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SUPPLEMENTAL

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTHEIMER PLACE SECTION TWO (A Subdivision in Harris County, Texas)

RECORDED IN THE PUBLIC RECORDS OF HARRIS COUNTY TEXAS

THE STATE OF TEXAS §
COUNTY OF HARRIS §

09/09/82 20123503 H608581 \$ 31.00

THIS SUPPLEMENTAL DECLARATION, made on the date hereinafter set forth by Commonwealth Development Co., a Texas corporation, having its principal place of business in Houston, Harris County, Texas, hereinafter referred to as "Declarant".

W I T N E S S E T H:

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WHEREAS, Commonwealth Development Co., a Texas corporation, has heretofore executed that certain Declaration of Covenants, Conditions and Restrictions filed for record in the Office of the County Clerk of Harris County, Texas, under County Clerk's File No. G-855649 and recorded under Film Code No. 177-92-0108 in the official public records of real property in Harris County, Texas, (the Declaration of Covenants, Conditions and Restrictions as amended is hereinafter referred to as the "Declaration") imposing on Westheimer Place, Section One, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 309, Page 79, of the Map Records of Harris County, Texas, all those certain covenants, conditions, restrictions, easements, charges, and liens therein set forth for the benefit of said property, and each owner thereof; and

WHEREAS, the Declaration contains provisions granting to Commonwealth Development Co., its successors and assigns, the right to bring within the scheme of such Declaration additional property upon the terms set forth therein, including the approval of the Federal Housing Authority/Veterans Administration (the "FHA/VA") of such annexation; and

WHEREAS, Commonwealth Development Co., is the owner of the real property described as follows, to-wit:

Block One (1), Lots One (1) and Two (2); Block Two (2), Lots Twenty-one (21) through Forty (40); Block Three (3), Lots Seventeen (17) through Twenty (20) and Block Four (4), Lots Seventeen (17) through Thirty (30) of WESTHEIMER PLACE, SECTION TWO, a subdivision in Harris County, Texas, according to the plat thereof recorded in Volume 309, Page 79, of the Map Records of Harris County, Texas.

And said owner desires to provide for the preservation of the values and amenities in such property, and, to this end, desires to bring such property within the scheme of the Declaration and add it to the properties now comprising the subdivision, by subjecting such property to the covenants, conditions and restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each owner in the subdivision; and

WHEREAS, Declarant has obtained the required approval of the FHA/VA and Board of Directors of the Westheimer Place Homeowners Association, of the addition of the real property described in the preceding paragraph of this Supplemental Declaration to the properties now comprising the subdivision, in accordance with the requirements of the Declaration and as subjected to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the subdivision, to

create an agency to which has been and will be delegated and assigned the powers of maintaining, administering and enforcing the assessments and charges created in the Declaration and all Supplemental Declarations; and

WHEREAS, Westheimer Place Homeowners Association, Inc., has been incorporated under laws of the State of Texas for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon the real property described in Article I, Section 1, the following reservations, easements, restrictions, covenants and conditions and declare same applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the land, which reservations, easements, restrictions, covenants and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof. Notwithstanding anything contained herein to the contrary, those certain Reserves depicted as Reserves A, B and C on the Subdivision Plat of Westheimer Place, Section Two shall not be restricted in any way by this Declaration and said Reserves shall not be considered as "lot or lots" for purposes of this Declaration.

ARTICLE I.

Definitions

Section 1. "Properties" shall mean and refer to the real property constituting,

Block One (1), Lots One (1) and Two (2); Block Two ^{CK}(2), Lots Twenty-one (21) through Forty (40); Block Three ^{CK}(3), Lots Seventeen (17) through Twenty ^{CK}(20) and Block Four ^{CK}(4), Lots Seventeen (17) through Thirty (30) of WESTHEIMER PLACE SECTION TWO, a subdivision in Harris County, Texas, according to the plat thereof recorded in Volume 309, Page 79, of the Map Records of Harris County, Texas (hereinafter referred to as "WESTHEIMER PLACE SECTION TWO");

Section 2. "Subdivision shall mean and refer to Westheimer Place Section One and Westheimer Place Section Two, which is brought within the scheme of the Declaration by this Supplemental Declaration; and any additional properties which may hereafter be brought within the scheme of the Declaration pursuant to the provisions set forth herein.

