



- (ii) that the Declaration, except for limiting the use and occupancy of that portion of the entire tract, hereinafter described and identified as Restricted Reserve "A", to single and multiple family dwellings, would be applicable only to said 5.105 acre tract described in the Declaration;
- (iii) the "Association" (as that word is defined in the Declaration) would not have the right to annex said Restricted Reserve "A" without the expressed written consent of Declarant, its successors and assigns;
- (iv) to reserve the right in the Declarant for a period of five (5) years from the date of recording of the Declaration to annex said Restricted Reserve "A" into the Properties (as that term is defined in the Declaration) without the Consent of the Association or its members; and

WHEREAS, in order to correct the errors previously made and in order to avoid future misunderstandings and difficulties, Declarant has filed a Replat of Oakhurst Townhouses recorded in Volume \_\_\_\_\_, page \_\_\_\_\_ of the Map Records of Harris County, Texas, for the purposes of more fully describing and identifying that portion of the said 9.777 acre tract of land which is not subject to the Declaration, and to amend said Declaration to correctly and accurately reflect the original intent of the Declarant; that portion of said 9.777 acre tract of land which is not subject to the Declaration, except to the extent of limiting its use and occupancy to

single and multiple family dwellings, consists of a tract containing 4.624 acres, more or less, more particularly described and designated as Restricted Reserve "A" on said Replat of Oakhurst Townhouses, and all references herein to said Restricted Reserve "A" shall mean and refer to said 4.624 acre tract; and

WHEREAS, Declarant is the owner of all of the property described above by metes and bounds and shown on the Replat of Oakhurst Townhouses; and

WHEREAS, for the purposes set forth above, Declarant does hereby amend said Declaration as follows:

1.

The recitals, preambles and first unnumbered paragraph of said Declaration are hereby deleted in their entirety and they are hereby amended to read as follows:

"WHEREAS, Declarant is the owner of certain property in the City of Houston, County of Harris, State of Texas, known as OAKHURST TOWNHOUSES, and which is more particularly described as:

Being out of Lot 9, Sauer Subdivision, the plat of which is recorded in Volume 7, Page 67 of the Harris County Map Records and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod in the North right-of-way line of Milwee Street (based on a width of 50.0 feet), said iron rod being the Southwest corner of that certain 559 square foot tract of land conveyed to the City of Houston by deed of record in Volume 8460, Page 407 of the Harris County Deed Records;

THENCE North 89° 05' 13" West, along the North right-of-way line of said Milwee Street, 1207.24 feet to a 3/4 inch iron pipe with pinched top for corner;

THENCE North 00° 45' 40" East, 511.18 feet to a 1-1/4 inch iron pipe for corner on the North line of said John Flowers Survey;

THENCE South 88° 18' 54" East, along the North line of said John Flowers Survey and in part along the South right-of-way line of La Monte Drive (based on a width of 60.0 feet), 569.33 feet to a 1 inch iron pipe with pinched top for corner in the South right-of-way line of said La Monte Drive;

THENCE South 00° 52' 00" West, along the West line of Homer Homes Subdivision, 250.21 feet to a 1/2 inch iron pipe for corner at the Southwest corner of said Homer Homes Subdivision;

THENCE South 88° 20' 43" East, along the South line of said Homer Homes Subdivision, 424.14 feet to a 1/2 inch iron rod for corner on the Southwesterly right-of-way line of Mangum Road (based on a width of 60.0 feet); same being the Southeast corner of said Homer Homes Subdivision;

THENCE South 44° 55' 55" East, along the Southwesterly right-of-way line of said Mangum Road, 315.58 feet to a 1/2 inch iron rod for corner at the most Northerly corner of said City of Houston 559 square foot tract of land;

THENCE South 23° 05' 46" West, along the Westerly line of said City of Houston tract, 30.21 feet to the PLACE OF BEGINNING, containing 9.777 acres of land, more or less.

Said tract of land being known as Replat of Oakhurst Townhouses, as recorded in Volume \_\_\_\_\_, page \_\_\_\_\_, of the Map Records of Harris County, Texas and accordingly, said map is referred to hereinafter as 'said Replat of Oakhurst Townhouses.'

"NOW, THEREFORE, Declarant hereby declares that the Property described above, SAVE and EXCEPT Restricted Reserve 'A', shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

. 2.

