyers Crossing, a  
subdivision lying in Harris County, Texas, according to the map or  
plat thereof recorded under Film Code No. 360094, of the Map  
Records of Harris County, Texas and being a Partial Replat of  
Fondren Grove, Section Three, a subdivision lying in Harris County,  
Texas, according to the map or plat thereof recorded in Volume 332,  
Page 31, of the Map Records of Harris County, Texas; and**

**WHEREAS, Declarant is the assignee of the rights of Fondren  
Grove Venture, a Texas joint venture composed of Noel Graubart and  
Martin Perlman, as Declarant with respect to Fondren Grove Section  
One-A, pursuant to the Declaration of Covenants and Restrictions of  
Fondren Grove Section One-A, recorded under Harris County Clerk's  
File Number K622103; and**

**WHEREAS, it is the intent of Declarant to establish a uniform  
plan for the development, improvement and sale of such property**

(including any property later brought within the scheme), to insure the preservation of a uniform plan for the benefit of both present and future owners of such property, and, to this end, to cause such property to be annexed into the jurisdiction of an existing homeowner's association and delegate thereto the powers to administer and enforce the covenants, restrictions, easements, charges and liens set forth herein;

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

All of Colony Crossing, Village of Sawyers Crossing, a subdivision lying in Harris County, Texas, according to the map or plat thereof recorded in Film Code No. 360094, of the Map Records of Harris County, Texas (and any subsequently recorded plat thereof).

**ARTICLE I****DEFINITIONS**

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

**SECTION 1.** "Association" shall refer to Colony Crossing Homeowners' Association, a Texas non-profit corporation, which has heretofore been organized and its successors and assigns.

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

**SECTION 3.** "Committee" shall refer to the Architectural Control Committee provided for in Article II, Section 1 below.

**SECTION 4.** "Community Properties" shall refer to any properties, real or personal, hereafter conveyed to or otherwise acquired by the Association for the common use and enjoyment of the Members of the Association. The Community Properties will be conveyed to the Association, free and clear of all encumbrances, prior to FHA's insuring of the first mortgage on a Lot in the Subdivision.

**SECTION 5.** "Corner Lot" shall refer to a Lot which abuts on more than one Street.

**SECTION 6.** "Declarant" shall refer to Kimball Hill Texas Development, L.C., a Texas limited liability company, its successors and assigns, provided any such successor or assign (i) acquire more than one lot in the Subdivision for the purposes of development or resale, and (ii) is designated as the Declarant by an instrument in writing executed by Declarant and filed of record

in the Official Public Records of Real Property of Harris County, Texas.

**SECTION 7.** "Declaration" shall refer to this Declaration of Covenants and Restrictions.

**SECTION 8.** "FHA" and "VA" shall refer to Federal Housing Administration and Veterans Administration, respectively.

**SECTION 9.** "Living Unit" shall refer to the single family residence located on the Lot, which complies with this Agreement.

**SECTION 10.** "Lot" shall refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

**SECTION 11.** "Member" shall refer to every person or entity which holds a membership in the Association.

**SECTION 12.** "Owner" shall refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but shall not refer to any person or entity holding such interest merely as a lien, easement, mineral interest or royalty interest burdening the title thereto.

**SECTION 13.** "Street" shall refer to any street, drive, boulevard, road, alley, lane, avenue or any thoroughfare as shown on the Subdivision Plat.

**SECTION 14.** "Subdivision" shall refer to that certain real property within the parameters of Colony Crossing, Village of Sawyers Crossing, a subdivision lying in Harris County, Texas, as set forth in the map or plat thereof recorded under Film Code No. 360094, of the Map Records of Harris County, Texas. As used in

this Declaration, the term "Subdivision" shall not cover or include any of the Community Properties.

**SECTION 15.** "Subdivision Plat" shall refer to the recorded map or maps, or plat or plats, of the Subdivision or an replat thereof.

## ARTICLE II

### **ARCHITECTURAL CONTROL COMMITTEE**

**SECTION 1.** **CREATION, PURPOSE AND DUTIES.** There is hereby created an Architectural Control Committee comprised of Kirk Breitenwischer, Lance Wright and Greg Yakim, all of Harris County, Texas, each of whom shall serve until a successor is appointed as provided herein. Declarant may remove any member, with or without cause, at its discretion. The powers of the Committee, its successors and the designated representatives as provided for hereinbelow shall cease on the earlier of ten (10) years from the date of this instrument, or the date upon which all Lots subject to the jurisdiction of the Association have houses thereon occupied as residences, at which time the Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by either the Board of Directors of the Association or its designated representatives. The then current members of the Committee may at any time voluntarily transfer all of their duties and powers to the Board of Directors of the Association. To be effective, such a transfer shall be evidenced by a document executed by each of the then current members of the Committee. A majority of the Committee may designate one member to act for it. In the event of the death,

removal by Declarant or resignation of any person serving on the Committee, the Declarant shall designate a successor, or successors, who shall have all of the authority and power of such successor's predecessor(s); provided, however, the foregoing part of this sentence shall not apply to a successor Committee appointed by the Association. Until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans submitted or to designate a representative with like authority.

