

DECLARATION
of
AMENDED AND RESTATED
RESTRICTIONS
for
MEMORIAL PLAZA,
SECTIONS ONE, TWO AND THREE
a Harris County Subdivision

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DECLARATION
of
AMENDED AND RESTATED RESTRICTIONS
for
MEMORIAL PLAZA, SECTIONS ONE, TWO AND THREE
all Harris County Subdivisions

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF HARRIS §

WHEREAS, MEMORIAL PLAZA DEVELOPMENT CO., a Texas Corporation was the sole owner of MEMORIAL PLAZA, also known as MEMORIAL PLAZA, SECTION ONE a subdivision in Harris County, Texas, according to the map or plat thereof filed of record in Volume 49, Page 74 of the Map Records of Harris County, Texas; and

WHEREAS, MEMORIAL PLAZA DEVELOPMENT COMPANY did impose on MEMORIAL PLAZA, SECTION ONE all those certain covenants, conditions, restrictions and easements set forth in that certain instrument filed of record in Volume 3059, Page 67, et seq., of the Deeds Records of Harris County; Texas, in (the "Memorial Plaza, Section One, Prior Restrictions"); and

WHEREAS, J. H. MacNAUGHTON, TRUSTEE, was the sole owner of MEMORIAL PLAZA SECTIONS TWO AND THREE, both Harris County, Texas subdivisions according to the map or plat thereof respectively filed of record in Volume 58, Page 69, et seq., and Volume 82, Page 47, et seq., of the Map Records of Harris County, Texas; and

WHEREAS, J. H. MacNAUGHTON, TRUSTEE, did impose on MEMORIAL PLAZA, SECTION TWO all those certain covenants, conditions, restrictions and easements set forth in that certain instrument filed of record in Volume 1254, Page 350, et seq., of the Deed Records of Harris County, Texas, (the "Memorial Plaza, Section Two, Prior Restrictions"); and

WHEREAS, J. H. MacNAUGHTON, TRUSTEE, did impose on MEMORIAL PLAZA, SECTION THREE all those certain covenants, conditions, restrictions and easements set forth in that certain instrument filed of record in Volume 1641, Page 447, et seq., of the Deed Records of Harris County, Texas, (the "Memorial Plaza, Section Three, Prior Restrictions", which along with the "Memorial Plaza, Section One, Prior Restrictions and Memorial Plaza, Section Two, Prior Restrictions" shall hereafter collectively be referred to as the "Prior Restrictions"); and

WHEREAS, the Prior Restrictions provide the terms of the Prior Restrictions may be amended at any time by a proper instrument signed by a majority of the then Owners, which instrument must be recorded.

NOW, THEREFORE, the Owners listed in Exhibit "A", representing a majority of the Owners in each Memorial Plaza, Sections One, Two and Three (the "Subdivision"), all wishing to amend and restate the prior Restrictions, do hereby adopt, establish and impose upon all of the Lots in the Subdivision, the following restrictions and covenants, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots in the Subdivision for the benefit of present and future Owners, which restrictions and covenants shall take the place of the Prior Restrictions and which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in any of the Lots in the Subdivision and shall inure to the benefit of each Owner thereof.

ARTICLE I. -- DEFINITIONS

As used in this instrument, the terms set forth below shall have the following meanings:

Section 1.1 "Association" shall mean and refer to Memorial Plaza Civic Club, Inc., a non-profit corporation created under the laws of the State of Texas, its successors and assigns. Membership in the Association shall be regulated according to the Articles of Incorporation, Bylaws, and other governing documents of the Association.

Section 1.2 "Declaration" shall mean and refer to this "Declaration of Restated and Amended Covenants, Conditions and Restrictions for Memorial Plaza, Sections One, Two and Three, all Harris County, Texas Subdivisions."

Section 1.3 "Improvement" or "Improvements" shall mean a structure such as a single family residence and garage, either attached or detached, regardless of whether the garage contains a dwelling area or living space. Improvement or improvements shall not mean or include, porches, terraces (roofed, covered or uncovered), patio covers, awnings, walkways, sprinkler systems, fences not protruding beyond the leading edge of a single family residence, screening walls, retaining walls, stairs, decks, swimming pools, fixtures, poles, exterior lighting, landscaping and/or other similar changes or alterations that are not readily apparent from the exterior of the structure.

Section 1.4 "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to the surface estate of any Lot which is part of the Subdivision. Each Owner is a member of the Association and is entitled to one vote per Lot in the affairs and activities of the Association.

Section 1.5 "Properties" shall mean and refer to that certain real property (land and improvements) as may be brought within the jurisdiction of the Association.

