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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK HARBOR

THE STATE OF TEXAS § 11/02/83 00101587 J218661 \$ 45.00
COUNTY OF HARRIS §

This declaration, made on the date hereinafter set forth by Park Harbor Interests, Ltd., a Texas limited partnership (hereinafter called "Developer");

WITNESSETH:

Whereas, Developer is the owner of that certain real property described by metes and bounds on Exhibit "A" attached hereto (hereinafter called "Park Harbor"); and

Whereas, Developer desires to adopt a uniform plan for the orderly development and improvement of Park Harbor, and for the maintenance of certain Common Properties as hereinafter defined;

Now, therefore, Developer does hereby impose upon all the property included in Park Harbor, the following covenants, conditions, restrictions, and charges (hereinafter collectively referred to as "Protective Covenants"), which shall be covenants running with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the real property or any portion thereof, their heirs, executors, administrators, devisees, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- A. "Association" shall mean and refer to Park Harbor Improvement Association, Inc., a Texas non-profit corporation which Developer shall cause to be incorporated as herein provided, its successors and assigns.
B. "Building Set Back Area" shall mean and refer to each area on any Building Site which lies between (i) any street right of way line adjacent to the Building Site or boundary line of the Building Site and (ii) the building set back line established with respect to such right of way or boundary line.
C. "Building Site" shall mean and refer to that portion of the Restricted Properties (hereinafter defined) described in any deed conveying a fee interest from Developer to any individual or entity (unless such deed specifies otherwise) or that portion of the Restricted Properties described in a ground lease from Developer to a Ground Lessee (hereinafter defined) (unless such ground lease specifies otherwise) or that portion of the Restricted Properties described or designated as a Building Site by a written instrument

RETURN TO: LAWYERS TITLE COMPANY 617 CAROLINE HOUSTON, TEXAS 77002 ATTN: SHARON FLICK

signed by Developer and filed in the Official Public Records of Real Property of Harris County, Texas.

Any Building Site, once created, shall not be subdivided into smaller tracts or consolidated into a large tract without the approval of the hereinafter defined Architectural Control Committee.

- D. "Committee" shall mean and refer to the Architectural Control Committee established in accordance with Article V hereof.
- E. "Common Properties" shall mean and refer to the public streets or dedicated rights of way shown on the Plat the Detention Lake Area and Detention Park shown on the Plat, the Pocket Parks, and all those areas of land within the Restricted Properties which Developer may subsequently designate and set aside for the common use and benefit of all owners of any portion of Park Harbor.
- F. "Declaration" or "this Declaration" shall mean and refer to this instrument, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.
- G. "Detention Lake Area and Detention Park" shall mean those areas containing 12.95 acres and 4.50 acres respectively delineated as such on the Plat comprising a portion of the Common Properties. The Detention Lake Area and Detention Park shall be conveyed to Harris County Flood Control District with a reservation of recreational maintenance and aesthetic rights in the Association.
- H. "Developer" shall mean and refer (i) to Park Harbor Interests, Ltd., (ii) to any successor entity which succeeds to all or substantially all of the assets of Park Harbor Interests, Ltd. by any merger, foreclosure, consolidation or conveyance of assets, or (iii) to any person, corporation or legal entity to which Park Harbor Interests, Ltd. or any such successor entity specifically assigns the rights, power and duties of Developer under this Declaration. As of the effective date of any such action, the assignee therein shall succeed to all of the rights, powers and therein and Developer shall cease to have any obligations, duties or responsibilities under this declaration.
- I. "Development Guidelines" shall mean those guidelines, narrative and/or graphic, issued and amended by the Committee and/or Developer from time to time, which describe the development objective of the Park Harbor Protective Covenants. Owner should obtain the Development Guidelines from the Committee prior to commencing any work on improving its Building Site.
- J. "Ground Lessee" shall mean and refer to any person or entity who has leased for a term of years the entirety of a Building Site.

- K. "Improvements" shall mean all improvements constructed upon any Restricted Properties, including without limitation, all buildings, parking garages, open parking areas, driveways, access roads, sidewalks, walkways, mechanical equipment, fountains, swimming pools, vaults, paved plazas, recreational courts, and any other structure whatsoever.
- L. "Landscaped Area" shall mean any area which is required by the Landscape Plan, the Committee and/or the Owner's plans and specifications (as approved by the Committee) to be landscaped with acceptable plant materials and maintained and irrigated with the intent of preserving the Landscaped Area in its original design as described in the Landscape Plan and/or plans and specifications.
- M. "Landscape Plan" shall mean the master plan for landscaping as established by Developer and/or the Committee and thereafter modified, from time to time, by the Committee.
- N. "Member" and/or "Members" shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof.
- O. "Owner" shall mean and refer to the record owner, or if a Building Site is subject to a ground lease, to the Ground Lessee, whether one or more persons or entities, of the fee simple title to any portion of the Restricted Properties, but, notwithstanding any applicable theory of mortgage, shall not mean or refer to any mortgagee unless and until such mortgage has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- P. "Park Harbor" shall mean the Restricted Properties and the Common Properties.
- Q. "Plat" shall mean the plat or map of Park Harbor now or hereafter recorded in the Map Records of Harris County, Texas which covers both the Common Properties and the Restricted Properties.
- R. "Pocket Parks" shall mean those areas designated by Developer and conveyed to the Association which shall be landscaped and contain recreational facilities owned and maintained by the Association as part of the Common Properties.
- S. "Restricted Properties" shall mean and refer to the surface estate of all those areas of land described in Exhibit "A" to this Declaration except the Common Properties (including, specifically, without limitation, all Building Sites) and to the surface estate in any other tract(s) of land which become subject to the provisions of this Declaration in the manner provided for herein.
- T. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Protective Covenants bringing additional property within the plan

of the Declaration in express accordance with the limited authority therefor provided in the Declaration. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declarations.

