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STATE OF GEORGIA  
COUNTY OF COBB

COBB SUPERIOR COURT CLERK

*[Signature]*

81 MAR 10 P 1:18

FILED IN CASE NO. 311

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION, made and entered into on the 2nd day of MARCH, 1981, by FRED T. SULLIVAN and YOUKO J. RISSANAN, their successors and assigns in title, (hereinafter "present owners");

W I T N E S S E T H

WHEREAS, the present owners are the owners of that tract of land lying and being in Land Lots 923 and 938 of the 17th District, 2nd Section, Cobb County, Georgia, being more particularly described in Exhibit "A" attached hereto and made a part hereof by reference, said property being referred to hereinafter as the "property" or the "subject property;" and

WHEREAS, it is to the benefit and advantage of the present owners of the property that there be protective covenants regulating the use of the property and that the same be established as covenants running with the land; and

WHEREAS, said property was formerly owned by the Flagship National Bank of Miami, which bank applied for rezoning of said property from PSC to GC (being Petition No. 136 initially heard by the Cobb County Commission on July 5, 1978); and

WHEREAS, the Valencia Hills I Owners Association objected to said zoning; and

WHEREAS, the then owner and said Association negotiated a settlement of their differences by agreeing to protective covenants being adopted by the then owner; and

WHEREAS, the Board of Commissioners of Cobb County, Georgia, rezoned said property to General Commercial (GC), subject to the covenants as agreed upon between the then owner and the Association above referred to; and

WHEREAS, the property was never used for the intended purpose as contemplated by the covenants and the rezoning, that is, a retail liquor store; and

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WHEREAS, the present owners, who purchased the property from the Flagship National Bank of Miami, have entered into a contract to sell said property to Texaco, Inc., for the purpose of a retail service station and related uses; and

WHEREAS, the present owners did, on the 28th day of January, 1981, apply for rezoning from General Commercial (GC) with stipulations to General Commercial (GC) for the above purposes; and

WHEREAS, the present owners, in consideration for the Valencia Hills Condominium Association, Inc., (the corporate successor to the Valencia Hills I Owners Association), not opposing the said application for rezoning, have agreed to (a) request that the said application for rezoning be made subject to the covenants contained herein; and (b) record the covenants contained herein in the Office of Land Records, Cobb County, Georgia, if the rezoning, as set forth in subparagraph (a), above, is approved; and

WHEREAS, these covenants are made and entered into for the benefit and advantage of the owners of the property known as the Valencia Hills Condominium, being adjacent to the property which is the subject of these covenants and being more fully described in Exhibit "B" attached hereto and made a part hereof by reference, (hereinafter referred to as the "Valencia Hills Property"), said benefits to run to the benefit of Valencia Hills Condominium Association, Inc., or its successor;

NOW, THEREFORE, in consideration of such benefits and in further consideration of the agreement by the Valencia Hills Condominium Association, Inc., not to oppose the rezoning petition now pending, the undersigned property owners do hereby proclaim, publish, and declare that the following protective covenants shall apply to the subject property and to any parcel which the undersigned property owners may sell, transfer, or assign, or convey by deed or otherwise which comes out of the subject property. These covenants shall be binding and shall

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run with the land, whether or not they are specifically declared or recited in any deed of conveyance or other instrument of conveyance executed and delivered by the property owners to any party. Said covenants shall be and become effective immediately and shall be included and run with the subject property in any deed of conveyance and shall be binding on all parties claiming unto any deed of conveyance or other instrument of conveyance by any of the property owners herein until terminated by operation of law or as hereinafter provided.

1.

The property shall be used only for a retail gasoline service station with a car wash and a convenience store ("C" store) which offers limited grocery, tobacco, sundries, and beer and wine merchandise for sale, and other uses customarily associated with retail gasoline service stations.

2.

Valencia Hills Condominium Association, Inc., agrees not to oppose the necessary rezoning required to erect and operate the above described improvements on the premises subject to the restrictions contained in these protective covenants, and said Association shall not object to the issuance of an alcoholic beverage license in the convenience store, as above referred to.

3.

The present owners and their successors and assigns, including, but not limited to, Texaco, Inc., shall provide landscaping, grading, and fencing in accordance with the plan marked Exhibit "C" attached hereto and made a part hereof by reference, (hereinafter sometimes referred to as "landscaping work"), in conjunction with any construction which takes place on the property. Time being of the essence, said landscaping work shall be performed not later than forty-five (45) days after the initial grading is complete. In the event that the landscaping work is not performed within the period prescribed,

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the present owners of the property expressly acknowledge that such failure to complete the landscaping work shall be deemed a total failure to perform, which cannot be adequately compensated by money damages and which shall give rise to an immediate right to seek specific performance on the part of the owners of the Valencia Hills Property acting through the Board of Directors of the Valencia Hills Condominium Association, Inc.; provided, however, that if the present owners are delayed beyond the time limit prescribed in this paragraph by labor disputes, fire, weather, or other causes beyond their control, then the time period specified shall be extended by an amount of time equal to such delay.