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

**SECTION 2.**      **POWERS OF THE COMMITTEE.** No building or other improvement or structure shall be constructed, reconstructed or placed in the Subdivision, and no exterior alteration thereof shall be made until the plans thereof have been submitted to and approved in writing by the Committee as to conformity and harmony of external design and location in relation to surrounding structures and topography. In the event the Committee fails to approve or disapprove such plans within thirty (30) days after submission to

the Committee, approval thereof shall be deemed to have been given; however, such approval shall not operate to waive any other covenants and restrictions set forth herein. The said 30 day period shall commence on the date all Committee members receive such plans.

The plans submitted to the Committee must be composed of a set of construction documents of such detail and information as required by the Committee, which shall include, without limitation, the following:

- (a) Site plan/roof plan;
- (b) Floor plans;
- (c) All exterior elevations; and
- (d) Landscape layout.

Any such submission must also include samples of all materials and colors to be used on building exterior or specifications which will identify materials for the Committee. Brick selections must be evidenced by actual sample brick. Paint and stair colors may be evidenced by means of any actual sample or by means of manufacturer's paint color chips.

No construction of a building, structure, fence, wall or other improvements shall be commenced until the contractor designated to perform such construction has been approved in writing by the Committee. In the event the Committee fails to specifically approve or disapprove a contractor within thirty (30) days after the contractor's name is submitted and received by all Committee members, approval thereof shall be deemed to have been given.

The Committee shall have the right to specify, among other things, architectural and aesthetic requirements for building sites, minimum setback lines, the location, height and extent of fences, walls or other screening devices, the orientation of structures with respect to streets, walks, paths and structures on adjacent property and a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of improvements. The Committee's right to approve or disapprove plans shall not be construed to be limited because of the inclusion in this Declaration of express use and architectural requirements. The Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or that do not meet its minimum construction or architectural design requirements or that might not be compatible with the overall character and aesthetics of the Subdivision. The Committee shall have the right, exercisable in its sole discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and environmental integrity of the Subdivision or the common scheme of development. All variance grants shall be in writing, addressed to the Owner requesting the variance, describing the applicable restrictions to which the variance is granted, listing conditions imposed on the granted variance and listing specific reasons for granting of the variance and shall not affect in any way the Owner's obligation to comply with all governmental

laws affecting the Subdivision and with the Plat. Failure by the Committee to respond within thirty (30) days of its receipt of a request for a variance shall operate as a denial of the variance. No person exercising any prerogative of approval or disapproval by the Committee shall incur any liability by reason of the good faith exercise thereof.

**SECTION 3.      LIABILITY LIMITATION.** The Committee's approval of plans shall not be deemed to be a representation or warranty, express or implied, of any nature. Neither the Committee nor any member thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility in connection with approval of plans or for any defect in the improvements constructed from such plans, nor shall any of such persons or entities be liable for any injury, loss or damage arising out of or in any way relating to the performance of the duties of the Committee, except to the extent caused by willful misconduct or gross negligence. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of any improvements be deemed approval of, the quality of the improvements or safety integrity, or otherwise, of the improvements, or conformance with applicable laws, regulations and codes. Neither the Committee, nor any member thereof, the Association, the Board nor the Declarant shall have any obligation or liability for failure to inspect any improvements or for failure to repair or maintain such improvements.

**ARTICLE III****COLONY CROSSING HOMEOWNERS' ASSOCIATION**

**SECTION 1. ORGANIZATION.** The Association has previously been organized as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance charge funds, enforcement of the Declaration, providing for the maintenance, preservation and architectural control (when the powers of the Committee terminate and the Committee's powers vest in the Association) within the Subdivision, and other subdivisions within its jurisdiction, the general overall supervision of all of the affairs and well being of the Subdivision and other subdivisions within its jurisdictions, and the promotion of the health, safety and welfare of the residents within the Subdivision and other subdivisions within its jurisdiction.

**SECTION 2. BOARD OF DIRECTORS.** The Association shall act through a Board of Directors, which shall manage the affairs of the Association as specified in the By-laws of the Association, to be promulgated by Declarant.

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

**SECTION 4. VOTING.** The Association shall have two classes

of voting membership:

- (a) **CLASS A.** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned either within the Subdivision or within other subdivisions under the jurisdiction of the Association. When more than one individual or entity holds an ownership interest in a Lot, all such persons shall be members, but in no event shall they be entitled to more than one vote with respect to that particular lot.
- (b) **CLASS B.** Class B members shall be the Declarant. Class B members shall be entitled to three (3) votes for each Lot owned within the Subdivision and within other subdivisions under the jurisdiction of the Association. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (i) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or (ii) January 1, 2004. However, if Class B membership has automatically converted to one vote per lot owned, it shall automatically revert to three votes per lot owned in the event additional lots are subjected to the jurisdiction of the Association such that the Declarant owns more than twenty-five percent (25%) of all lots within the Association's jurisdiction. Such reinstated Class B membership shall terminate under the terms above.