ARTICLE II

EASEMENTS

Section 1. Existing Easements. Developer and Developer's predecessors in title have heretofore granted, created and dedicated by several recorded instruments, certain easements and related rights affecting Park Harbor. All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements and related rights heretofore made by Developer and Developer's predecessor in title except to the extent superseded by the Plat affecting Park Harbor are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance or ground lease executed or to be executed by or on behalf of Developer conveying or leasing any part of Park Harbor.

Section 2. Changes and Additions. Developer reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing streets and utilities. After the conveyance by Developer of any Building Site, at Developer's request, the Owner thereof shall be obligated to dedicate or convey any additional easement(s) required by Harris County, the City of Houston, the Park 10 Municipal Utility District, or any public utility or cable television company for water, sanitary sewer, cable television, drainage, electric power and/or gas service to the Restricted Properties or any part thereof, provided the easement(s) are confined to that part of the Building Site within its Building Set Back Area, and if the Owner of any Building Site fails to execute any such requested easement, within ten (10) business days after it is submitted by Developer to such Owner, Developer shall be authorized and is hereby empowered to execute the easement as the agent and attorney in fact for such Owner, and this power of attorney is acknowledged and declared to be coupled with an interest and to be irrevocable.

Section 3. Title to Easements and Appurtenances Not Conveyed. Title to any Building Site conveyed by Developer by deed or other conveyance or ground lease shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles, or conduits on or in any utility facility or appurtenances thereto, constructed by or under Developer or its agents through, along or upon any Building Site or any part thereof to serve said Building Site, or any other portion of Park Harbor, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Developer.

Section 4. Surface Areas. The surface of easement areas for underground utility services may be used for

planting of shrubbery, trees, lawns, or flowers in accordance with the Landscape Plan. However, neither the Developer nor any supplier of any utility or service using any easement area shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

Section 5. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Restricted Properties in the performance of their duties. Further, an easement is hereby granted to the Developer, its officers, agents, employees, and management personnel to enter upon the Restricted Properties to render any service or perform any of their functions.

ARTICLE III

THE ASSOCIATION

Section 1. Organization. The Developer shall cause the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas under the name of Park Harbor Improvement Association (or a similar name if such name is not available).

Section 2. Purpose. The purpose of the Association in general shall be to collect the annual maintenance charges, to administer the Maintenance Fund (as hereinafter defined), to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Properties in Park Harbor with the first priority being the maintenance of the Detention Lake Area and Detention Park and to assist any governmental agency in maintaining the Detention Lake Area and Detention Park for the accumulation and controlled detention and drainage of surface water run-off, to enforce the provisions of this Declaration and any Supplemental Declarations and such other purposes as are stated in the Articles of Incorporation consistent with the provisions of this Declaration.

Section 3. Membership. Each Owner shall, upon and by virtue of being an Owner, automatically be a member of the Association (hereinafter called "Member"), and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Each Owner's membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of a portion of the Restricted Properties and may not be separated from such ownership. Whenever the legal ownership of any portion of the Restricted Properties passes from one person to another (or the interest of a ground lease is transferred), by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 4. Voting Rights. In the election of Directors of the Association and on all other matters submitted to a vote of the Members of the Association, there shall be two classes of voting membership:

Class A. The Class A Members shall be all the members of the Association, with the exception of the Developer. Class A Members shall be entitled to one vote for each acre, or major fraction thereof (i.e., rounding up to the nearest acre for any fractional acre greater than or equal to one-half (.5 acre), of the Restricted Properties in Park Harbor in which they hold the interest required for membership by this Declaration. When more than one person holds such interest or interests in such Restricted Properties, all such persons shall be Members, and the votes for such portion of the Restricted Properties shall be exercised as they among themselves determine, but, in no event, shall more than one vote be cast with respect to each acre of the Restricted Properties in Park Harbor (or major fraction thereof).

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to eight (8) votes for each acre of the Restricted Properties in Park Harbor (or major fraction thereof) in which it holds the interest required for membership by this Declaration; provided that the Class B membership shall cease and become converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Thereafter, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each acre of the Restricted Properties in Park Harbor (or major fraction thereof) in which it holds the interest required for membership by this Declaration.

Section 5. Title to Common Properties. The Developer may retain the legal title to the Common Properties in Park Harbor until such time as it has completed improvements thereon and until such time as the Association assumes responsibility for the operation and maintenance of same, or same are dedicated to the public or in the case of the Detention Lake Area and Detention Park conveyed to Harris County Flood Control District. Until title to such Common Properties has been conveyed to the Association by Developer, Developer shall be entitled to exercise all rights and privileges relating to such Common Properties granted to the Association in this Declaration.