Article I of said Declaration is hereby deleted in its entirety and said Article I is hereby amended to read as follows:

"ARTICLE I"

"DEFINITIONS"

"Section 1. "Association" shall mean and refer to OAKHURST HOME OWNERS ASSOCIATION, INC., a Texas Non-Profit Corporation, its successors and assigns.

"Section 2. The words 'Owner' or 'Lot Owner' shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any of the seventy (70) Lots described in Section 6 of this Article I which is a part of the 'Property' as that term is hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

"Section 3. The words 'Property', 'Properties' or 'Subdivision' shall mean and refer to the real property described above, save and except Restricted Reserve "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

"Section 4. 'Restricted Reserve A' shall mean and refer to the 4.624 acre tract of land, more or less, described in said Replat of Oakhurst Townhouses.

"Section 5. 'Common Area' shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

"All land contained in Replat of Oakhurst Townhouses, according to the map thereof recorded in Volume \_\_\_\_\_, page \_\_\_\_\_ of the Map Records of Harris County, Texas:

SAVE AND EXCEPT Restricted Reserve A, all public streets, all Blocks designated by Block numbers numbered One (1) through nine (9); but

SUBJECT to all easements shown on said Replat and the regulation of the City of Houston, Texas of private streets and driveways;

Together with all improvements situated thereon, including a clubhouse, one (1) swimming pool, one (1) tennis court, playground, carports, paving of all private streets, driveways, and parking areas, master water meter and water distribution system, and sanitary sewer collection system.

"Section 6. 'Lot' shall mean and refer to any of the seventy (70) lots, in Blocks One (1) through Nine (9), both numbers inclusive, into which the Property has been subdivided, as shown on the Replat of Oakhurst Townhouses, referred to above.

"Section 7. 'Declarant' shall mean and refer to FOUNTAIN PROPERTIES, INC., a corporation organized under the laws of the State of Ohio and authorized to conduct business in the State of Texas, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

3.

Section 1 of Article VIII of said Declaration, including the sentence which precedes Section 1, is hereby deleted in its entirety and is amended to read as follows:

"ARTICLE VIII"

"USE RESTRICTIONS"

"The Property and the Common Area shall be occupied and used as follows:

"Section 1. Residential Use. (a) No Owner of any Lot or Lots into which the Property has been subdivided shall occupy or use his Lot or building thereon, or permit the same or any part thereof, to be occupied or used for any purpose other than as a private residence for the Owner, his family, guests and tenants; and (b) No Owner of Restricted Reserve A shall occupy or use Restricted Reserve A or any part thereof for any purposes other than single or multiple family Dwellings."

4.

Section 4 of Article X of said Declaration is hereby deleted in its entirety and is hereby amended to read as follows:



THE STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

114-02-1672

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OAKHURST TOWNHOUSES

THIS DECLARATION made on the date hereinafter set forth by FOUNTAIN PROPERTIES, INC., a corporation organized under the laws of the State of Ohio and authorized to conduct business in the State of Texas, and of which Gerald M. Langlois is President and Joella Fullbright is Asst. Secretary, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Houston, County of Harris, State of Texas, known as OAKHURST TOWNHOUSES, Section One, and which is more particularly described as:

Being out of Lot 9, Sauer Subdivision, the plat of which is recorded in Volume 7, Page 67 of the Harris County Map Records and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod in the North right-of-way line of Milwee Street (based on a width of 50.0 feet), said iron rod being the Southwest corner of that certain 559 square foot tract of land conveyed to the City of Houston by deed of record in Volume 8460, Page 407 of the Harris County Deed Records;

THENCE North 89° 05' 13" West, along the North right-of-way line of said Milwee Street, 791.24 feet to a point for corner;

THENCE North 00° 54' 57" East, 275.00 feet to a point for corner;

THENCE North 88° 18' 54" West, 37.67 feet to a point for corner;

THENCE North 01° 41' 06" East, 230.53 feet to a point for corner on the South right-of-way line of La Monte Drive (based on a width of 60.0 feet), same being the North line of said John Flowers Survey;

THENCE South 88° 18' 54" East, along the North line of said John Flowers Survey and along the South right-of-way line of said La Monte Drive, 186.50 feet to a 1 inch iron pipe with pinched top for corner in the South right-of-way line of said La Monte Drive;