It is stipulated by the Declarant that the Declarant herein is also the successor and assignee of Fondren Grove Venture as to the rights of the Declarant under the Declaration of Covenants and Restrictions of Fondren Grove, Section One-A ("Section One-A"), recorded under Harris County Clerk's File Number K622103 (the "Section One-A Declaration"), which is also within the jurisdiction of the Association. Accordingly, the Declarant herein shall succeed to the rights of the Declarant under the Section One-A Declaration, provided that the Declarant shall have no liability for actions taken by any predecessor to Declarant.

**ARTICLE IV****COVENANT FOR MAINTENANCE ASSESSMENTS****SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION**

**FOR ASSESSMENTS.** The Declarant, for each Lot within the

Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot which shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay to the Association the following:

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

Such assessments or charges are to be filed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing Vendor's Lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorney's fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such Lot. The personal obligation for delinquent assessments and charges shall not pass to 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 residents of the Subdivision and other property within the jurisdiction of the Association. Without limiting the foregoing,

the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association and, at the option of the Board of Directors of the Association, for any and all of the following purposes: lighting, improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways and esplanades in the Subdivision and in other properties within its jurisdiction, collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration and other declarations covering properties within the jurisdiction of the Association; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees, grass and shrubbery on esplanades and easements in the Community Properties; acquiring and maintaining or entering into contracts with other entities for the use of any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; paying usage or other fees to other entities for the right of the Owners to use their recreational facilities and/or share in the costs of a joint security service; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision

and all other properties within its jurisdiction, in neat and good order, or which they consider of general benefit to the Owners or occupants of the Subdivision, including all other properties within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance and other charges, and the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

**SECTION 3. BASIS AND MAXIMUM LEVEL OF ANNUAL ASSESSMENTS.**

Until January 1 of the year immediately following the date of commencement of the first annual assessment with respect to the Lots as determined by the Board of Directors, the maximum annual assessment shall be \$385.00 per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount equal to a ten percent (10%) increase over the prior year's annual assessment without a vote of the Members of the Association. The maximum annual assessment may be increased by more than ten percent (10%) over the last year's assessment only by approval of two-thirds (2/3rds) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the By-Laws of the Association, a door to door canvass may be used to secure the written approval of two-thirds (2/3rds) of each class of Members for such increase in the annual assessment or in the

special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the County Clerk of Harris County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

**SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.**

In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a particular capital improvement located upon the Community Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of the Members as set forth in Section 3 above.

**SECTION 5. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS**

**3 OR 4 HEREIN.** The quorum for any action authorized by Sections 3 or 4 herein shall be as follows:

At the first meeting called, as provided in Section 3, the presence at the meeting of Members, or of proxies, entitled to cast twenty percent (20%) of all of the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable

to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

**SECTION 6. RATES OF ASSESSMENT.** Both annual and special assessments on all Lots, whether or not owned by Declarant, shall be fixed at uniform rates provided, however, the rate applicable to Lots that are owned by Declarant or a Builder and are not occupied as residences shall be equal to one-half (1/2) of the full assessment as set by the Board of Directors of the Association. The rate of assessment for each Lot shall change as the character of ownership and the status of occupancy changes.

**SECTION 7. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENT.** The annual assessment provided for herein shall commence as to the various Lots on the first day of the month following the month in which a family dwelling on one of the Lots in the Subdivision is conveyed to an Owner (or, if earlier, occupancy of a residence commences); provided, in no event shall same commence as to any Lot or groups of Lots until the streets and utilities servicing same have been substantially completed as certified by the engineer supervising the construction of such streets and utilities, it being recognized that the Subdivision may be developed in "phases" so that the streets and utilities servicing same may be completed at different times. The first annual assessment for each phase of Lots for which streets and utilities have been substantially completed shall be adjusted according to the number of months remaining in the calendar year. On or before the 30th day of November in each year, the Board of Directors of the Association shall fix the amount of the annual

assessment to be levied against such Lot in the next calendar year. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof. Each annual assessment shall be due and payable in advance on the first day of January of each calendar year. The Association shall, upon demand, and for reasonable charge, furnish a certified signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

**SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.** Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within sixty (60) days after the due date, the Association may bring an action against the Owner personally obligated to pay the same, or to foreclose the Vendor's Lien herein retained against the Lot. Interest accruing on past due assessments at the maximum rate permitted by law, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Owner, by such Owner's acceptance of a Deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments and charges as a debt and to enforce the Vendor's Lien by all methods available for the enforcement of such liens, including foreclosure by an action

brought in the name of the Association either judicially or non-judicially by power of sale. Each Owner expressly grants to the Association a power of sale, and such Owner expressly grants to the Association a power of sale in connection with the non-judicial foreclosure of the Vendor's Lien. Non-judicial foreclosure shall be conducted by notice and posting of sale in accordance with the then applicable laws of the State of Texas. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Properties or abandonment of a Lot.