Section 6. Members' Easements of Enjoyment. Every Member shall have a common right and easement of enjoyment in and to the Common Properties, and such right and easement shall be appurtenant to and shall pass with the title to the Restricted Properties, or any portion thereof. The rights and easements of enjoyment created hereby shall be expressly subject to the following:

- A. the right of the Association to grant or dedicate easements in, on, under or above such Common Properties or any part thereof to any public or governmental agency or authority or to any utility or service company for any service to Park Harbor or any part thereof;
- B. the rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II of this Declaration; and

- C. the rights of Harris County Flood Control District in and to the Detention Lake Area and Detention Park.

ARTICLE IV

ANNUAL MAINTENANCE CHARGE

Section 1. The Maintenance Fund. All funds collected by the Association from the maintenance charge provided for in this Article shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members for the following purposes, to-wit:

- (i) First priority in the expenditure of the said maintenance fund is hereby given to the planting, landscaping, mowing and upkeep for the purpose of preserving the natural beauty and aesthetic quality of the Detention Lake Area and Detention Park and for the purpose of assisting any other entity or governmental agency charged with the obligation to do so in maintaining said detention areas for accumulating, detaining and permitting controlled drainage of surface water originating in Park Harbor.
- (ii) planting and landscaping, mowing, upkeep of landscaped areas; illumination, street signs and other project identification; lighting, improving and maintaining the boulevards, streets, road, medians and parks in or adjacent to Park Harbor (to the extent not performed to the satisfaction of the Association by Harris County); reconstruction, and relocation of improvements related to the enhancement and beautification of the Common Properties; and such other items of expense as may be deemed by the Association, in its discretion and good faith, to be necessary or desirable for the carrying out of these protective covenants and for the general benefit of all Members of the Association.

It is understood that the judgment of the Association, its successors and assigns, in the allocation and expenditure of the Maintenance Fund shall be binding and conclusive on all Members so long as such judgment is exercised in good faith. The enumeration of the services for which the Maintenance Fund may be expended carries no obligation to furnish any of such services except to the extent of funds actually received by the Association.

Section 2. Covenant for Assessments. Each Owner (other than Developer) of any portion of the Restricted Properties by his claim or assertion of ownership or by accepting a deed or ground lease to any such portion of the Restricted Properties, whether or not it shall be so expressed in such deed or ground lease is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges assessed against such portion of the Restricted Properties and/or assessed against him by virtue of his ownership, as the same shall become due and payable without demand. The maintenance charge herein provided for shall be a charge and a continuing lien upon the Restricted Properties, together with all improvements thereon, as hereinafter more particularly stated. Such

maintenance charge, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person or entity who was the Owner of the portion of the Restricted Properties at the time the obligation to pay such maintenance charge accrued, but no Member shall be personally liable for the payment of any assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charge by waiver of the use or enjoyment of the Common Properties or any part thereof, or by abandonment of the portion of the Restricted Properties owned by him.

Section 3. The Annual Maintenance Charge. The annual maintenance charge provided for herein shall be in an amount fixed by the Board of Directors of the Association allocated among the Owners based upon the square footage of the Restricted Properties owned by each such Owner, it being intended that the Board of Directors will for each year fix the annual maintenance fund charge at an amount estimated in good faith by the Board of Directors to be required in order that the funds procured thereby will approximate the costs and expenditures of such funds for the purposes hereinabove set forth with it being covenanted and stipulated that the annual maintenance charge must be sufficient to provide for the association's obligations regarding maintenance of the Detention Lake Area and Detention Park.

The Board of Directors of the Association may decrease or increase the amount of the annual maintenance charge provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing the annual maintenance charge shall become effective prior to the expiration of sixty (60) days from date of its adoption, and each Owner subject to such assessment, shall, within thirty (30) days from such effective date, pay to the Association the proportionate part of such increase for the balance of the year in which such resolution is adopted.

Section 4. Date of Commencement and Determination of Annual Assessment. The Board of Directors of the Association shall fix the date of commencement of the initial assessment period, and the amount of the assessment against the Restricted Properties for such assessment period, at least thirty (30) days in advance of such date and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by Developer and/or any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. On or before the 31st day of October in each calendar year thereafter, the Board of Directors shall fix the amount of the annual assessment to be levied against each portion of the Restricted Properties and written notice of such amount shall be sent to every Owner subject thereto. The assessments for each calendar year after the first year shall be due and payable to the Association in advance on January 1st each year.

Section 5. Liens to Secure Assessments. The annual maintenance charge shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, which shall exist upon and against all of the Restricted Properties and all Improvements thereon for the benefit of the Association and all Members. The lien hereby created shall be subordinate and inferior to:

- A. all liens for taxes or special assessments levied by the city, county, and state governments, or any political subdivision or special district thereof, and
- B. all liens securing amounts due or to become due under any ground lease dated, or any mortgage, vendor's lien, or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable, and

any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges which become due and payable prior to such foreclosure date, but no such foreclosure shall free any portion of the Restricted Properties from the liens securing the assessments thereafter becoming due and payable, nor shall the liability of any member personally obligated to pay such maintenance charge which becomes due prior to such foreclosure, be extinguished by any foreclosure. In addition to the automatic subordination provided hereinabove, the Association, in the sole discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Directors may determine.