4.

The present owners shall maintain the landscaping work according to the following standards:

(a) All trees, shrubs, and other plantings shall be maintained in accordance with such landscaping practices and procedures as will ensure their good health and visual attractiveness;

(b) All trees, shrubs, and other plantings which die or become diseased shall be replaced with planting materials of a like kind, either immediately or upon such replacement as is seasonally feasible; and

(c) All fences, grades, and other improvements required as part of the landscaping work shall be maintained in good condition substantially in conformance with the landscaping plan designated as Exhibit "C" attached hereto and incorporated herein.

5.

The Valencia Hills Condominium Association, Inc., agrees to grant to Texaco, Inc., an easement to grade and improve a slope shown on Exhibit "C" as the dotted area between the east boundary of the property and the west boundary of Bolearic Drive, and to thereafter maintain any portion of

the above referenced landscaping work on the Valencia Hills Property.

6.

No temporary exterior sign of a trailer type shall be permitted on the property. All exterior sign sizes and design shall conform to Cobb County Licensing and Zoning Ordinances and only those signs directly relating to the business conducted on the premises shall be permitted.

7.

The Valencia Hills Condominium Association, Inc., now maintains a sign on the property which is the subject matter of these covenants. As a part of these covenants, said Association may leave said sign in its present location until same must be replaced or must be subject to major repairs, at which time it will be removed from the premises; provided, however, that the present owners agree to grant the Valencia Hills Condominium Association, Inc., an easement across the subject property to allow the Association to make such minor repairs to the sign, including, but not limited to, repainting, as it deems necessary.

8.

No improvement to be constructed on the subject property shall exceed a single story in height. A single story shall be defined as such is defined in the Cobb County, Georgia, Zoning Ordinance adopted December 6, 1978.

9.

No parking area lighting or other outside lighting located on the southern one-half of the property shall be directed outward from the improvements to be located on the property, except for lighting which is attached to the improvement. All parking area lighting or other outside lighting located on the property, whether attached to the improvements or not, shall be directed so as not to cast direct light on the Valencia Hills Condominium, unreasonably interfere with the quiet enjoyment of

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the condominium units or unreasonably annoy the residents of the Valencia Hills Condominium.

10.

Improvements to be located on the property shall have exterior surfaces painted or stained in earth tones compatible with the exterior colors of the Valencia Hills Condominium.

11.

These covenants are set forth for the benefit and advantage of the Valencia Hills Property and the owners thereof. Violation of any of these covenants shall give rise to an immediate right of enforcement on the part of the benefitting parties. It is hereby agreed that with all matters in regard to the covenants contained herein, including, but not limited to, the enforcement of these covenants, the Valencia Hills Condominium Association, Inc., shall be authorized and empowered to act on behalf of the benefitting parties.

12.

Invalidation of any one of these covenants by a judgment or court order shall in no way effect any of the other provisions, which provisions shall remain in full force and effect. These covenants, although considered separately by virtue of the preceding sentence, shall not be separable with respect to the imposition by the undersigned in deed of conveyance, and the undersigned shall in making deeds and conveyances to the subject property or any portion thereof make said deed and conveyance subject to the terms and conditions of these covenants. These covenants shall run with the land for a period of twenty (20) years after the date of recording thereof, after which date they will no longer be of any force or effect.

13.

The above protective covenants shall terminate in accordance with and as calculated under the preceding paragraph. Notwithstanding, however, in the event the property owners are prevented by operation of law beyond their control or doing

from operating an establishment for the uses above set out,  
these covenants shall terminate.

IN WITNESS WHEREOF, the property owners named in the  
beginning of this Declaration have signed and sealed this docu-  
ment the day and year above written, and the Valencia Hills  
Condominium Association, Inc., does hereby assent to these  
provisions.

Signed, sealed, and deliv-  
ered before me this 27<sup>th</sup>  
day of March, 1981.



[Signature]  
WITNESS

C. Ann Petrusko  
NOTARY

Notary Public, Georgia, State at Large  
My Commission Expires June 22, 1984

[Signature]  
FRED T. SULLIVAN

Signed, sealed, and deliv-  
ered before me this 2<sup>nd</sup>  
day of March, 1981.