THENCE South 00° 52' 00" West, along the West line of Homer Homes Subdivision, 250.21 feet to a 1/2 inch iron pipe for corner at the Southwest corner of said Homer Homes Subdivision;

THENCE South 88° 20' 43" East, along the South line of said Homer Homes Subdivision, 424.14 feet to a 1/2 inch iron rod for corner on the Southwesterly right-

**HOLD**

REFERS TO →



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of-way line of Mangum Road (based on a width of 60.0 feet), same being the Southeast corner of said Homer Homes Subdivision;

THENCE South 44° 55' 55" East, along the Southwesterly right-of-way line of said Mangum Road, 315.58 feet to a 1/2 inch iron rod for corner at the most Northerly corner of said City of Houston 559 square foot tract of land;

THENCE South 23° 05' 46" West, along the Westerly line of said City of Houston tract, 30.21 feet to the PLACE OF BEGINNING, containing 5.105 acres of land, more or less.

Said tract of land being known as OAKHURST TOWNHOUSES, Section One, as recorded in Volume 193, Page 69 of the Map Records of Harris County, Texas and, accordingly, said map is referred to hereinafter as "said Plat".

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to OAKHURST HOME OWNERS ASSOCIATION, INC., a Texas Non-Profit Corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties or Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

All land contained in Oakhurst Townhouses, Section One, according to the plat thereof recorded in Volume 193, Page 69, of the Map Records or Harris County, Texas;

SAVE AND EXCEPT all public streets, all Blocks designated by Block numbers numbered one (1) through nine (9); but

SUBJECT TO all easements shown on said Plat and the regulation of the City of Houston, Texas, of private streets and driveways;

Together with all improvements situated thereon, including a clubhouse, one (1) swimming pool, one (1) tennis court, playground, carports, paving of all private streets, driveways, and parking areas, master water meter and water distribution system, and sanitary sewer collection system.

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Section 5. "Lot" shall mean and refer to any of the 70 plots of land to be described by metes and bounds upon the conveyance thereof and which lots shall be on the Blocks one (1) through nine (9) referred to above, and shown upon the recorded subdivision map or plat of the Properties.

Section 6. "Declarant" shall mean and refer to FOUNTAIN PROPERTIES, INC., a corporation organized under the laws of the State of Ohio and authorized to conduct business in the State of Texas, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational or other facilities owned or operated by the Association, excluding domestic water, by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) the right of individual owners to the exclusive use of parking spaces as provided in this article.

(e) the right of the Association to limit the number of guests of owners.

(f) the right of the Association, in accordance with its Articles of Incorporation or By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said properties shall be subordinate to the rights of the owners hereunder;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the lot of the owner.

Section 3. Parking Rights. Each owner shall be entitled to two (2) parking spaces to the immediate rear of such owner's Lot, which parking spaces shall be part of the Common Area and shall be permanently assigned by the Association.

The use of all other parking areas situated in the Common Area shall be subject to the exclusive control and management of the Board of Directors of the Association, including the assignment of areas where boats, trailers, etc., may or may not be parked or stored.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

(A) Every person or entity who is a record owner of a fee or undivided fee interest in any residential lot in the Subdivision, or in any other area duly annexed thereto and brought under the jurisdiction of the Association, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any such lot.

(B) The association shall have two (2) classes of members, with voting rights as follows:

(1) Class A Members

Class A Members shall be all of the record owners, other than Fountain Properties, Inc., its successors or assigns (hereinafter called the "Developer"), of residential lots situated in the Subdivision and/or in any other area duly annexed thereto. Voting within Class A shall be limited to one (1) vote for each lot owned by Class A Members. If any lot is owned by more than one person or entity, all such persons or entities shall be members, and the one (1) vote to which such lot is entitled shall be exercised as the owners of such lot may determine among themselves.