Section 6. Effect of Non-Payment of Assessment. If the annual charge or assessment is not paid within thirty (30) days from the due date thereof, the same shall be deemed delinquent and shall bear interest from the due date until paid at the highest interest rate allowed under the laws of the State of Texas or if no interest rate ceiling exists then at 18% per annum, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount but not less than ten percent (10%) of the amount owing, as attorneys' fees. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection, or foreclose the lien retained herein against the portion of the Restricted Properties affected. Each Member, by his assertion of title or claim or ownership or by his acceptance of a deed or ground lease to a Building Site, whether or not it shall be so recited in such deed or ground lease, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien foreclosure on real property, and such Member expressly grants to the Association a power of sale and non-judicial foreclosure in connection with said lien.

Section 7. Exempt Properties. All properties dedicated to and accepted by a local public authority shall be exempt from the assessments and charges created under this Article IV.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Approval of Plans. No Improvements shall be erected or placed, or the erection or placing thereof commenced upon the Restricted Properties, nor shall any exterior addition to or change or alteration therein including coloration be made until the detailed plans and specifications therefor (including landscaping, signage, color tones, and parking) together with all other construction information reasonably required by the Committee to apprise the Committee of the scope and appearance of the planned Improvements, shall have been submitted to and approved in writing by the Committee as to (a) harmony of external design or location in relation to surrounding structures, walks and topography, (b) quality of workmanship and materials, and (c) compliance with Development Guidelines.

In the event that the Committee fails to approve or disapprove in writing any plans and specifications submitted to it in compliance with the preceding provisions within sixty (60) days following such submission (or having disapproved, fails to specify the particular reasons for disapproval), then the Committee shall be deemed to have approved such plans and specifications.

Section 2. Committee Membership. The authority to grant or withhold architectural control approval referred to hereinabove is hereby vested in the Architectural Control Committee. The Architectural Control Committee shall be a three (3) member committee, all of the members of which shall be appointed by Developer; except, however, that at such time as eighty-nine percent (89%) of the area of the Restricted Properties shall have been conveyed by Developer, Developer shall have the authority to designate only one member of the Committee, and the other two (2) members of the Committee shall be selected by a majority vote of the Members of the Association at a meeting specially called for such purpose. The Committee members may, by a majority vote designate a representative or representatives to act for them, and any such representative shall have full right, authority and power to carry out the functions of the Committee as provided herein (as used herein, the term "Committee" shall refer to the members described above, their successors as provided herein, their assignee as permitted herein, or their designated representative). The vote of a majority of the Committee shall constitute Committee action. No member of the Committee shall incur any liability by reason of any good faith exercise of such member's prerogatives as a member of the Committee.

Section 3. Granting of Variances. The Committee has the power to grant variances or waivers from the provisions of the Declaration relating to Building Set Back Area, Development Guidelines, Building Site configurations, Construction Standards, Parking and other requirements contained herein when the good faith determination of the Committee determines it to be in the best interests to the orderly development and improvement of Park Harbor.

Section 4. Transfer of Authority to the Association. The duties, rights, powers and authority of the Committee may be assigned at any time, at the sole discretion of a majority of the members of the Committee, to the Board of Directors of the Association, and from and after the date of such assignment and the acceptance thereof by the Directors,

the Board of Directors of the Association shall have full right, authority and power, and shall be obligated to perform the functions of the Committee as provided herein, including the right to designate a representative or representatives to act for it.

ARTICLE VI

GENERAL RESTRICTIONS

Section 1. Permitted Uses. All of the Building Sites in Park Harbor shall be used solely for offices, office parks, single family, multi-family, townhouse and/or condominium residential developments, and such other uses as the Committee may determine, in its sole discretion, in writing, to be permitted uses, which shall not be incompatible with the foregoing specifically designated uses. Such permitted uses requiring the Committee's written consent may include banks, service centers, office warehouses, research facilities, processing, light industrial manufacturing, service stations, hotels, motor hotels, retail shopping centers, hospitals, theatres, churches, schools, and restaurants; all uses whether or not the Committee's written consent is required are subject, however, to the restrictions and covenants herein contained and any restrictions or covenants which may be contained in any deed or ground lease executed by Developer, and shall exclude any non-permitted uses expressly hereinafter set forth. Written approval of the Committee of a particular intended use shall be conclusive evidence of compliance with the intent of this Declaration as to the use of the portion of the Restricted Properties expressly made the subject of such approval. However, no activity or use shall be permitted on or with respect to any part of the Restricted Properties which is obnoxious to or out of harmony with the development of a distinctive office, retail, commercial and residential project, such as but not limited to any trailer court, junk yard, scrap metal yard, heavy industrial manufacturing business or waste material business, or the dumping, disposal, incineration or reduction of garbage or refuse, or any fire or bankruptcy sale or auction house operation.

Section 2. Construction Standards. Construction, remodeling or alteration of any building or structure within the Restricted Properties shall meet the standards set forth in this Declaration and the Development Guidelines. All exterior walls of any building or structure shall be finished with face brick, stucco, stone, marble, architectural concrete, glass, or equal, from grade to roof level. Residential dwellings, however, may have wood exteriors. No building shall be covered with sheet or corrugated aluminum, iron, steel or asbestos. Where construction material is specified herein, another material may be used in lieu thereof, provided that such substituted material is determined by the Committee to be the equivalent of or better than the specified material.