Section 1.6 "Single Family Residence" shall mean and include a free-standing dwelling house located on a Lot, the use of which is defined in accordance with provisions of these restrictions. In addition to restricting occupancy of Lots to single families, the term "single family residence" as used herein, shall be held and construed to exclude structure of temporary character, trailer, camper, camper trailer, motor vehicle, recreational vehicle, tent, shack, garage, barn, mobile home, double-wide mobile home, modular home, house trailer, duplex, garage apartment, apartment house, town home, boarding home or other outbuilding on the Lot or Lots, except, however, with the Board's prior written approval, temporary structures may be erected for use

in connection with the repair or rebuilding of Improvements on a Lot. The type of structures that are identified above that are not to be construed as a "Single Family Residence" is not and may not be construed as an exclusive list of the type of structures that are not a "Single Family Residence."

Section 1.7 "Structure" shall mean and refer to any Improvement, dwelling, building, attachment, garage, or other structure within its ordinary meaning, constructed or to be constructed on any Lot.

Section 1.8 "Lot" shall mean and refer to any numbered Lot or plot of land as shown on the recorded subdivision plats.

Section 1.9 "Living Unit" shall mean and refer to the main residential structure on any Lot in the Subdivision.

Section 1.10 "Board of Directors" shall consist of the individual or individuals duly elected to serve as Directors of the Association in accordance with the Bylaws of the Association.

Section 1.11 "Subdivision" shall mean and refer to the three sections of Memorial Plaza, which are: Section One, according to the plat thereof filed in Volume 49, Page 74, of the Map Records of Harris County, Texas; Section Two, according to the plat thereof filed in Volume 58, Page 69, of the Map Records of Harris County, Texas; and Section Three, according to the plat thereof filed in Volume 82, Page 47, of the Map Records of Harris County, Texas.

ARTICLE II. – ARCHITECTURAL CONTROL

Section 2.1 Architectural Control Committee: The Board of Directors shall have full power and authority to enforce the restrictions, covenants and conditions imposed upon the Subdivision in this Article II. The Board of Directors shall appoint an Architectural Control Committee to assist the Board of Directors in the execution as of its rights and duties contained in this Article II. The Architectural Control Committee shall consist of not less than three (3) persons who are property owners of the Subdivision, each of whom shall serve for a term of two (2) years. In the event any committee member dies, resigns, or becomes ineligible to act, the Board of Directors shall appoint a successor to fill out the remaining term of the member who has died, resigned, or become ineligible. Any committee member may be removed by the Board of Directors with or without cause, and the Board of Directors may appoint a new successor to fill out the remaining term of the removed member.

Section 2.2 Approval of Plans and Specifications: No Lot, Improvement or Structure shall be commenced, erected, placed, or altered on any Lot until the plans, specifications and/or plot plan showing the nature, kind, color, shape, height, materials, and location of the structure have been submitted in writing to and reviewed by the Architectural Control Committee, whose recommendations will be subject to final approval by the Board of Directors, as to conformity and harmony of external design and color with existing structures in the Subdivision, and as to the location of the building with respect to topography and finished ground elevation. The term "color" as used in this paragraph means that the Board of Directors has the authority to restrict unusual colors or color schemes that do not exist in the subdivision at the time that the plans, specifications and/or plot plans are submitted for approval. A majority of the Board of Directors shall have the power to either approve or disapprove any proposal submitted to it by the Architectural Control Committee. In

the event the Board of Directors fails to approve or disapprove such plans and specifications within forty-five (45) calendar days following their submission to *the Architectural Control Committee*, approval by the Board of Directors will not be required and this provision will be deemed to have been satisfied. Any decision of the Board of Directors shall be final and conclusive, except as otherwise provided in Section 2.4.

Section 2.3 Control Over Maintenance of Improvements: If in the opinion of the Board of Directors the exterior of any Living Unit, Improvements, Structure, fences or walls are in need of repair, a fresh coat of paint or other major maintenance such that the appearance or condition of the property is a nuisance or hazard, the Board of Directors shall notify the Owner thereof in writing of the need of such repairs or maintenance and if such repairs or maintenance are not accomplished (or appeal to the membership is not made as provided in Section 2.4 within sixty (60) calendar days of said notice, then the Board of Directors may proceed to have such repairs or maintenance work done for the account of and payment by the Owner, and the Owner shall pay upon demand the Board of Directors' cost, together with interest at the rate of ten percent (10%) per annum until such payment is made, and reasonable attorney's fees if referred to an attorney for collection, all of which shall be retained by the lien against the Lot described in Article IV. An Owner may request and the board may approve an extension of time within which to make the repairs required under this Section 2.3.

Section 2.4 Appeals Process: Any Owner whose plans, specifications and/or plot plans *are* rejected by the Board of Directors in relation to this Article II is entitled to an automatic appeal of that decision to the Association's general membership. The automatic appeal will be the subject of a special meeting called the Board of Directors subject to the rules for calling special meetings of the membership and also rules of quorum as set forth in the By-Laws. All decisions made at such a special meeting shall be determined by a simple majority of the Owners present either in person or by proxy. Any costs associated with such meetings will be paid by the unsuccessful party. In the event the simple majority of Owners decide in favor of the individual making the appeal, the cost of such meeting will be paid by the Association. Should the Owners decide in favor of the Board of Directors' original decision, the appealing Owner shall be liable for the costs of such meeting.