Section 3. "Lot" and/or "Lots" shall mean and refer to each of the lots shown upon the subdivision plat, save and except the Reserves which shall not be subject to these covenants, conditions and restrictions and shall not be considered "lot or lots".

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple to any lot which is a part of the Properties, including contract sellers, but excluding those having said interest merely as security for the performance of an obligation and those having only an interest in the mineral estate.

Section 5. "Subdivision Plat" or "Map" shall mean and refer to the plat or map of Westheimer Place Section Two, recorded in Volume 309, Page 79 of the Map Records of Harris County, Texas, and any subsequently recorded replats thereof.

This instrument has been recorded more than one time.
Anita Rodeheaver
County Clerk, Harris County
Anita Rodeheaver

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Section 6. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee provided for in Article _____ hereof.

Section 7. "Declarant" shall mean and refer to Commonwealth Development Co., a Texas corporation, its successors and assigns, if such successors and assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 8. "Association" shall mean and refer to Westheimer Place Homeowners Association, Inc., a non-profit corporation, their successors and assigns.

Section 9. "Common Properties" shall mean and refer to all those areas of land within the Properties, as shown on the Subdivision Plat, except the lots, the streets, and the restricted and unrestricted reserves shown thereon, together with such other property as the Association may, at any time, or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications, and reservations applicable thereto, by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to "the Common Properties" (any Common Property in the Subdivision) shall mean and refer to Common Properties as defined respectively in this Supplemental Declaration and all Supplemental Declarations.

Section 10. "Common Facilities" shall mean and refer to any provided improvements upon or within the Common Properties. Reference is herein to "the Common Facilities" (any Common Facility in the Subdivision) shall mean and refer to Common Facilities as defined respectively in this Supplemental Declaration and all Supplemental Declarations.

Section 11. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions bringing additional property within the scheme of the Declaration under the authority provided in the Declaration. References herein, whether specific or general, to provisions set forth in "any (all) Supplemental Declaration(s)" shall be deemed to relate to the respective Properties covered by such Supplemental Declarations.

ARTICLE II.

Reservations, Exceptions and Dedications

Section 1. Recorded Subdivision Maps of the Properties. The recorded subdivision maps of the Properties dedicate for use as such, subject to the limitations as set forth therein, the streets and easements shown thereon, and such recorded subdivision maps of the Properties further establish certain restrictions applicable to the Properties including without limitation certain minimum setback lines. All dedications, limitations, restrictions and reservations shown on the recorded plats or replats of the subdivision of the Properties are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property or any part thereof, whether specifically referred to therein or not.

Section 2. Easements. Declarant reserves for the public use the easements and rights-of-way as shown on the recorded subdivision maps of the Properties for the purpose of constructing, maintaining and repairing a system of electric lighting, electric power, telegraph and telephone line or lines,

gas, sewers, and any other utility Declarant sees fit to install in, across and/or under the Properties. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements, but such changes and additions must be approved by the Federal Housing Administration and Veterans Administration. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damages done by them or their assigns, their agents, employees, or servants, to fences, shrubbery, trees or flowers of any other property of the Owner of the land covered by said easements.

Section 3. Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Declarant to any of the Properties by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, storm sewer, electric lighting, electric power, telephone or telegraph purposes. The owners of the respective lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property which are utilized for or service other lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for use, maintenance and enjoyment of his lot.