From the terminal facility serving a Building Site, extensions of utility lines across property hereafter sold by Developer must be constructed underground (including telephone lines); but this shall not be construed to control the placement of any temporary utility lines during construction or to control the location of lines to the terminal facility from such Building Site.

Section 3. Building Setback Lines. No building or other structure shall be located on or erected nearer than twenty-five (25) feet to any property line, except that no parking garage shall be nearer than fifteen (15) feet to any side or rear property line of a Building Site not abutting a street, unless and to the extent that the Committee shall approve the erection of such a building or other structure in writing. Where there is a conflict between setback lines contained in this Declaration and in any Plat the provisions of the Plat shall control.

Section 4. Parking. Each Owner shall at all times devote a sufficient portion of his Building Site to providing paved, offstreet parking facilities adequate for the use to which his Building Site is put and the number and type of parking spaces and the location thereof within the Building Site shall be approved by the Committee prior to the construction of any improvements on his Building Site. No use shall ever be permitted of any Building Site nor shall any building be constructed thereon which requires nor shall be reasonably expected to require or attract, parking in excess of the capacity of the paved, offstreet facility maintained upon said Building Site. The determination of whether or not an Owner is providing adequate offstreet parking facilities shall be in the sole good faith and discretion of the Committee. Except at the locations and to the extent approved in writing by the Committee, all parking areas shall be paved with asphalt, concrete, exposed aggregate concrete, or other suitable surfacing material. Parking will not be permitted on any street or road, either public or private, or at any place other than the paved parking spaces provided in accordance with the foregoing, and each Owner shall be responsible for compliance by their respective employees, guests, customers, business invitees and visitors.

Section 5. Landscaping. All open, unpaved space, including, but not limited to, front, side and rear Building Set Back Areas, shall be planted, landscaped, and maintained in accordance with the Landscape Plan to the extent applicable and according to a plan for each Building Site approved in writing by the Committee. Landscape plans submitted for approval of the Committee shall indicate the number, size, spacing and species of shrubs and trees, and the species of ground cover. In addition, a sprinkler system of approved design shall be installed in all landscaped areas. Landscaping in accordance with the approved plans and specifications must be completed within thirty (30) days following the occupancy or completion of any building on a Building Site, whichever occurs first. This thirty (30) day period may be extended in writing by the Committee, acting in its sole good faith and discretion, in the event of delays caused by adverse weather conditions or other conditions beyond the reasonable control of the Owner requesting such extension.

Section 6. Signs. All signs and graphics shall be of a size and nature so as to preserve the quality and atmosphere of Park Harbor, and the design, material, location and placement of all signs shall be approved as such in writing by the Committee prior to their erection. No sign, either temporary or permanent, placed upon any portion of the Restricted Properties, shall contain or utilize any flashing, blinking, intermittent or moving light or source of illumination, nor shall any such sign create or attempt to create or simulate the effect of any flashing, intermittent or moving light or source of illumination by mechanical or other means. Unless otherwise approved in writing by the

Committee, all signs, if attached to a building, must be parallel to and contiguous with the building wall, and must not project above the roof line of the building to which attached, and no sign shall be painted on any building wall.

Section 7. Illumination. If exterior illumination is desired for any building in Park Harbor, such exterior illumination shall be designed so as to shine only on the particular building for which such illumination has been approved by the Committee; and such illumination shall not be installed without the prior written approval of the Committee as to the plans therefor.

Section 8. Screening. Except at the locations, to the extent and in the manner approved in writing by the Committee, no purchaser, grantee, Owner or lessee of any portion of the Restricted Properties shall have any right to keep articles, goods, materials, incinerators, trash bins, storage tanks or like equipment open or exposed to public view or view from adjacent buildings. If it shall be necessary to store or keep such materials or equipment in the open, these shall be screened from view in a manner approved in writing by the Committee. Except at the locations, to the extent and in the manner approved by the Committee, said screen shall be of a height at least equal to that of the materials or equipment being stored but in no event less than six (6) feet in height and said screen shall fully shield said materials and equipment from both public view and view from adjacent buildings.

Water towers, storage tanks, processing equipment, cooling towers, heating equipment, air conditioning or ventilating equipment, skylights, communications towers, electrical, mechanical or any other equipment or structures, including such as may be located on the roof of any building shall be approved in writing by the Committee as being architecturally compatible with the other buildings and the overall atmosphere of Park Harbor, or shall be effectively shielded from public view or view from other adjacent buildings by an architecturally sound method approved in writing by the Committee before erection or construction of such structures or equipment.

Section 9. Loading Facilities. Loading docks and other loading facilities will not be permitted to face any street. Provisions must be made for handling all freight on those sides of a building which do not face a street. Written exception to this protective covenant concerning the placement of freight facilities may be permitted by the Committee in those cases where more than two (2) sides of a Building Site face a street. All loading docks and garbage collection facilities must be screened from public view in a manner approved by the Committee.