Section 2.5 Non-Liability for Committee Action: Neither the Association, its Board or the Committee or the members thereof shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing nor shall its approval of an Improvement or modification to an Improvement on a Lot be deemed approval of the Improvement or modification of the Improvement from the standpoint of safety, whether structural or otherwise, or conformance to building codes or other governmental laws or regulations.

Section 2.6 Design Guidelines: Upon receiving written approval by at least fifty-one percent (51%) of the Owners holding the aggregate votes of the Lots in the Subdivision which includes those areas described in Section 1.11, above, which have adopted these Restrictions, the Association may adopt and approve Design Guidelines which expand the duties and responsibilities of the Architectural Control Committee and outlines minimum acceptable construction standards for the Subdivision. If Design Guidelines are approved and they impose requirements that are more stringent than the provisions of these Restrictions, the provisions of the Design Guidelines shall control.

PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE, AND OWNER SHOULD CONTACT THE BOARD AND/OR CHECK THE HARRIS COUNTY REAL PROPERTY RECORDS TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES, IF ANY, WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.

NO DESIGN GUIDELINE SHALL BE APPROVED FOR THE SUBDIVISION UNLESS APPROVED IN WRITING BY MEMBERS HOLDING AT LEAST FIFTY-ONE PERCENT (51%) OF THE AGGREGATE VOTES OF THE LOTS IN THIS SUBDIVISION WHICH INCLUDES THE SECTIONS OF MEMORIAL PLAZA WHICH HAVE ADOPTED THESE RESTRICTIONS. AFTER THE DESIGN GUIDELINES ARE ADOPTED IN ACCORDANCE WITH SECTION 2.6, THEY MAY BE RESCINDED IN WRITING BY MEMBERS HOLDING AT LEAST FIFTY-ONE PERCENT (51%) OF THE AGGREGATE VOTES OF THE LOTS IN THE SUBDIVISION WHICH INCLUDES THE SECTIONS OF MEMORIAL PLAZA THAT HAVE ADOPTED THESE RESTRICTIONS. THE SIGNATURES OF THE OWNERS WHO APPROVE THE ADOPTION OR RESCISSION OF THE DESIGN GUIDELINES NEED NOT BE NOTARIZED BUT THEY MUST BE RECORDED IN THE HARRIS COUNTY REAL PROPERTY RECORDS AND ACCOMPANIED BY A SIGNED AND NOTARIZED CERTIFICATE FROM AN AUTHORIZED OFFICER OF THE ASSOCIATION.

ARTICLE III. – USE RESTRICTIONS, COVENANTS AND CONDITIONS

Section 3.1 Land Use and Building Type: No Lot shall be used except for single family residential purposes. In addition to restricting occupancy of Lots to single families, the term “single family residential purposes” as used herein, shall be held and construed to exclude, without limitation, duplex houses, apartment houses, garage apartments, half-way houses, hotels, hospitals and nursing homes. No Lot shall be used for business, commercial or professional uses of any kind except as provided in Section 3.20. No structure shall be erected, altered, placed or permitted to remain on any Lot other than (a) one single family dwelling not to exceed two and one-half stories in height, and (b) one attached or detached private garage for not less than two (2) nor more than three (3) cars.

Section 3.2 Dwelling Size: As set forth in the Prior Restrictions, the ground floor area of the main Living Unit, exclusive of open porches and garages, shall be as follows:

- (i) Living Units in Memorial Plaza, Section One – the ground floor area, exclusive of one story open porches and garages, shall not be less than 1,500 square feet; and
- (ii) Living Units in Memorial Plaza, Sections Two and Three – the ground floor area, exclusive of one story open porches and garages, shall not be less than 1,800 square feet for a one story dwelling and not less than 1,500 square feet for a dwelling of more than one story.

Section 3.3 Construction: All improvements shall be new construction. No temporary Structure, trailer, mobile home, tent, shack, garage, barn or outbuilding shall be used as a residence, either temporarily or permanently. The exterior construction of any Living Unit shall be at least fifty-one percent (51%) brick, stone, or other approved masonry excluding stucco. Provided, however, stucco and Exterior Insulating Finishing System (“EIFS”) may be used in a 100% application with the prior written approval of the Board of Directors. In determining such percentage, roof areas and garages shall be excluded, but attached garages, porches, and other Structures consisting part of the Living Unit shall be included. A garage which is separated

by at least ten (10) feet but connected to the Living Unit by a covered walkway is not considered as being attached.