[Signature]  
WITNESS

C. Ann Petrusko  
NOTARY

Notary Public, Georgia, State at Large  
My Commission Expires June 22, 1984

[Signature]  
YOUKO J. RISSANAN

VALENCIA HILLS CONDOMINIUM  
ASSOCIATION, INC.

Signed, sealed, and deliv-  
ered before me this 3<sup>rd</sup>  
day of March, 1981.



Nancy M. Minis  
WITNESS

Linda S. Thompson By:  
NOTARY

Notary Public, Georgia, State at Large  
My Commission Expires March 11, 1984

[Signature]  
President

*[Handwritten initials]*

EXHIBIT A

All that tract or parcel of land lying and being in Land Lots 923 and 938 of the 17th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

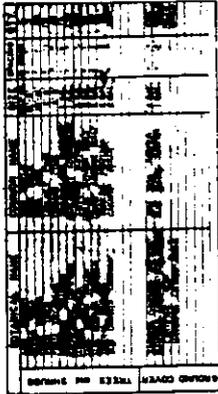
BEGIN at a point on the northeastern right of way of Powers Ferry Road (having an eighty-foot right of way) 410.31 feet southeasterly as measured along said right of way from its intersection with the southeastern right of way of Terrell Mill Road (having an eighty foot right of way); run thence north 51 degrees 25 minutes 00 seconds east 200.00 feet to a point; run thence south 20 degrees 41 minutes 18 seconds east 198.49 to a point; run thence south 57 degrees 10 minutes 00 seconds west 200.00 feet to the northeast right of way of Powers Ferry Road; run thence in a northwestern direction along said right of way north 19 degrees 23 minutes 00 seconds west 182.49 feet to the point of beginning; said property being more particularly shown on plat of survey for Texaco Inc. by Chester M. Smith, Jr., Surveyor, dated March 17, 1980, said plat being made a part hereof by reference.

*Handwritten signature and date:*  
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ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 923 and 938 of the 17th District, 2nd Section of Cobb County, Georgia and being more particularly described as follows:

BEGINNING at the corner common to said Land Lot 938, Land Lot 939, Land Lot 988 and Land Lot 989, said District, Section and County and running thence north 89 degrees 59 minutes 30 seconds west along the south line of said Land Lot 939 (being the north line of said Land Lot 938) a distance of 1130.52 feet to a point; running thence north 90 degrees 0 minutes 0 seconds west along the south line of said Land Lot 938 (being the north line of said Land Lot 939) a distance of 24.31 feet to a point; running thence north 20 degrees 16 minutes 9 seconds west a distance of 150 feet to a point; running thence north 89 degrees 52 minutes 6 seconds west a distance of 200 feet to a point on the northeasterly line of the right-of-way of Powers Ferry Road (being a 40 foot right-of-way); running thence north 20 degrees 12 minutes 8 seconds west along the northeasterly line of said right-of-way of Powers Ferry Road a distance of 179.75 feet to a point (which point is located a distance of 600.05 feet as measured southeasterly along the northeasterly line of said right-of-way of Powers Ferry Road from the intersection formed by the northeasterly line of said right-of-way of Powers Ferry Road and the southerly line of the right-of-way of Terrell Mill Road); running thence north 57 degrees 6 minutes 32 seconds east a distance of 360 feet to a point; running thence south 46 degrees 33 minutes 55 seconds east a distance of 220 feet to a point; running thence north 47 degrees 54 minutes 34 seconds east a distance of 133.7 feet to a point; running thence south 41 degrees 53 minutes 18 seconds east a distance of 76.37 feet to a point; running thence north 49 degrees 44 minutes 22 seconds east a distance of 363.62 feet to a point; running thence south 78 degrees 28 minutes 19 seconds east a distance of 205.11 feet to a point; running thence north 88 degrees 56 minutes 15 seconds east a distance of 179.44 feet to a point; running thence south 1 degree 17 minutes 25 seconds west a distance of 154.89 feet to a point; running thence north 87 degrees 55 minutes 50 seconds east a distance of 206.79 feet to a point on the east line of said Land Lot 938 (being the west line of said Land Lot 989); running thence south 0 degrees 34 minutes 47 seconds west along the east line of said Land Lot 938 (being the west line of said Land Lot 989) a distance of 437 feet to the POINT OF BEGINNING; being shown on that certain plat of survey (Master Plot Plan) to which reference is made for all purposes entitled "Valencia Hills I" prepared by Richard Carter Woodman, Georgia Registered Professional Engineer No. 5897, and dated October 29, 1973.