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

mortgage, lien or encumbrances, subject to such limitations, if any, as the Board of Directors may determine.

## ARTICLE V

### RIGHTS REGARDING THE COMMUNITY PROPERTIES

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

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

- a. The Association shall have the right to borrow money and in aid thereof to mortgage the Community Properties upon approval by two-thirds (2/3rds) of the votes cast by each class of Members at a Meeting of Members. In the event a default under or foreclosure of any such mortgage, the rights of the lender or foreclosure sale purchaser shall be subject to the easement of enjoyment of the Members, except that the lender or foreclosure sale purchaser shall have the right, after taking possession of such Community Properties, to charge admission and other fees as a condition to continued enjoyment by the Members of any recreational facilities and to open the enjoyment of such recreational facilities to a reasonably wider public until the mortgage debt owed to such lender, or the purchase price paid by the foreclosure purchaser, interest thereon at the rate of ten percent (10%) per annum, and other reasonable expenses incident to maintenance of such Community Properties incurred by the lender or foreclosure sale purchaser shall be satisfied or recovered, whereupon the possession of such Properties shall be returned to the Association and all rights hereunder of the Members shall be fully restored.
- b. The Association shall have the right to take such steps as are reasonably necessary to

protect the Community Properties against foreclosure of any such mortgage.

- c. The Association shall have the right to suspend the voting rights and enjoyment rights of any Member for any period during which any assessments or other amount owed by such Member to the Association remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services) the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in the payment of any assessment against such Member's Lot.
- d. The Association shall have the right to establish reasonable rules and regulations. The Association shall have the right to delegate such rules and regulations. The Association shall have the right to delegate management of the Community Properties.
- e. Upon approval by two-thirds (2/3rds) of each class of Members, the Association shall have the right to transfer or convey all or any part of the Community Properties, or interests therein, to any public authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3rds) of each class of Members; provided, however, this provision shall not be construed to limit the right of the Association to grant or dedicate public or private utility easements in portions of the Community Properties.
- f. The Association shall have the right, but not the obligation, to contract, on behalf of all Lots, for garbage and rubbish pickup and to charge the Owner of each Lot for such Owner's pro rata share to be determined by dividing the number of Lots being served into the total cost of providing garbage and rubbish pickup and such cost to be in addition to, should the Association so elect, the assessments described herein.
- g. Notwithstanding any contrary provision in this Declaration, in no event shall any of the Community Properties be mortgaged or conveyed

without the consent of at least 2/3 of the  
Class A Members.

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

**ARTICLE VI**

**USE RESTRICTIONS**

**SECTION 1.**      **RESIDENTIAL USE.** Each and every Lot is hereby restricted to residential dwellings for single family residential use only. No business, professional, commercial or manufacturing use shall be made of any of said Lots, even if such business, professional, commercial or manufacturing use is subordinate or incident to use of the premises as a residence. No structure other than one single family residence and its outbuildings shall be constructed, placed on or permitted to remain on any Lot in the Subdivision. As used herein, the term "residential use" shall be construed to prohibit the use of any Lot for duplex houses, garage apartments for rental purposes or apartment or similar buildings.

**SECTION 2.**      **ANIMALS AND LIVESTOCK.** No livestock, or poultry or other animal of any kind shall be raised, bred, or kept on any Lot. Consistent with its use as a residence, dogs, cats or other household pets may be kept on a Lot, provided that they are not kept, bred or maintained for any business purposes and further

provided that no more than three (3) such pets shall be kept on a Lot.

**SECTION 3. NUISANCES.** No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance to residents of the Subdivision.

**SECTION 4. STORAGE AND REPAIR OF VEHICLES.** No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter (3/4) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the Street in front of, or side of any Lot or on any Lot, unless such vehicle is stored within a garage. No Owner of any Lot in the Subdivision or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or Streets other than work of a temporary nature. For the purposes of the foregoing term, "temporary" shall mean that the vehicle shall not remain in driveways or Streets in excess of twenty-four (24) hours.

**SECTION 5. PERMITTED HOURS FOR CONSTRUCTION ACTIVITY.** Except in an emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m.

**SECTION 6. DISPOSAL OF TRASH.** No trash, rubbish, garbage, manure, debris or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such

matters shall be placed in sanitary containers constructed of metal, plastic or masonry materials with tightfitting sanitary covers or lids and placed in an area adequately screened by planting or fencing. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from the Owner's Lot at regular intervals at such Owner's expense.

**SECTION 7.**      **BUILDING MATERIALS.** No Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced. During initial construction or remodeling of residences by Builders in the Subdivision, building materials may be placed or stored outside the property lines. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay, after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the Street.