Section 3.4 Building Setbacks: No Structure, building or Living Unit shall be located nearer to the front Lot line or nearer to the side Lot line than the minimum setback lines shown on the recorded Subdivision plats, and shall not encroach on any easement shown on the plats. No Structure, building or Living Unit shall be located nearer than five (5) feet to any Lot line, except that a three (3) foot side yard shall be permissible for a detached garage or other permitted accessory building located fifty (50) feet or more from the front property line. For the purpose of setbacks, eaves, steps, and open porches shall not be considered as part of a building; however, no part of any structure shall encroach upon another Lot. No Living Unit or any part thereof shall be located on any interior Lot nearer than seven (7) feet to the rear lot line. For the purposes of these restrictions, the front of each Lot shall coincide with and be the property line having the smallest or shortest dimension abutting a street. Each Living Unit will face the front of the Lot, and each garage will face the front of the Lot on which it is situated and will be provided with driveway access from the front of the Lot only, except that garages on corner Lots may have driveway access from the side street if this exception is specifically approved by the Board of Directors.

Section 3.5 Minimum Lot Area and Width: Portions of Lots may be added to whole Lots as indicated on the recorded Subdivision plats to make one building site, but no Living Unit shall be erected or placed on any building site which has a width of less than that provided in the Prior Restrictions, as follows:

- (i) Memorial Plaza, Section One – eighty (80) feet at the minimum set back line, and no Living Units shall be placed on a Lot having less than 9,850 square feet, except as to Lots No. 17, 18, in Block 6, so far as the width at the minimum set back line is concerned;
- (ii) Memorial Plaza, Section Two – sixty-five (65) feet at the minimum building set back line, as reflected on the plat, and no Living Unit shall be placed on a Lot having less than 8,000 square feet; and
- (iii) Memorial Plaza, Section Three – sixty (60) feet at the minimum building set back line, as reflected on the plat, and no Living Unit shall be placed on a Lot having less than 8,000 square feet.

No Lots shall be re-subdivided in any fashion except as follows: any person owning two or more adjoining Lots may consolidate such Lots into one building site under the guidelines in Sections 3.1, 3.2, 3.3 and 3.4. If more than one Lot is used as one building site, the restrictions set out herein shall not apply to the common property line of such Lots.

Section 3.6 Easements: Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded subdivision plat.

Section 3.7 Destruction of Structures: Any building, Structure, improvement or Living Unit partially or totally damaged or destroyed by fire, storm, deterioration or by any other means shall be repaired or demolished within sixty (60) calendar days, and the Lot restored to an orderly and attractive condition. Should additional time be necessary, extended time periods may be requested by the Owner for approval by the Board of Directors.

Section 3.8 Nuisances: No nuisance shall be erected or placed upon any Lot. No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot shall be used for any illegal purposes, or for any purpose in violation of any state or federal law, or of any police, health, sanitary, building or fire code, regulation or instruction relating to or affecting the use, occupancy or possession of any Lot. No activity that might reasonably be considered to reduce the marketability of any Lot or the desirability of the subdivision as a residential neighborhood shall be carried on upon any Lot or common area. The Board of Directors of the Association is hereby authorized to determine what constitutes a violation of this restriction.

Section 3.9 Acceptable Pets: No animals, livestock or poultry of any kind shall be kept on any Lot or in the neighborhood, except that dogs, cats and other common household pets may be kept by the occupants. Any personal pet(s) kept by an Owner on a Lot must be done in conformity with any applicable ordinances enacted by the City of Houston. No pets shall be kept, bred or maintained for commercial purposes. All pets shall be kept under control in an enclosed area except when on a leash with the Owner or Owner's representative.

Section 3.10 Storage and Disposal of Garbage and Trash: No Lot shall be used or maintained as a dumping ground for rubbish. No garbage, trash, rubbish, manure, waste, debris or materials of any kind shall be kept or allowed to remain on any Lot except in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be visible from streets or other Lots. A small compost pile or container may be kept, provided it does not attract rodents or vermin and is in an area adequately screened so as not to be visible from streets or other Lots. Trash and garbage shall be kept in sanitary containers and shall be removed from each Lot at least weekly. No poisonous or hazardous products may be kept on any Lot, except a small amount of paint, gasoline for lawn equipment, and other household or lawn maintenance products.

Section 3.11 Sewage and Burning Trash: No privy, cesspool or septic tank shall be placed or maintained on any Lot. No trash, garbage or waste burning shall be permitted on any Lot.

Section 3.12 On Site Drilling: No oil or natural gas drilling, oil or natural gas development activities, or oil refining, quarrying, or mining operations of any kind, or oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, or derricks or other structures for use in boring for oil, natural gas, minerals or water shall be placed, erected, maintained or permitted on any Lot.