ARTICLE III

Use Restrictions

Section 1. Single family zero lot line, detached or attached, residential construction. No building shall be erected, altered, or permitted to remain on any lot other than one detached zero lot line or attached zero lot line residential family dwelling unit used for residential purposes only, and not to exceed two (2) stories in height. Each such dwelling unit as previously described in Section 1, shall have parking space for no less than two (2) cars. Nor shall any dwelling exclusive of open porches, carports or garages, or patios be permitted on any lot in this subdivision at a cost of less than \$20,000.00, based upon cost levels prevailing on the date these covenants are recorded. As used herein, the term "residential purposes" shall be construed to prohibit apartment complexes, mobile homes or trailers being placed on the Lots, and no lot shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purposes. No building of any kind, with the exception of lawn storage or children's playhouses, shall ever be moved onto any lot within said subdivision it being the intention that only new construction shall be placed and erected thereon, except with the prior consent of the Architectural Control Committee. A minimum of 50% of the first floor wall area to the top of the first floor window height and exclusive of openings shall be of masonry, masonry veneer, or stucco construction unless otherwise approved in writing by the Architectural Control Committee.

Section 2. Minimum square footage within improvements. Those lots described above as shown on the plat of Westheimer Place, Section 1, are restricted to a detached zero lot line dwelling with a minimum of 1,000 square feet or an attached zero lot line dwelling containing 900 square feet of livable area, exclusive of open porches and garages, carports or parking spaces.

Section 3. Sidewalks. A concrete sidewalk four (4) feet wide shall be constructed parallel to the curb two (2) feet from the property line along the entire fronts of all lots. In addition thereto, four (4) foot wide sidewalks shall be constructed parallel to the curb two (2) feet from the property line along the entire side of all corner lots, and the plans for each residential building on each side of said lots shall include

plans and specifications for such sidewalk and same shall be constructed and completed before the main residence it occupies.

Section 4. Location of the improvements upon the lot. No building shall be located on any lot nearer to the street side line than the minimum building setback line shown on the recorded plat or replats. Detached zero lot line: Subject to the provisions of Section 5 below, one wall of the building, carport or garage shall be located on one side lot line of interior lots of the dwelling in a single detached zero lot line dwelling. However, this wall shall not have any windows, doors or other such related openings. The other wall of the building, carport or garage shall be a minimum of ten (10) feet to an interior lot line or ten (10) feet to an exterior lot line on a corner lot. Attached zero lot line: Subject to the provisions of Section 5 below, the common wall of the attached zero lot line unit shall be built exactly upon the lot line on interior lots. This common wall shall have no openings, nor shall any penetration of this common wall of any kind be allowed, including the installation of electrical wiring or plumbing. The two outside walls of the attached zero lot line unit shall be a minimum of ten (10) feet to an interior lot line or to an exterior lot line on a corner lot.

On the ten (10) foot building setback side of the lot, eaves, steps and unroofed terraces shall not be considered as part of a building; however, this shall not be construed to permit any portion of the construction on a lot to encroach upon another lot.

Section 5. Composite building site. Subject to the approval of the Architectural Control Committee, any owner of one or more adjoining Lot or Lots or portions thereof may consolidate or redivide such Lots or portions into one or more building sites with the privilege of placing or constructing improvements on such resulting sites, in which case the front footage at the building setback lines shall be measured from the resulting side property lines rather than from the Lot lines as indicated on the recorded plats. Any such resulting building site must have a frontage at the building setback line of not less than forty (40) feet.

Section 6. Prohibition of offensive activities. No activity, whether for profit or not, shall be carried on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the neighborhood. This restriction is waived in regard to the normal sales activities required to sell homes in the subdivision and the lighting effects utilized to display the model homes.

Section 7. Use of temporary structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, with the exception of lawn storage or children's playhouses; provided, however, that Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include, but not necessarily be limited to sales and construction offices, storage areas, model units, signs, and portable toilet facilities.