**SECTION 8.**      **MINERAL PRODUCTION.** No drilling, developing operations, refining, quarrying or mining operations of any kind

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

#### ARTICLE VII

##### ARCHITECTURAL RESTRICTIONS

SECTION 1. TYPE OF RESIDENCE. Except for the easement rights elsewhere recognized in this Declaration, each Lot shall be used only for a Living Unit and a private garage, and no Lot shall be used for business or professional purposes of any kind. With each Living Unit there shall be an attached or detached enclosed garage. Each garage shall be large enough to accommodate two full sized automobiles. All structures shall be of new construction and no structure shall be moved from another location onto any Lot. All residences must be kept in good repair and must be painted when necessary to preserve their attractiveness. Bona fide domestic servants may live in the improvements on any Lot.

SECTION 2. HEIGHT AND LIVING AREA REQUIREMENTS. No building or Living Unit in the Subdivision shall exceed in height three (3) stories or thirty-five feet (35'), measured from the finished grade of the building site. Each Living Unit shall contain not less than 1,200 square feet of living area, unless the Committee agrees to the contrary in writing. All computations of

living area shall be exclusive of open or screened porches, terraces, patios, driveways and garages. Measurements shall be to the face of the outside walls of the living area.

SECTION 3.      LOCATION OF RESIDENCE ON LOT.      No building shall be located on any Lot nearer to the front line or nearer to the side street than the minimum building setback lines shown on the recorded Plat. Should two or more adjoining building sites be owned by the same Owner, said Owner shall be permitted to erect a structure across the building site lines between the sites owned by said Owner, and such construction shall not be considered to be a violation of the setback restrictions describe above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole good faith discretion of the Committee. Except as expressly approved by the Committee, the immediately preceding sentence shall in no way affect or change the side or rear setback lines hereinabove set forth and those setback lines shall continue to apply to any building site or group of building sites under the same or substantially the same ownership. For the purposes of this covenant, eaves, steps, patios and open porches shall not be considered as part of the building; provided, however, that this shall not be construed to permit any portion of a building on any Lot to encroach upon another Lot. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. The manner in which the residence buildings will face and the type of

driveway access will be governed by the ordinances and rules of the City of Missouri City Planning and Zoning Commission. The Committee shall be empowered to grant exceptions for minor variances if they do not result in a violation of City requirements. It is the intention of this covenant to allow placement of residential structures at the option of Declarant or any entity constructing a dwelling on any Lot using the following method:

Standard Single Family Residence Option. The front building setback line shall be as hereinabove required. The residential dwelling shall not be located on the Lot nearer than five feet (5') from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from the side line abutting a Street. No dwelling shall be located on any Lot within any utility easement.

SECTION 4. TYPE OF CONSTRUCTION. Unless otherwise approved by the Committee, at least twenty-five percent (25%) of the exterior wall area of the ground floor of all residences (excluding detached garages, gables, windows and door openings), must be of masonry or brick veneer. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character which incorporates frame construction on the exterior shall be erected on an Lot unless such structure receives at least two coats of paint at the time of construction or the frame portion of the exterior is of redwood or cedar material.

**SECTION 5.**      **TEMPORARY BUILDINGS.**      Temporary buildings or structures shall not be permitted on any Lot; provided, however, Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences.

**SECTION 6.**      **DRIVEWAYS.**      On each Lot the Builder shall construct and the Owner shall maintain at such Owner's expense the driveway from the garage to the abutting Street, including the portion of the driveway in the street right-of-way, and the Builder and Owner shall repair at Builder's expense any damage to the Street occasioned by connecting the driveway thereto. All driveways shall be hard paved with concrete or unit masonry.

**SECTION 7.**      **ROOF MATERIAL.**      Unless otherwise approved by the Committee, all roofs of all residences shall be constructed so that the exposed material is either wood shingles having a frame of No. 2 or better or composition shingles of a wood tone color of sufficient weight and grade to comply with the then current FHA, VA and Missouri City Code requirements at the time of construction of each such roof.

**SECTION 8.**      **FENCES.**      No fence or wall shall be erected on any Lot nearer to the Street than the building setback lines as shown on the Subdivision Plat. The erection of chain link fences is prohibited.

**SECTION 9.**      **LANDSCAPING AND FENCING.**      At the time of the initial construction of a dwelling on any Lot in the Subdivision, the Owner must present a landscape layout for the front yard and

the side yard facing a street on corner lots to the Committee for its approval. Such layout must contain as a minimum: (a) solid sod with grass in the area between the residence and the curb line of the abutting street(s); and, (b) at least one tree having a minimum diameter of two inches (2") in the front yard. The beds in which the plants and shrubs are planted must be of a proper mixture of top soil, and mulch material and must have a minimum depth of three (3) feet and be of sufficient width to accommodate the plants and shrubs. All landscaping must be properly and neatly maintained at all times. Dead or damaged trees, which might create a hazard to property or persons within the Subdivision, shall be promptly removed or repaired, and if not removed by Owner upon request, then the Declarant or Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. Vacant lots shall be mowed and maintained in appearance by the Owner and shall not be used as dumping grounds for rubbish, trash, rubble or soil, except that Declarant may designate fill areas into which materials specified by Declarant may be placed. The Association may plant, install and maintain shrubbery and other screening devices around boxes, transformers and other above-ground utility equipment. The Association shall have the right and an easement to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment and wood piles or storage piles.