Section 3.13 Motor Vehicles, Boats, Trailers, etc.: No boat(s), marine craft, trailer, motor home, recreational vehicle, camping unit, bus, large truck, tractor, commercial vehicle or self-propelled or towable equipment or machinery of any sort shall be stored, parked, maintained or repaired on any street or on any Lot for a period longer than forty-eight (48) hours during a seventy-two (72) hour period, except in an enclosed structure or in an area screened by planting or fencing so as not to be visible from streets or other Lots. Provided, however, during the construction, repair or maintenance of structures on a Lot, necessary construction vehicles may be parked thereon. Non-running motor vehicles or vehicles not in a usable condition shall be stored inside a garage or enclosure so as not to be visible from streets or other Lots. No passenger vehicle shall be repaired on any street or Lot for a period longer than forth-eight (48) hours during a seventy-two (72) hour period except in an enclosed structure or in an area screened by planting or fencing so as not to be visible from streets or other Lots.

A boat, motor vehicle, trailer or other item identified in this paragraph, Section 3.13, will be presumed to be non-running or in an unusable condition if it does not have a current Texas inspection sticker or registration tags placed on the vehicle or trailer as designated by the State of Texas or if a tire or tires are flat or missing.

Section 3.14 Working Hours: Except in an emergency or when other unusual circumstances exist, outside work or noisy interior construction work shall be limited to the time period between 7:00 a.m. and 8:00 p.m.

Section 3.15 Antennas and Satellite Dishes: No antenna or satellite dish which exceeds one meter (39 inches) in diameter or antenna or satellite masts which exceed more than twelve (12) feet above the roof line edge at the soffit of any Living Unit are permitted on any Lot, unless otherwise approved in writing by the Board of Directors. No permitted satellite dishes and antennas shall be erected, constructed, or placed on any Lot, unless such installation strictly complies with the following minimum conditions. The minimum conditions are as follows:

- (a) To the extent feasible, an antenna or satellite dish, including its base and anchoring structure, shall not extend above the roof ridge line of the Living Unit and shall not be visible from the frontage or any adjoining street.
- (b) To the extent feasible, no antenna or satellite dish shall be constructed or placed or permitted to remain on any utility easement or other easement or right-of-way located on any Lot.
- (c) An antenna or satellite dish must be securely mounted to a base, so as to be able to withstand the effects of high winds or other extraordinary weather conditions; however, no guy wires or similar mounting apparatus will be allowed.
- (d) No advertising slogans, logos, banners, signs or any other printing or illustration whatsoever shall be permitted upon or be attached to an antenna or satellite dish.
- (e) No antenna or satellite dish shall be permitted to cause any distortion or interference whatsoever with respect to any other electronic device in the Subdivision.
- (f) An antenna or satellite dish shall be one solid color, which color must enable the satellite dish to blend into the background.
- (g) In all cases, each Lot may contain only one (1) permitted antenna and one (1) permitted satellite dish.

Section 3.16 Street Numbers and Mailboxes: House numbers and mail boxes shall be harmonious with the overall character and aesthetics of the neighborhood. Each Lot shall have its street address marked in a manner that is legible from the street.

Section 3.17 Sight Lines: No object, fence, wall, tree, hedge or planting shall be placed on any Lot in such a manner as to obstruct sight lines for vehicular traffic. No fences, walls or shrub plant that obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of the driveway or pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight line.

Section 3.18 Signs: No sign of any kind shall be displayed to the public view, except with the written consent of the Board of Directors. One (1) sign, however, of not more than six (6) square feet advertising the property for sale or rent is acceptable and temporary signs of not more than four (4) square feet advertising garage sales, remodeling of structure, family announcements, or support of political candidates just before and after an election are acceptable.

Section 3.19 Lot Maintenance: The Owner of each Lot shall maintain the Lot, including trees, hedges, and plantings thereon in a neat, orderly and attractive condition. Front and back lawns shall be mowed on a regular basis. Furthermore, the drying of clothes in public view from the street is prohibited. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements, and the continuance of such default after ten (10) calendar days written notice, the Association or its agent, without liability to the Owner or occupant in trespass or otherwise, has the right (but not the obligation) to enter upon said Lot or cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot and improvements in a neat, orderly and attractive condition, and may render a statement or charge to the Owner or occupant of such Lot for the cost of such work. The Owner or occupant agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof, plus reasonable and necessary attorney's fees if referred to an attorney for collection, all of which shall be retained by the Lien against the Lot described in Article IV. An Owner may request and the Board of Directors, within its sole and exclusive discretion, may approve an extension of time within which to make the repairs required under this Section, on a case by case basis.