Section 8. Storage of automobiles, boats, trailers and other vehicles. No motor vehicle may be parked or stored on any part of any Lot, easement, right-of-way, or common area or in the

street adjacent to any Lot, easement, right-of-way or common area unless such vehicle is concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans, motorcycles, pick-up trucks, or pick-up trucks with attached-bed campers, that are in operating condition, having current licence plates and inspection stickers, and are in daily use as motor vehicles on the streets and highways of the State of Texas.

No non-motorized vehicle, trailer, recreational vehicle, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored, in any part of any lot, easement, right-of-way, or common area or in the street adjacent to such lot, easement, right-of-way, or common area unless such object is completely concealed from public view inside a garage or other approved enclosure.

This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity.

Section 9. Mineral operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot. No derrick or other structures designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 10. Animal husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. No more than two of each type of pet will be permitted on each Lot. If common household pets are kept, they must be confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from Lot, pet must be on a leash at all times. It is the pet owner's responsibility to keep the Lot clean and free of pet debris.

Section 11. Walls, fences and hedges. Walls, fences and/or hedges shall be allowed to be erected and maintained within five (5) feet of the front lot line for detached zero lot line homes only, except as required in Section 12 below. These hedges, walls and/or fences shall be of wood construction, brick or other materials approved by the Architectural Control Committee and shall not exceed eight (8) feet in height. No side or rear fence, wall or hedge shall exceed eight (8) feet in height. No fences over two (2) feet in height will be permitted in front of the front setback line for attached zero lot line units.

Section 12. Visual obstruction at the intersections of public streets. No object or thing which obstructs site lines at elevations between two (2) feet and eight (8) feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points ten (10) feet from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner lots.

Section 13. Lot maintenance. The Owners or occupants of each Lot shall at all times keep all weeds and grass thereof cut in a sanitary, healthful and attractive manner and shall edge the street curbs that run along the property lines. Each single family attached unit shall each keep their lot to the center line

of the lot mowed and their landscaping maintained in a sanitary, healthful and attractive manner. Owners shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The drying of clothes in full public view is prohibited and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to public view shall construct and maintain a drying yard or other suitable enclosure to screen the following from public view: the drying of clothes, yard equipment, or storage piles, which are incident to the normal residential requirements of a typical family. No lot shall be used or maintained as dumping ground for trash. Trash, garbage or other waste materials shall not be kept except in sanitary sewer containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Containers for the storage of trash, garbage and other waste materials must be stored out of public view. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition. New building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

Section 14. Signs, advertisements, billboards. Except for signs owned by Declarant or by builders advertising their model homes during the period of original construction and home sales, no sign, advertisement or billboard or advertising structure of any kind other than a normal "For Sale" sign not to exceed five (5) feet in total size may be erected or maintained on any Lot in said Subdivision. Declarant, or its assigns, will have the right to remove any sign, advertisement or billboard or structure that does not comply with the above, and in so doing shall not be subject to any liability of trespass or other sort in the connection therewith or arising with such removal.

* Section 15. Maximum height of antenna. No radio or television aerial wires or antenna shall be maintained on any portion of any Lot forward of the front building line of said Lot; nor shall any antenna of any style be permitted to extend above the roof of the main residential structure on said Lot. No antenna or wires shall be visible from the street which runs in front of said Lot.

Section 16. Maintenance of building exterior. Zero lot line detached. Owner shall always have the right to enter the adjacent property to perform maintenance upon the building wall that is on the property line (zero lot line wall), and occupant shall at all times keep this wall in good repair. All deeds of trust upon these lots shall so convey this right of easement. This covenants shall in no way be construed as giving the owner the right to enter upon the adjacent property for any other reason than for maintenance of the zero lot line wall.