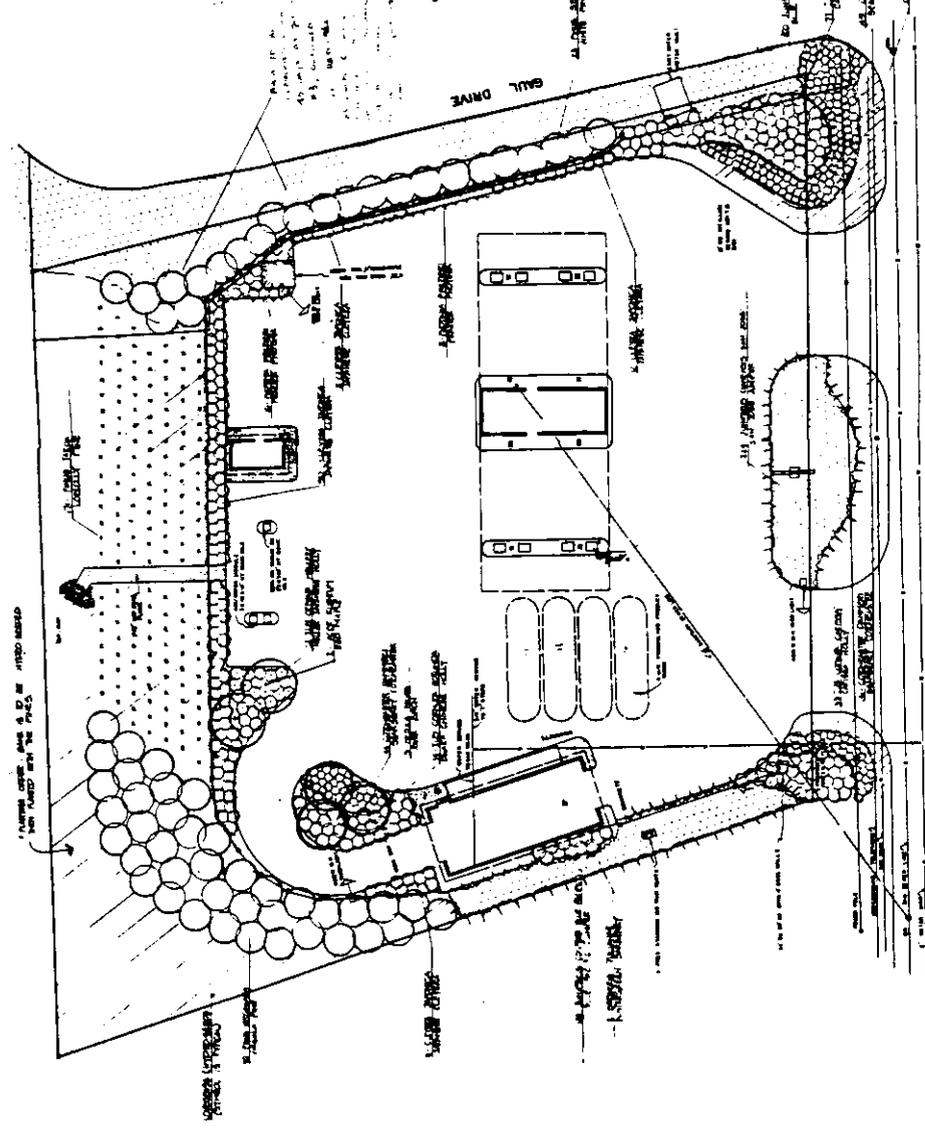
EXHIBIT B 1



THE FOLLOWING IS A LIST OF THE PLANTS AND TREES WHICH WERE FOUND IN THE AREA OF THE GARDEN AND THE ADJACENT DRIVE AND DRIVEWAY. THE PLANTS AND TREES WERE IDENTIFIED BY THE GARDENERS AND THE RESULTS ARE SET FORTH IN THE LIST WHICH IS ATTACHED TO THIS REPORT. THE PLANTS AND TREES WERE IDENTIFIED BY THE GARDENERS AND THE RESULTS ARE SET FORTH IN THE LIST WHICH IS ATTACHED TO THIS REPORT. THE PLANTS AND TREES WERE IDENTIFIED BY THE GARDENERS AND THE RESULTS ARE SET FORTH IN THE LIST WHICH IS ATTACHED TO THIS REPORT.

EXHIBIT C

EXHIBIT C



POWER'S FERRY ROAD

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|----------------|------|
| TEXAS INC.     | 1957 |
| POWER FERRY    | 1957 |
| THORNTON, TEX. | 1957 |