Section 10. Sidewalks. Each Owner shall install alongside any dedicated street abutting his property line a sidewalk which is constructed in accordance with a design approved by the Committee, using aggregate concrete or comparable material approved in writing by the Committee and the appropriate public authorities, such construction to be completed by the time occupancy of the building constructed on such site occurs.

Section 11. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or within any portion of the Restricted Properties, nor shall

oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within any portion of the Restricted Properties. No derrick or other structures designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Restricted Properties.

Section 12. Nuisances or Illegal Activities. No illegal, noxious or offensive activity of any kind shall be conducted on any portion of the Restricted Properties, and the Committee shall have the exclusive and final determination as to what activity constitutes a noxious or offensive activity. No use shall be permitted which is offensive by reason of odor, fumes, vibrations, dust, smoke, radiation, noise or pollution, or that is hazardous by reason of excessive danger of fire or explosion or use as to cause or produce a nuisance as to any other portion of the Restricted Properties, or which is in violation of the laws of the United States, State of Texas or Harris County.

Section 13. Maintenance of Building Sites and Improvements. Each Owner shall have the responsibility of keeping the premises, building, improvements, appurtenances and landscaping in a well maintained, safe, clean and attractive condition at all times. If, in the opinion of the Committee or the Association, any such Owner (or any tenant, invitee, licensee, or customer of such Owner) shall fail in its duty and responsibility of maintenance, the Committee or Association may give such Owner notice of such fact and thereupon such Owner shall, within ten (10) days of such notice, undertake the care and maintenance required to restore said Owner's property to a safe, clean and attractive condition.

Section 14. Grading and Drainage. Surface drainage for each Building Site shall be collected on-site and connected to underground storm drain structures. Care shall be taken not to cause damage to adjacent properties during construction or after completion of the project. Grading of the Building Site shall be done to the maximum practicable extent without damaging existing trees.

Section 15. Temporary Structures. No temporary building or structure other than construction offices and structures for related purposes during the construction period shall be installed or maintained on any Building Site without the prior written approval of the Committee. All temporary structures used for construction purposes must receive approval by the Committee with regard to location and appearance, and must be removed promptly upon completion of construction.

Section 16. Right of Association to Perform Work. In the event of default on the part of the Owner in observing the requirements set out in Sections 1 through 15 hereof, the Association, acting through its Board of Directors, shall have the right to enter upon such Owner's property, without liability to such Owner (or any tenant, invitee, customer or licensee of Owner) for trespass or otherwise, and cause to be done any work or any other act necessary to secure compliance with these protective covenants. As a condition precedent to exercising the rights given to the Association under this Section 16, the Association shall give the Owner written notice specifying with particularity the nature of the work or act which the Association considers necessary and such Owner shall have a period of ten (10) days after receipt of such written notice within

which to commence such work or act. If such Owner timely commences such work or act and prosecutes same with due diligence until completion, the Association shall not have any right to enter upon such Owner's property for purposes of performing the same. The cost of any such work or act performed by the Association shall be assessed against such Owner's property upon which such work or act is done. Each Owner shall be deemed to have agreed to pay for any such work or act performed by the Association promptly upon receipt of a statement covering the cost of such work, and that upon failure to make prompt payment, the amount due for such work or act may be added to the maintenance charge herein established to which Owner's property is subject. Any such amounts due shall also be a personal obligation of the said Owner and shall become due and payable and shall be subject to the same lien and collection procedures as the maintenance charge provided for in Article IV hereof and shall be subordinate to the same extent as the lien provided for in Article IV.

Section 17. Initial Construction Period; Developer's Option to Repurchase. Each Owner (other than Developer) of any Building Site, by his claim or assertion of ownership or by accepting a deed or ground lease to such Building Site, whether or not it shall be so expressed in said deed or ground lease, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to commence in good faith the actual construction of improvements approved by the Committee upon such Building Site within one (1) year from the date such property is designated as a Building Site, and thereafter diligently to prosecute such construction to completion. If, after the expiration of said one (1) year period, the actual construction of improvements approved by the Committee shall not have been commenced in good faith, then the Developer shall have the option, but not the obligation, exercisable at any time after the expiration of said one (1) year period, of refunding that portion of the original purchase price for such Building Site theretofore paid to Developer, and of entering into possession of such Building Site. All conveyances made by Developer shall be made and accepted on condition that the purchaser, grantee, Owner or Ground Lessee shall reconvey such Building Site upon the exercise by Developer of the aforesaid option under the conditions herein set forth. The Developer may, as to any Building Site, at its sole election, and at any time or from time to time, extend the time within which such construction must be commenced on such Building Site.

The right and option to require the reconveyance of such Building Site created in this Section 17 shall be prior and superior to:

- A. all liens and security interests securing amounts due or to become due under any mortgage, vendor's lien or deed of trust covering a Building Site, executed by any Owner other than Developer, and filed for record subsequent to the date on which this Declaration is filed in the Official Public Records of Real Property of Harris County, Texas; and
- B. all involuntary liens on such Building Site except liens for maintenance charges, utility standby charges and taxes levied by any city, county and state governments, or any political subdivision or special district thereof,

and the exercise by Developer of such option and the reconveyance of such Building Site to Developer in consummation of the exercise of such option shall effect the termination and discharge of all such subordinate liens and security interests, and such Building Site shall be reconveyed to Developer free and clear of any such subordinate liens and security interests.