(2) Class B Members

The Class B Member shall be the Developer. Class B membership shall be entitled to three (3) votes for each residential lot owned in the Subdivision and/or in any area duly annexed thereto, until such time as the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or on JAN. 10<sup>th</sup>, 1980, whichever date occurs the earliest. After the earliest to occur of the foregoing events, the voting rights of the Class B membership shall be automatically converted to one (1) vote for each residential lot owned in the Subdivision and/or in any area duly annexed thereto, the same as the Class A membership. It is specially provided, however, that at any time other areas are duly annexed to the Subdivision in the manner set forth in the Declaration, the voting rights as to residential lots owned by the Class B membership in the Subdivision and/or in any area duly annexed thereto, shall (if previously converted automatically to one (1) vote per lot) automatically revert to three (3) votes for each lot owned in the Subdivision and/or in any area duly annexed thereto, until such time as the total votes outstanding in the Class A membership throughout the Subdivision and any duly annexed area collectively shall equal or exceed the total votes outstanding in the Class B membership throughout such total area, or until JAN 10<sup>th</sup>, 1985, whichever date occurs the earliest, at which time the Class B voting rights shall be automatically converted to one (1) vote for each lot owned.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

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Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interests, costs, and reasonable attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of a Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but shall remain a lien and a charge on the Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties; domestic water and sanitary sewer service for the residents and Common Area; for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be FOUR HUNDRED TWENTY DOLLARS per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% (such percentage increase may be cumulative from year to year) above the maximum assessment for the previous year without a vote of the membership of the Association;

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by the vote or written assent of 51% of each class of members of the Association.

(c) The Board of Directors of the Association may fix the annual assessment in accordance with the foregoing provisions.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal

property related thereto, provided that any such assessment shall have the vote or written assent of 51% of each class of members of the Association. The due date for the payment of any special assessment shall be established by the Board of Directors.

Section 5. Notice and Quorum For Any Action Authorized Under Sections 3 and 4. Any action authorized under Section 3 or 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite 51% of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such meeting.

Section 6. Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Annual assessments shall be made for Lots with completed houses not owned by the Declarant, Lots with completed houses unoccupied and owned by the Declarant, Lots with houses under construction and for vacant Lots. Lots with completed houses owned by the Declarant and that are unoccupied shall be assessed at 66-2/3% of the assessment for Lots with completed houses and owned by parties other than the Declarant; Lots with houses under construction shall be assessed at 40% of the assessment for Lots with completed houses; and vacant Lots shall be assessed at 33-1/3% of the assessment for Lots with completed houses.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be made as to all Lots on the first day of the month following the conveyance of the Common Area by the Declarant to the Association, and shall be made on the same day on each succeeding year thereafter. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment date. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates for the payment of annual assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot in question, or both. Each such Owner, by his 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 charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection

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with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot owners. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Purchase Money or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Insurance.

(a) The Board of Directors of the Association shall obtain and continue in effect blanket property insurance to insure the buildings and structures on each Lot and in the Common Areas against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, and naming each Lot owner and the Association as named insured under said policy. Said insurance may include coverage against vandalism.

(b) The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees, and each Owner, from and against liability in connection with the Common Areas.

(c) Each Owner shall be responsible at his own expense and cost for his own personal insurance on the contents of his own residence, contents of the assigned carport or parking spaces and his additions and improvements thereto, including decorations, furnishings and personal property therein, and his personal property stored elsewhere on the Properties; and for his personal liability not covered by liability insurance for all Owners obtained as a part of the common expense. Participation in any group or blanket insurance program must be voluntary.

(d) All costs, charges and premiums for all insurance that the Board of Directors authorized as provided herein shall be a common expense of all Owners and be a part of the annual maintenance assessment.

(e) Notwithstanding the foregoing provisions of this Section 11, it is further provided that the requirement for the maintenance of insurance on a

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residence shall not apply to any residence acquired by the Veterans Administration or Federal Housing Administration under a mortgage foreclosure during the period of ownership by either of said Veterans Administration or Federal Housing Administration.

Section 12. Water and Sanitary Sewer Fund. Charges collected by the Association for water and sewage service shall be maintained in a separate fund and shall not be commingled with any other assessment fund, and such water or sewer funds shall not be directed to any use other than expense of such, water or sewer services.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, or any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Violation of the foregoing may be enjoyed by the Association.

ARTICLE VI

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace (but not in the event of fire, or other casualty loss normally covered by insurance on the premises) and care for roofs, gutters and downspouts, (if any), exterior building surfaces, fences, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include: glass surfaces, enclosed patio areas (if any), window and door fixtures and hardware, landscaping installed by Owner (if any), exterior light fixtures operated from a residence, air conditioning equipment, utility company meters, circuit breakers and switch panels, sanitary sewer, gas and electric power service lines, nor any work or thing specifically defined as Owner's maintenance in Article VIII.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, any member of his family, guests, or invitees, the cost of such maintenance for repairs shall be added to and become a part of the assessment to which such Lot is subject.