Section 3.20 Prohibited Use: No Lot shall be used for any professional, business or commercial purpose or activity of any kind where the general public is invited. An Owner of a Lot may use their Single Family Residence for professional, business or commercial purpose or activity where the general public is not invited, provided such activity is exclusively conducted by telephone and that such use is purely incidental to the Owner's residential purpose. "General public" includes clients, agents and employees. A small business operation which is being performed by a property owner out of his or her residence shall not be considered to be in violation of these covenants: (a) if the business activity is not advertised in public as being operated out of the property owner's residence; (b) if there is no public visual indication that the business activity is being operated out of the property owner's residence; (c) if the business activity does not attract more vehicles to the property owner's residence than would be usual and customary at such Lot; (d) and if all other provisions of these covenants, restrictions and reservations are being complied with. The intent of this restriction is to allow businesses that are incidental to the *Owner's* residential use. The Board of Directors of the Association, within its sole and exclusive discretion and the parameters outlined in this section, is authorized to determine what constitutes a prima facie violation of this Section 3.20.

Section 3.21 Infringement: An Owner shall do no act or any work that will impair the structural soundness or integrity of another Lot or improvement thereon, or impair any easement, or allow any condition to exist which will adversely affect other Lots, improvements thereon, or their Owners.

ARTICLE IV. – MEMBERSHIP IN ASSOCIATION AND COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of Membership in Association, Lien and Personal Obligation of Assessments: The Owner of each Lot in the Subdivision shall be a member of the Association and each Lot shall be entitled to one vote in the Association. Each Lot in the Subdivision shall also be subject to regular annual assessments or charges and special assessments. Each Owner of any Lot is deemed to covenant and agree to pay to the Association: (a) regular annual assessments or charges which shall be payable as hereinafter set forth, and (b) special assessments for capital improvements, to be established and collected as hereinafter provided. Each such assessment, together with any penalties, interest, court costs and reasonable legal fees, shall also be the personal obligation of the person, persons or entity who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by such successors. Additionally, each Owner by voting in favor of this Declaration or by accepting a deed to any Lot in the Subdivision after the date of this Declaration is filed of record in the Official Records of Harris County, Texas, whether or not it is in such deed, is deemed to covenant and agree that said Lot is subject to an assessment lien for the regular annual assessment and the special assessments for capital improvements set forth above as well as all interest, penalties, collection costs, court costs and reasonable legal fees.

Section 4.2 Non-Judicial Foreclosure: Nothing in these Restrictions shall allow, provide for or permit foreclosure by non-judicial means.

Section 4.3 Lots with Homestead Designation: Nothing in these Restrictions shall allow, provide for or permit the Association to foreclose on any Lot that is designated as an Owners homestead, as that term is defined under Texas law, to collect delinquent, regular annual and/or special assessments. In the event that a delinquent Owner's Lot is protected under Texas homestead law then the Association shall file a lien to collect the delinquent, regular, annual and/or special assessments as provided for under Sections 4.9 and 4.10

Section 4.4 Purpose of Assessments: The regular annual and special assessments levied by the Association shall be used to benefit all residents of said Subdivision and promote the property value of each Lot. Such uses and benefits to be provided by the Association may include, but are not limited to, the following: collecting and disposing of garbage and refuse; mosquito control; courtesy patrol; caring of vacant Lots; maintenance of entranceways and similar facilities serving the properties; costs of enforcing the restrictions, covenants and conditions provided for herein; business and other administrative costs of the Association; and in doing any other thing or things necessary or desirable which the Board of Directors of the Association deem appropriate to keep the properties neat and presentable. IT IS UNDERSTOOD EACH RESIDENT OF THE PROPERTY, THEIR GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY. IT IS FURTHER UNDERSTOOD AND AGREED THAT IT SHALL NOT BE ONE OF THE PURPOSES OF THE ASSOCIATION TO PROVIDE SECURITY TO THE RESIDENTS OF THE PROPERTY OR THEIR GUESTS OR INVITEES. NEITHER THE ASSOCIATION, ITS BOARD, NOR ITS OFFICERS OR DIRECTORS, SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR ALLEGED FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES TAKEN, IF ANY.

Section 4.5 Regular Annual Assessment: The Board of Directors of the Association shall fix the amount of the regular annual assessment subject to the approval of a majority of the members of the Association of those present at the regular annual meeting of the Association, provided a quorum is present as provided in the By-Laws of the Association. The first of such regular annual assessments shall be fixed at a maximum of Two Hundred and Eighty-Five Dollars (\$285.00) per Lot commencing in 1998. Subsequent regular annual assessments may be increased or decreased from time to time by the Board of Directors subject to approval of the membership as outlined above. Any such increase in the regular annual assessment shall not exceed ten percent (10%) of the previous year's regular annual assessment. The maximum annual maintenance assessment, however, may be increased above ten percent (10%) of the previous year's maximum annual assessment by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose. The regular annual assessment shall be for the period July 1 through June 30 of each such twelve month period. The Board of Directors shall fix the amount of the regular annual assessment against each Lot at least thirty (30) calendar days in advance of each annual assessment period.