Section 18. Exempt Property. Notwithstanding any provision herein to the contrary, the Common Properties shall not be subject to or burdened by the building and use restrictions set forth in this Article VI, except to the extent the same are made specifically applicable to the Common Properties.

ARTICLE VII

ADDITION(S) TO EXISTING PROPERTIES

Developer shall have the right, in its sole discretion, to bring within the plan of this Declaration the surface estate in one or more other tracts of land, at any time or from time to time, by executing and filing for record in the Office of the County Clerk of Harris County, Texas a Supplemental Declaration which describes said additional tract(s) of land and states Developer's intention to extend the plan of this Declaration thereto. Said Supplemental Declaration may modify or amend the terms and provisions of this Declaration insofar as they relate to the tract(s) of land described therein and/or may subject the same to additional terms and provisions. Upon the filing for record of said Supplemental Declaration, the surface estate in the tract(s) of land described therein shall become subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth in this Declaration, except as otherwise provided in said Supplemental Declaration, and to any others set forth therein, effective as of the date stated therein. Furthermore the Owners shall be Members of the Association in accordance with the terms of this Declaration. No additional properties shall be brought within the plan of this Declaration other than under and in accordance with the provisions of this Article VII.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Applicability. Each contract, deed, deed of trust, or ground lease which may be hereafter executed with respect to any portion of the Restricted Properties shall be deemed and held to have been executed, delivered and accepted subject to all of the provisions of this instrument, including, without limitation, the reservations, restrictions, covenants, conditions, liens, and charges set forth herein, regardless of whether or not any of such provisions are set forth in such contract, deed, deed of trust, or ground lease, and whether or not referred to in any such instrument.

Section 2. Duration. The protective covenants of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date hereof and ending thirty-five (35) years from such

effective date. Upon the expiration of the initial term, these protective covenants (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years each. During the initial term and any extension thereof, the protective covenants of this Declaration may be altered, amended or terminated only by the approval of a majority of the votes entitled to be cast by the Members of the Association at a meeting called for this purpose, and upon the execution by such approving Members and the recordation in the appropriate records of Harris County, Texas, of an instrument so amending, modifying or terminating the provisions hereof. PROVIDED HOWEVER, the obligation of the Association to maintain the Detention Lake Area and Detention Park, together with the maintenance fund charge necessary to fund such maintenance and the liens herein imposed to secure the same, shall survive any termination of any other portions of this Declaration and no modification or amendment shall diminish the obligations imposed by this Declaration for the maintenance of such detention areas unless such modification amendment or termination is consented to in writing by the City of Houston and the Harris County Flood Control District.

Section 3. Enforcement. The Association, as a common expense to be paid out of the Maintenance Fund, or any Owner at his own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessments, and all other provisions set out in this Declaration; provided, however, that failure of the Association, any Owner or the Developer to take any action upon a breach of the protective covenants herein provided for shall not render such party liable in any manner for such failure. Failure of the Association or of any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default.

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

Section 5. Developer, Association and Committee Not Liable for Damages. Developer, representatives designated by Developer to act for it under this Declaration, successors and assigns of Developer, officers and directors of the Association, and members of the Committee shall not be liable in damages to any Owner, to any lessee, tenant or other occupant of any land or improvement covered by this Declaration, or to anyone else in connection with the exercise or failure to exercise the powers, duties and authorities set forth in this Declaration, by reason of mistake in judgment, negligence or nonfeasance. Every person who submits plans and specifications for approval pursuant to Article V agrees, by submission thereof, and every Owner, lessee or tenant of any of the property subject hereto agrees, by acquiring title thereto or a leasehold

interest therein, that he will not bring any action or suit against any of said persons or parties to recover any such damages.

Section 6. Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

Section 7. Rights of Lienholders.

- (a) Developer has executed a Promissory Note in the original principal amount of \$17,771,314, payable to the order of Meadowbrook/Pinebrook II ("M/P") dated October 25, 1983 (the "M/P Note") secured by a vendor's lien retained in a deed bearing even date herewith from M/P to Developer and additionally secured by a deed of trust bearing even date herewith from Developer to Lee D. Schlanger, as Trustee, covering Park Harbor (such liens being herein referred to as the "M/P Liens"). Notwithstanding any other term or provision herein to the contrary, at any time prior to the release of the M/P Liens in full, in the event anything in this Declaration requires the consent of Developer, the Association, the Board of Directors of the Association, or the Committee (as provided for herein) or requires or is permitted with the affirmative action of Developer, the Association, the Board of Directors of the Association or the Committee, no such affirmative action shall be taken nor such consent deemed given unless the holder of the M/P Note and the M/P Liens has consented, by instrument in writing executed by such holder, to such affirmative action or has given its consent to any such matters.
- (b) Developer has executed a Promissory Note in the original principal amount of \$4,200,000, payable to the order of Ameriway Savings Association ("Ameriway") dated October 25, 1983 (the "Ameriway Note") secured by, among other liens, a deed of trust bearing even date herewith from Developer to Paul Easterwood, as Trustee, covering a portion of Park Harbor (such liens being herein referred to as the "Ameriway Liens"). Notwithstanding any other term or provision herein to the contrary, at any time prior to the release of the Ameriway Liens in full, in the event anything in this Declaration requires the consent of Developer, the Association, the Board of Directors of the Association, or the Committee (as provided for herein) or requires or is permitted with the affirmative action of Developer, the Association, the Board of Directors of the Association or the Committee, no such affirmative action shall be taken nor such consent deemed given unless the holder of the Ameriway Note and the Ameriway Liens has consented, by instrument in writing executed by such holder, to such affirmative action or has given its consent to any such matters.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has executed this Declaration this the 25 day of October, 1983.