**SECTION 10. SIGNS.** No signs, billboards, posters or advertising devices of any kind shall be permitted on any Lot unless (i) they comply with Missouri City requirements and (ii) they have received the prior written consent of the Committee. The right is reserved by Declarant to construct and maintain, signs, billboards and advertising devices as is customary in connection with the sale of newly constructed residential dwellings. The Declarant and the Association shall have the right to erect identifying signs at each entrance to the Subdivision, subject to approval by Missouri City.

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

**SECTION 12. EXTERIOR ANTENNAE.** Without the prior written consent of the Committee, no television, radio or telecommunications antenna or dish antenna or other similar device of any type shall be placed, allowed, or maintained outside of a Living Unit or on the exterior of any building or other improvement located on a Lot.

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

**SECTION 14. SCREENING FENCES.** Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Subdivision Plat, or as required pursuant to this Declaration, shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the Owners of the Lots adjacent thereto at their own expense.

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

**SECTION 16. MAILBOXES.** Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community.

**SECTION 17. DISPOSAL UNITS.** Each kitchen in each residence shall be equipped with a garbage disposal unit in a serviceable condition.

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

**SECTION 19. TREES.** No trees measuring six (6) inches in diameter or greater at a point two feet above ground level may be removed without prior approval of the Committee unless located within ten (10) feet of an existing building or within ten (10) feet of the approved site for a building, or within a utility easement or street right-of-way.

**SECTION 20. SKYLIGHTS, SOLAR COLLECTORS AND EXPOSED ROOF METAL.** No skylights, solar collectors, stack vents, attic ventilators or similar equipment shall be permitted on the front slope of any roof unless approved by the Committee.

**SECTION 21. WINDOWS, SCREENS, SLIDING GLASS DOORS.** Aluminum windows, screens, sliding glass doors and frames for fixed glass shall have bronze, white or aluminum color finish only. No reflective glazing will be allowed on any residence.

**SECTION 22. AIR CONDITIONING COMPRESSORS AND METER BOXES.** All air conditioning compressors, meter boxes and similar equipment shall be visually screened from the street and from side yard view

by appropriate location at the back of each residence or by plantings.

**SECTION 23. EXTERIOR COLOR SCHEDULE.** Exterior paint and stain for each residence shall be selected to complement, coordinate or harmonize with the colors of building material which are used in their "natural" state such as brick, stone, copper, etc. All exterior paint and stain colors must be approved by the Committee.

**SECTION 24. FOUNDATIONS.** The elevation of the first level finished floor of any residence shall be constructed at a height so that same shall comply with the requirements therefor of the FHA, VA and the City of Missouri City.

**SECTION 25. CHIMNEYS.** The exposed portion of all job built fireplace chimneys shall be of brick or stone. If a prefabricated metal fireplace is utilized the exposed portion of the metal flue must be screened from view with masonry or wood. If wood is used, the wood covering must be constructed a sufficient distance from the flue so as to avoid a fire hazard and must be constructed in accordance with applicable codes.

**SECTION 26. MAINTENANCE OF GRASS AND SHRUBBERY.** The grass and weeds on each Lot shall be kept, mowed and edged along sidewalks and curbs to prevent unsightly appearance. All plants and shrubs shall be kept trimmed and attractive. If such grass and shrubbery are not mowed, trimmed and edged by the Owner within ten (10) days after written request to do so it made by the Association, then the Association shall have the right to cause the

mowing, trimming and edging to be performed and add the cost thereof to the defaulting Owner's assessment.

SECTION 27.      GUTTERS.      Owner will maintain guttering of the dwelling, so that it catches and channels water running off the roof. Such guttering shall be kept painted and attractive and shall be kept firmly affixed at the point of attachment to the dwelling.

#### ARTICLE VIII

##### EASEMENTS

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

**SECTION 2.**      **CHANGES AND ADDITIONS.** Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time easements for public utility purposes (including, without limitation, gas, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to the Lots or other properties within the jurisdiction of the Association, along and on either or both sides of any side lot line, which such easements shall have a maximum width of five (5) feet on each side of such side lot line; provided, however, if a structure has been constructed across the building site line separating adjoining lots, as provided in Article VII, Section 3, no such easement will be granted along the interior part of the Lot on which the structure has been constructed.