In the event an Owner is responsible for certain exterior maintenance as set forth in the Rules and Regulations of the Association and such Owner shall fail to maintain the

premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the annual assessment to which such Lot is subject.

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## ARTICLE VII

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty and such destruction or damage is not covered by insurance, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in titles.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to choose an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.



ARTICLE VIII

USE RESTRICTIONS

The Lots and the Common Area shall be occupied and used as follows:

Section 1. Residential Use. No Owner shall occupy or use his Lot or building thereon, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner, his family, guests and tenants.

Section 2. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 3. Insurance. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

Section 4. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No boat, trailer or truck shall be parked or stored in front of any dwelling unit for more than 48 hours. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, driveway or yard adjacent to a street, or in the Common Area.

Section 5. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn, servants quarters or other out buildings shall be used on any Lot at any time as a residence, either temporarily or permanently; nor shall any used residence or other used structure be moved onto any Lot. During the construction and sale period of the initial dwelling units the builder may erect and maintain such structures as is customary in connection with such construction and sale of such property, including, but without limitation, a business office, storage areas, construction yards, signs, model units and sales offices.

Section 6. Signs. No sign of any kind shall be displayed to public view on any Lot or building except one sign of not more than five (5) square feet in area advertising the merits of the Lot for sale or rent. During the construction and initial sales period of the dwelling units the builder may use other signs and displays to advertise the merits of the property for sale or rent.

Section 7. Oil and Mining Operations. No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot

Section 8. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot

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except that dogs, cats or other household pets, not to exceed a total of two (2) pets, may be kept provided that they shall not become a nuisance and are not kept, bred, or maintained for any commercial purposes.

Section 9. Garbage and Refuse Disposal. No Lot shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall be kept screened by adequate planting or fencing so as to conceal them from public view. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal contractor(s). All incinerators or other equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

Section 10. Sewage Treatment. No sewage treatment system shall be permitted on any Lot.

Section 11. Use of Common Areas. Except in the individual rear yard areas appurtenant to a residence, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated architectural committee. Except for the right of ingress and egress and the right and easement of enjoyment as defined herein, the Owners are hereby prohibited and restricted from using any of said Property outside the exterior Property lines of each Lot, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of the Properties, and any additions thereto, and is necessary for the protection of said Owners. Maintenance, upkeep and repairs of any rear yard shall be the sole responsibility of the individual owner and not in any manner the responsibility of the Association, except as provided in Article VI. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area and all exteriors and roofs of the residences, including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representative.

Section 12. Owner's Maintenance. The Owner shall maintain and keep in repair the following equipment and lines located outside the residence: air conditioning compressor condenser, including pipes and electrical lines connecting same to the residence, sanitary sewer line connecting the residence to the sanitary sewer collection system, electric power service conductors from the exterior of the building to the point of connecting to the electric utility company's junction box or transformer, electric circuit breakers, any portion of natural gas, and/or telephone service lines located on the Lot but not maintained by the gas and/or telephone companies. If any Owner shall fail to maintain and keep in repair the foregoing items in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair and maintain said items, and the cost therefor shall be added to and become part of the annual assessment to which such Lot is subject.

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An Owner shall do no act nor any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other residences or their Owners.

Section 13. Outside Antennas. Without prior written approval of the Board of Directors, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon any Lot, nor upon any structure situated upon the Property other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 14. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner of Owners in favor of the other Owners.

Section 15. Annoyance. No activity shall be carried on upon any Lot or the Common Area which might reasonably be considered as giving annoyance to neighbors or ordinary sensibilities and which might be calculated to reduce the desirability of the Property as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit.

#### ARTICLE IX

##### EASEMENTS

Section 1. Construction. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing two or more residences is partially or totally destroyed, and then rebuilt, the Owners so affected agree that minor encroachments of parts of the adjacent residential units on Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utility, Emergency and Association. There is hereby created a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said residences. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pick-up vehicles and all similar persons to enter upon the Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to

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enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the residence or Common Area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement of said Property without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easement on said premises.

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Section 3. Underground Utility Services.