PARK HARBOR INTERESTS, LTD.
A Texas limited partnership

(4)
207

By: J. L. WATSON COMPANY, INC.
General Partner

ATTEST:

By: J. H. Mance
Name: _____

By: J. Watson
Name: Joseph L. Watson
Title: President

By: WATSON/HARBOR INVESTMENTS, LTD.
General Partner

107

ATTEST:

By: J. L. WATSON COMPANY, INC.
General Partner

By: J. H. Mance
Name: _____

By: J. Watson
Name: Joseph L. Watson
Title: President

By: J. Watson
JOSEPH L. WATSON
General Partner

101

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on Oct. 25 1983 by Joseph L. Watson, President of J. L. Watson Company, Inc., a Texas corporation, in its capacity as a general partner of PARK HARBOR INTERESTS, LTD. a Texas limited partnership, on behalf of said limited partnership.



SHARON FLICK
Notary Public, State of Texas
My Commission Expires 7/23/84

J. Sharon Flick
Notary Public in and for the
State of T E X A S
Printed Name: _____
My Commission Expires: _____

063-95-1217

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on Oct. 25, 1983 by Joseph L. Watson, President of J. L. Watson Company, Inc., a Texas corporation, in its capacity as a general partner of Watson/Harbor Investments, Ltd., a Texas limited partnership acting as a general partner of Park Harbor Investments, Ltd., a Texas limited partnership on behalf of said limited partnerships.

Sharon Flick
Notary Public in and for the State of T E X A S
Printed Name: _____
My Commission Expires: _____



SHARON FLICK
Notary Public, State of Texas
My Commission Expires 7/23/84

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on Oct 25, 1983 by Joseph L. Watson, in his capacity as a general partner of Park Harbor Interests, Ltd., a Texas limited partnership on behalf of said limited partnership.

Sharon Flick
Notary Public in and for the State of T E X A S
Printed Name: _____
My Commission Expires: _____



SHARON FLICK
Notary Public, State of Texas
My Commission Expires 7/23/84

69BC4WA

063-95-1218

EXHIBIT "A"

ALL that certain 149.2732 acres of land out of the W.C.R.R. Co. Surveys, A-901 and A-101, Harris County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at U.S. concrete monument #3 found for the southeast corner of a 7.75 acre tract described in a deed recorded in Harris County Clerk's File No. D-949060, and located in the west right-of-way line of Barker-Cypress Road at its intersection with the north line of Addicks Dam;

THENCE South 88° 43' 04" West - 2049.30 feet along said north line to a 1/2 inch iron rod found for the southeast corner of a 19.9 acre tract described in a Deed recorded in Harris County Clerk's File No. B-742470;

THENCE North 01° 52' 56" West - 426.14 feet to a one inch iron pipe found for the northeast corner of said 19.9 acre tract;

THENCE South 87° 50' 57" West - 2120.11 feet to a 3/4 inch iron pipe found for the northwest corner of said 19.9 acre tract and the southeast corner of a tract described in a Deed to Gary Cooper, recorded in Harris County Clerk's File No. D-783556;

THENCE North 01° 45' 44" West - 2657.60 feet along the east line of said Cooper tract to a 5/8 inch iron rod set for corner located in the south right-of-way line of Saums Road;

THENCE North 88° 17' 52" East - 510.00 feet along said south right-of-way line of U.S. concrete monument #14 found for the northwest corner of Addicks Reservoir tract AR-158;

THENCE South 02° 03' 09" East - 1465.14 feet to U.S. concrete monument #13 found for the southwest corner of said tract AR-158;

THENCE North 88° 43' 09" East - 1600.24 feet along the south line of Addicks Reservoir to a one inch iron pipe found for angle corner;

THENCE North 88° 53' 07" East - 1021.54 feet continuing along said south line to a one inch iron pipe found for angle corner;

THENCE North 88° 42' 17" East - 1022.80 feet continuing along said south line to U.S. concrete monument #12 found for the southeast corner of Addicks Reservoir tract AR-150 and located in the west right-of-way line of Barker Cypress Road;

THENCE South 02° 02' 21" East - 852.19 feet along said west right-of-way line to a one inch iron rod found for the most easterly northeast corner of a 41.7 acre tract describe in a Deed recorded in Harris County Clerk's File No. F-148982;

THENCE South 02° 05' 27" East - 735.39 feet continuing along said west right-of-way line to the POINT OF BEGINNING and containing 149.2732 acres of land;

FILED
NOV -2 PM 3:38
COUNTY CLERK
HARRIS COUNTY, TEXAS

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

NOV 2 1983



Quinta Roddenberry
COUNTY CLERK,
HARRIS COUNTY, TEXAS