**SECTION 3.**      **TITLE TO EASEMENTS AND APPURTENANCES NOT CONVEYED.** Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents or predecessors through, along or upon any Lot or any part thereof to serve said Lot or any other portion of

the Lots. The right to maintain, repair, sell or lease such items of property and appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

**SECTION 4.**      **INSTALLATION AND MAINTENANCE.** There is hereby created an easement upon, across, over and under all of the Lots for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, services lines or other utility facilities or appurtenances thereto, on, above, across and under the Lots within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Lots until approved by Declarant or the Association's Board of Directors. The utility companies furnishing service shall have the right to remove all trees and landscaping situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on portions of the Lots abutting such easements.

**SECTION 5.**      **EMERGENCY AND SERVICE VEHICLES.** An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles and other service vehicles to enter upon the Lots in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Lots to render any service.

**SECTION 6.**      **UNDERGROUND ELECTRICAL DISTRIBUTION SYSTEM.** An underground electric distribution system will be installed within the Subdivision (which will be designated for such purpose as an Underground Residential Subdivision) and which underground service area shall embrace all Lots in the Subdivision. The Owner of each Lot in the Underground Residential Subdivision shall, at such Owner's own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at such Owner's own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric

company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/140 volt, three wire, 60 cycle, alternating current.

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

such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot over the cost of equivalent overhead facilities serving such Lot, which rearrangement and/or addition is determined by the company to be necessary; provided, in no instance shall Declarant be obligated to pay the electric company such amount representing the excess in cost should the Owners of the Lots amend the Declaration to allow dwellings of a different type.

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

SECTION 7.      CABLE TV. The City of Missouri City shall have the exclusive right and authority to enter into a franchise or similar type agreement with one or more cable television companies and the City of Missouri City shall have the right and power in

such agreement or agreements to grant to such cable television company or Companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Subdivision Plat, pursuant to the applicable local ordinances and regulations duly adopted by the City of Missouri City, as amended from time to time.

## ARTICLE IX

### ENFORCEMENT

SECTION 1. GENERAL ENFORCEMENT. The Declarant, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, the covenants and restrictions contained herein. Failure of the Declarant, the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. If Declarant, the Association and/or any Owner shall institute proceedings to enforce these covenants and restrictions and/or seek relief for a breach thereof and prevail in such proceedings, then they shall be entitled to recover all court costs and attorney's fees reasonably incurred in connection with such proceedings.

SECTION 2. ADDITIONAL ENFORCEMENT RIGHTS. In the event any Owner or occupant of any Lot fails to properly maintain the exterior of the dwelling or other improvements on a Lot, or Owner otherwise fails to comply with the use and architectural restrictions referred to in this Declaration, and in the event such failure continues for a period of ten (10) days after written

notice thereof is furnished to the Owner by the Association, or if such compliance cannot by its nature be reasonably completed in ten days and Owner or occupant has not proceeded with due diligence to cause such compliance to occur, the Association shall have an easement, and the right (but not the obligation), through its agents or employees, to repair, maintain and restore the Lot and the residence and any other improvements located thereon to enforce compliance with this Declaration. To the extent necessary to prevent rat infestation, diminish fire hazards and accomplish any of the above described repair, maintenance and restoration, the Association shall have the right, through its agents and employees, to enter any residence or improvements located upon such Lot. The Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. The Owner and occupant agree by the purchase and occupation of the Lot to pay such statement immediately upon receipt. The cost of such work, plus interest thereon at the maximum rate permitted under the laws of the State of Texas, shall become a part of the assessment payable by said Owner and payment thereof shall be secured by the lien herein retained. The Association, its agents and employees shall not be liable, and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of the work authorized herein. The rights and remedies in this section shall be in addition to and not in limitation of other rights and remedies provided in this Declaration or by law.

**ARTICLE X****GENERAL PROVISIONS**

**SECTION 1.**      **TERM.** Subject to the amendment rights set out in Article X, Section 9 below, these covenants and restrictions shall run with the land and shall be binding upon all parties and all persons claiming them for a period of forty (40) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed by the Owners of a majority of the Lots in the Subdivision has been recorded agreeing to terminate the covenants and restrictions herein as of said renewal date.

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

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

**SECTION 4.**      **TITLES.** The titles of this Declaration contained herein are for convenience only and shall not be used to

construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

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

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

**SECTION 7.**      **NOTICES.**    Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of each mailing.

**SECTION 8.**      **REPLATTING.**    Declarant shall have the right, but never the obligation, to resubdivide into Lots, by recorded plat or in any other lawful manner, all or any part of the currently unplatted property, if any, contained within the boundaries of the Subdivision Plat and each Lot as replatted shall be subject to these restrictions as if such Lots were originally included herein. Any such replat must comply with all local,

state, FHA and VA, replatting ordinances, statutes, regulations and requirements.

SECTION 9.      AMENDMENT.      This Declaration may be amended only by an instrument executed by the Owners of at least 2/3 of the Lots in the Subdivision, and such amendment shall become effective as of the date an instrument, signed and acknowledged by the Owners of not less than 2/3 of the Lots in the Subdivision is filed for record in Harris County, Texas, so amending this Declaration. In addition, as further provided in Article XI, as long as there is Class B membership, the amendment of this Declaration shall require the prior approval of the FHA and VA. No amendment affecting Declarant's rights under this Declaration shall be effective without the written consent of Declarant, except to the extent the foregoing part of this sentence is inconsistent with FHA/VA requirements.