Section 4.6 Regular Annual Assessment Due Date: The regular annual assessment on each Lot shall accrue and become due and payable on the first day of July of each year, commencing in 1998. The regular annual assessment shall be billed to each property owner on an annual basis and payment is due in full on July 1 of each year. This constitutes notice to each property owner of the due date when each annual payment is to be made. The Association shall, upon demand and for a reasonable charge, furnish a certificate setting forth whether the assessments on a specified Lot have been paid.

Section 4.7 Special Assessments: In addition to the regular annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any purchase, construction, reconstruction, razing, or repair in the Subdivision. Any such special assessment must have the approval of two-thirds (2/3) of the members at a meeting of the members of the Association duly called for such purpose.

Section 4.8 Notice and Quorum for Any Action Authorized Under 4.5 and 4.7: Written notice of any meeting called for the purpose of taking any action authorized under sections 4.5 or 4.7 shall be sent to all members of the Association not less than fifteen (15) calendar days nor more than fifty (50) calendar days in advance of such meeting. At any such meeting called, the presence of members of the Association, their proxies representing ten percent (10%) of the votes entitled to be cast shall constitute a quorum.

Section 4.9 Effect of Non-Payment of Assessments: Any regular annual or special assessment not paid within ninety (90) calendar days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum and the Owner shall be responsible for paying the reasonable attorneys' fees, costs, and expenses that are incurred as a result of their failure to pay the assessment. The Association may file suit against the Owner personally obligated to pay the assessment, file a claim or lien against the Lot or the delinquent Owner, or take whatever other legal action is necessary to protect the Association's rights and/or the rights of the remaining Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his or her Lot. The Association shall further have the power to suspend the voting rights of any member who has not paid his or her or its assessments in full by the due date.

Section 4.10 Notice of Lien: In addition to the right of the Board to enforce Assessments in the manners described herein, the Board may elect to file a claim of lien against the Lot of the delinquent Owner by recording a Notice of Lien setting forth:

- (a) the amount of the claim of delinquency;
- (b) the interest that has accrued and the costs of collection, expenses and attorneys' fees that have been incurred;
- (c) the legal description and street address of the Lot against which the lien is claimed; and
- (d) the owner's name.

Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the Lien upon payment by the owner of attorneys' fees and expenses incurred by the Board of Directors to cover the preparation and recordation of such release of lien.

Section 4.11 Subordination of the Lien to Mortgages: The assessment lien provided herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer, however, of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.12 Insurance: The Board of Directors of the Association may obtain liability insurance in such limits as they deem desirable for the effective operation of the Association. All costs, charges and premiums for the insurance shall be a common expense of all Owners and be a part of the maintenance assessment.

ARTICLE V. – GENERAL PROVISIONS

Section 5.1 By-Laws: The Association may make whatever rules and By-Laws it shall deem desirable to govern the Association and its members, provided, however, any conflict between such By-Laws and the provisions hereof shall be controlled by the provisions hereof.

Section 5.2 Enforcement: The Association, through its Board of Directors, or any Owner shall have the right to enforce, by a proceeding at law or in equity, these restrictions, conditions, covenants, reservations, assessments, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 5.3 Severability: Invalidation of any one of these covenants, restrictions or conditions by judgment or court order shall in no way affect any other provisions which remain in full force and effect.

Section 5.4 Amendment: The covenants, restrictions and conditions of this Declaration shall be binding upon all Owners and Lots, and all persons claiming thereunder for a period of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive

periods of ten (10) years. This Declaration may be amended at any time by an instrument signed by not less than the Owners of fifty-one percent (51%) of the Lots. No instrument shall be effective until it is recorded.

Section 5.5 Notice: Any notice required to be sent to any Owner under the provision of this Declaration shall be given in writing and deemed to have been properly sent when it is hand delivered to the Owner or deposited in the United States Mail addressed to the last know address of the person who appears as Owner in the Association's records at the time of such mailing.

Section 5.6 Books and Records of the Association: Upon written notice stating the purposes thereof, any member of the Association or by his or her duly appointed representative, shall be entitled to make a reasonable examination of the books and records of the Association at any reasonable time and for a proper purpose reasonably related to their interest as a member, at the office of the Association or at such other place as the Board of Directors shall prescribe. No member shall remove any books and records from the possession of the Association for any reason, but a member may request copies of books and records stating the specific books and records desired and a proper purpose for the request, provided such member shall pay all reasonable cost of providing the requested copies prior to obtaining same. Notwithstanding the foregoing, no member shall be entitled to examine any documents regarding the Association and the Association shall have the privilege to refuse the disclosure of any confidential communications regarding (i) any communications by and between past or current legal counsel to the Association and the Board of Directors of the Association, or any agent, employee, representative or committee of either, (ii) any communication privileged under the Texas Rules of Civil or Criminal Procedure; the Texas Rules of Civil or Criminal Evidence, and any other statute or law of the State of Texas.