(a) Underground Electric Service. An underground electric distribution system will be installed to Lots. The Owner of each Lot, at his own cost, shall furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained, the electric service to each Lot shall be uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle alternating current.

(b) Telephone Service. Telephone service shall be available to each Lot and Common Area. Service between the telephone company's main lines and an individual residence shall be by way of underground conduit. Such conduit system shall be owned and maintained by the Owner, but all service wires therein shall be installed, owned and maintained by the telephone utility.

(c) Water Service. Water service shall be provided to each Lot by way of a water distribution system owned by the Association and connected by means of master meters to City of Houston mains. The distribution system

between the point of connection to the City of Houston mains and the points where the pipe penetrates the exterior wall of each residence shall be the property of the Association and shall be operated and maintained by the Association.

(d) Sanitary Sewer Service. Sanitary sewer service shall be provided to each Lot by means of a sanitary sewer collection system owned by the Association, which sanitary sewer collection system shall be connected to City of Houston sanitary sewer system for final treatment. That portion of the sanitary sewer service line from the point that it connects to the collection system owned by the Association to and throughout the residence shall be owned and maintained by the Owner.

(e) Use of Easements. Easements or underground utility services may be crossed by driveways and walkways provided the Declarant or Builder makes prior arrangements with the Utility furnishing service. Such easements for underground services shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossing walkways or driveways, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants, to shrubbery, trees, flowers, or other improvements of the Owner located on the land covered by said easements.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the property, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) years period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the Deed Records of Harris County, Texas.

Section 4. Annexation.

(a) Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members of the Association.

(b) Additional land within the area as recorded in Volume 198, Page 69, of the Map Records of Harris County, Texas, may be annexed by the Declarant without the consent of other members within five (5) years of the date of recording of this instrument; provided, however, that if the Federal Housing Administration and/or Veterans Administration has outstanding fifty or more insured or guaranteed mortgages within the Property, then such annexation shall also require the approval of the Federal Housing Administration and/or the Veterans Administration.

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Section 5. FHA/VA Approval. As long as there is a Class-B membership in the Association and the Federal Housing Administration and/or Veterans Administration has outstanding fifty or more insured or guaranteed mortgages within the Property, then the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 16 day of December, 1972, 1974

ATTEST:

FOUNTAIN PROPERTIES, INC. <sup>16</sup>

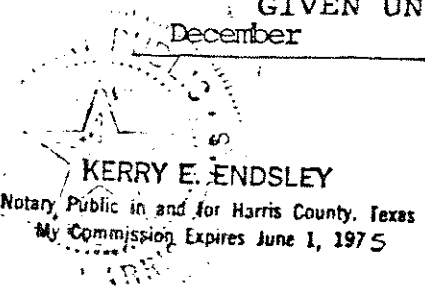
Cheryl A. Hinckley  
Asst. Secretary

Gerald M. Langlois  
President

THE STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS           §

Before me, the undersigned authority, on this day personally appeared Gerald M. Langlois and Cheryl A. Hinckley, President and Asst. Secretary, respectively of Fountain Properties, Inc., the corporation above named, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and considerations therein expressed, in the capacities therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16 day of December, 1974.



Kerry E. Endsley  
Notary Public in and for Harris County, Texas

THE STATE OF TEXAS            ( )  
  ( )  
COUNTY OF DALLAS           ( )

114-02-1687

LOMAS AND NETTLETON FINANCIAL CORPORATION, being the mortgage holder on the property described in the Declaration of Covenants Conditions and Restrictions Oakhurst Townhouses, which Declaration is dated December 16, 1974, does hereby consent to the placing of the restrictions contained in said Declaration on the property.

ATTEST:

LOMAS & NETTLETON FINANCIAL CORPORATION

BY: Lanelle Latendresse  
Lanelle Latendresse, Vice President

RECORDER'S MEMORANDUM:  
The additions on this instrument were present at the time instrument was filed and recorded.

THE STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Lanelle Latendresse, the Vice President of THE LOMAS & NETTLETON FINANCIAL CORPORATION, a Delaware Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed, and as the act and deed of said corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 17<sup>th</sup> day of Dec 19 74.

Maisha Kay Hart  
Notary Public in and for Dallas County, Texas

FILED  
R. J. [Signature]  
COUNTY CLERK  
HARRIS COUNTY, TEXAS  
DEC 17 12 57 PM 1974