Provided, 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 in Harris County, Texas for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or such Owner's mortgagee. All

amendments hereof shall be approved by FHA while the Declarant retains control of the Subdivision as evidenced by the existence of Class B membership in the Association, as described in Article III hereof, Section 4.

#### ARTICLE XI

##### ANNEXATION

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

Upon a merger or consolidation of the Association with another Association, the Association's properties, rights and obligations

may be transferred to the surviving or consolidated Association, or alternatively, the properties, rights and obligations of the 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. However, such merger or consolidation shall not effect any revocation, change or addition to the covenants and restrictions established by this Declaration and no merger or consolidation shall be permitted except upon approval of two-thirds (2/3) of each class of Members of the Association.

#### ARTICLE XII

##### RATIFICATION: LIENHOLDER.

Bank Texas N.A. ("Lienholder"), the owner and holder of a lien or liens covering the Lots, has executed this Declaration to evidence its joinder in, consent to, and ratification of the imposition of the provisions of this Declaration. Lienholder, by joining in, consenting to and ratifying this Declaration, does not subordinate the liens granted to it covering the herein described property to any liens securing any assessments, maintenance fees, or the like, provided for in this Declaration.

## ARTICLE XIII

RATIFICATION: ASSOCIATION

Colony Crossing Homeowners' Association, a Texas non-profit corporation, has executed this Declaration of Covenants, Conditions and Restrictions to evidence its agreement with the provisions hereof and its consent and of its Members to the annexation of Colony Crossing, Village of Sawyers Crossing into the Association. The Association further acknowledges that all Owners of Lots in Colony Crossing, Village of Sawyers Crossing shall have all the privileges, benefits and responsibilities of the owners of any other residential properties within the jurisdiction of the Association and that the Association's obligations and rights shall extend to and include all of the property included in Colony Crossing, Village of Sawyers Crossing.

IN WITNESS WHEREOF, this Declaration is executed this 17<sup>th</sup> day of JULY, 1995.

DECLARANT:

KIMBALL HILL TEXAS DEVELOPMENT,  
L.C.,  
a Texas limited liability company

By: [Signature]  
Name: Kirk Breinwischen  
Title: VICE PRESIDENT

## ASSOCIATION:

COLONY CROSSING HOMEOWNERS'  
ASSOCIATION,  
a Texas non-profit corporation

By: [Signature]  
Name: KIRK BREITENWISCHER  
Title: VICE PRESIDENT

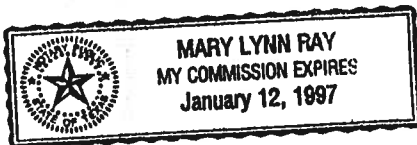
## LIENHOLDER:

BANK TEXAS N.A.

By: [Signature]  
Name: Robert Weakley  
Title: Vice President

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 17<sup>th</sup>  
day of JULY, 1995 by KIRK BREITENWISCHER,  
VICE PRESIDENT of Kimball Hill Texas Development, L.C.,  
a Texas limited liability company, on behalf of said company.

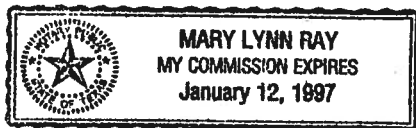


[Signature]  
Notary Public in and for  
The State of TEXAS

504-73-3800

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

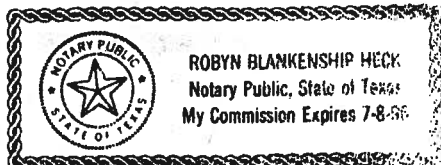
This instrument was acknowledged before me on this the 27<sup>th</sup>  
day of JULY, 1995 by KIRK BREITENWISCHER,  
VICE PRESIDENT of Colony Crossing Homeowners'  
Association, a Texas non-profit corporation, on behalf of said  
corporation.



Mary Lynn Ray  
Notary Public in and for  
The State of T E X A S

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 13<sup>th</sup>  
day of July, 1995 by Robert Weakley,  
Vice President of Bank Texas N.A., a national banking  
association, on behalf of said banking association.



jfa\powers\dec.005

Robyn Blankenship Heck  
Notary Public in and for  
The State of T E X A S

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL  
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
THE 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 hereon by me; and was  
duly RECORDED, in the Official Public Records of Real Property of  
Harris County, Texas on

JUL 31 1995

RETURN TO:  
STEWART TITLE CO. - HOUSTON  
P. O. Box 1504  
Houston, TX 77251-1504  
ATTN: Blindsey



Beverly B. Kaufman  
COUNTY CLERK  
HARRIS COUNTY TEXAS

COUNTY CLERK  
HARRIS COUNTY TEXAS

95 JUL 31 PM 1:32

FILED