Section 5.7 Existing Violations: If there exists on the date this Declaration is filed of record any Living Unit, building, improvement, or other Structure which is not in violation of the Prior Restrictions, such Living Unit, building, improvement, or other Structure shall be deemed to be in compliance with the Declaration by all parties having the right hereunder to compel compliance. Provided, however, should any Living Unit, building, improvement, or other Structure or any part thereof that would, but for this exception, constitute a violation of this Declaration be destroyed or otherwise removed after the date this Declaration is filed of record, then any replacement thereof must be constructed in compliance with the terms of this Declaration.

Section 5.8 Invalidation: Invalidation of any term or provision of these Restrictions by judgment of any court or otherwise shall in no way affect any other provision, which shall remain in full force and effect, except as to any terms and provisions which are invalidated.

Section 5.9 Grammar: The singular wherever used herein shall be construed to mean or include the plural when applicable and the necessary grammatical changes to required to make the provisions hereof apply either to corporation, other entities or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

Section 5.10 Headings: The headings to sections of these Restrictions are for convenience only and shall not be used to construe, interpret or limit the meaning of any terms or provisions hereof.

Section 5.11 Application of Restrictions: The terms and provisions of these Restrictions shall apply to, be binding upon, and inure to the benefit of the Association, all Owners of the Lots or any other property in the Subdivision, and their successors and assigns, and all occupants of any Single Family Residence or other Improvement.

Section 5.12 Limitation of Liability: Neither the Association, the Board, any member of a duly constituted committee of the Association and/or the Board, or any officer, agent, or employee of any of the same acting within the course and scope of their respective duties shall be liable to any person(s) for any reason(s) or for any failure to act if the action(s) or failure to act was in good faith and without malice.

Section 5.13 Notice of Sale or Lease: In the event an Owner sells his Lot, the acquiring Owner shall give the Association, in writing, the names of the new Lot Owner(s). Until such notice is received by the Association, the Association shall not be held responsible for incorrect notices and all notices provided by the Association to the address of the last known Owner shall be deemed to have been properly delivered.

Section 5.14 Section Approval: Upon obtaining the signatures of at least a majority of the Owners in any Section of Memorial Plaza, a counterpart of these Restrictions containing all such signatures from such Section may be recorded separately and shall be effective as to such Section upon recordation even though the signatures of at least a majority of the Owners of the other Sections have not yet been obtained. At such time at least a majority of the Owners of other Sections have signed these Restrictions, subsequent counterparts hereof containing all such signatures from each other Sections shall be recorded and shall thereupon be effective as to each such Section.

In the event that any court, by final judicial order, finds that any Section of Memorial Plaza failed to have the proper number of votes or signatures to make these Restrictions effective as to that Section, or was without the right to amend restrictions on that Section, that Section shall be deemed to be excluded from these Restrictions, but the other Sections and Owners in Memorial Plaza shall be deemed to have timely and properly executed these Restrictions and shall not be affected by any such court order. In the event of such Section being excluded from these Restrictions, the Original Restrictions shall continue to apply to that Section.

When these Restrictions have been adopted by all Sections of Memorial Plaza then thereafter all Sections of Memorial Plaza shall vote collectively to amend, modify, terminate, or cancel these restrictions without regard to the number of Lots in any particular Section or area.

IN WITNESS WHEREOF, the Owners of Lots attached in Exhibit "A", attached hereto and incorporated herein, representing at least a majority of the Owners of Lots in the Subdivision consent to and approve the amendment and restatement of the Prior Restrictions to take effect on the date this instrument is filed of record in the Official Public Records of Real Property of Harris County, Texas. The Association joins in the execution of this instrument to evidence its consent and approval to same.

DATED this 18th day of August, 1999.

ATTEST:

MEMORIAL PLAZA CIVIC CLUB, INC.

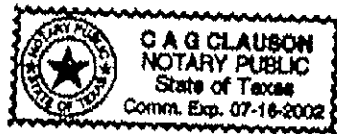
By: Richard Hargis
RICHARD HARGIS, Secretary

By: Gary L. Roeder
GARY L. ROEDER, President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, a notary public, on this day personally appeared GARY L. ROEDER, President of Memorial Plaza Civic Club, Inc., known to me ~~(or proved to me on the oath of~~ _____ or through _____ [description of identity card or other document]) to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND and seal of office, this the 18th day of August, 1999.

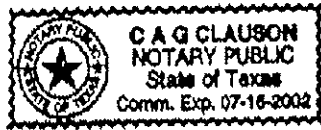


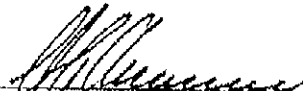
[Signature]
Notary Public in and for the
State of TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, a notary public, on this day personally appeared RICHARD HARGIS, Secretary of Memorial Plaza Civic Club, Inc., known to me ~~(or proved to me on the oath of~~ _____ or through _____ [description of identity card or other document]) to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND and seal of office, this the 18th day of August, 1999.





Notary Public in and for the
State of TEXAS