Further as to Lots and the Common Area adjoining Lots with improvements situated on the zero setback line shall be subject to a three (3) foot access easement for the construction, repair and maintenance of improvements located upon any adjacent Lot where said improvements are located on the "zero setback line" of the adjacent Lot. The zero setback line owner must replace any fencing, landscaping or other items on the adjoining Lot that he may disturb during the construction, repair or maintenance. Additionally, this easement, when used, must be left clean and unobstructed unless the easement is actively being utilized and any items removed must be replaced. Except in the event of an

emergency, the zero setback line owner must notify the Owner of the adjacent Lot of his intent to do any construction or maintenance upon the zero setback line wall at least twenty-four (24) hours before any work is started, with the hours that such access easement may be utilized being restricted to between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays. In the event of an emergency, no such notice is necessary.

Zero lot line attached: The two owners of each building shall be responsible for the maintenance of the exterior of their building. No change of paint, brick or roof color shall be permitted without approval of the Architectural Control Committee. No maintenance, repairs or painting shall be done by one owner without the consent of the other owner. Each owner (unit) shall have one vote in all matters of exterior maintenance, repairs and painting, and the cost of these repairs. If the two owners (units) cannot agree on the maintenance, repairs, and painting then the owner (unit) that deems that the work needs to be accomplished shall prepare a written description and cost of the work to be accomplished to the Westheimer Place Architectural Control Committee. The Architectural Control Committee shall rule on the need for accomplishing the work and shall set the time frame to accomplish the work if the work is required. Their ruling shall be binding on both owners. In the event an owner of any lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of Westheimer Place, the Association, after approval of two-thirds (2/3rds) vote of the Board of Directors, shall have the right, within sixty (60) days of written notification to said owner, through the Association's agents and employees, to enter upon said parcel and to repair, maintain, and restore the lot and the exterior of the buildings and any other improvements erected thereon. The costs of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

Section 17. General rules of law to apply. Each wall and roof which is built as a part of the original construction of the zero lot line attached building upon the Properties and placed on the dividing line between the lots shall constitute a common wall and roof, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding common walls and roofs and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a common wall or roof shall be shared by the Owners who make use of the wall and roof equally. Destruction by Fire or other Casualty: If a party wall or roof is destroyed or damaged by fire or other casualty, any owner who has used the wall or roof may restore it, and if the other owner thereafter makes use of the wall or roof, he shall contribute to the cost of restoration thereof in proportion to such as without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. In addition, for attached zero lot line buildings, the total exterior of both properties must be completely restored to their original condition before the destruction that resulted from fire or other casualty. Weatherproofing. Notwithstanding any other provision of this Article, an owner who, by his negligent or willful act, causes the common wall or roof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. Right to Contributions with Land. The right of any owner to contribution from any other owner under this Section will be appurtenant to the land and shall pass to such owner's successors in title. Arbitration. In the event of any dispute arising concerning a common wall or roof, or under the provisions of this Section, the Architectural Committee, as

set forth under Article IV herein, shall have full and complete authority in handling said dispute and the decision of the Architectural Control Committee shall be final. The decision of the Architectural Control Committee must be rendered on or before sixty (60) days following written notification to the Architectural Control Committee by one or both property owners involved.

ARTICLE IV.

Architectural Control Committee

Section 1. Approval of building plans. No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plot plan showing the location of the structure, have been approved in writing as to harmony of exterior design and color with existing structures, as to location with respect to topography and finished ground elevation, and as to compliance with minimum construction standards by the Architectural Control Committee of Westheimer Place, Section Two, subdivision. A copy of the construction plans and specifications, and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee, or its designated representative prior to commencement of construction. The Architectural Control Committee may require the submission of such plans, specifications, and plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect at its entire discretion.

Section 2. Committee Membership. The Architectural Control members shall be three (3) in number, and shall be composed of Wallace H. Claypool, Ben M. Dyer, and Cristela N. Harrison, who by majority vote may designate a representative to act for them. At any time, the then recorded owners of a majority of the lots shall have the power through a duly recorded instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties. The address of the committee is Wallace H. Claypool, 1010 Lamar, Suite 220, Houston, Texas 77002.

Section 3. Replacement. In the event of death or resignation of any member or members of said committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall be so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications, and plot plans submitted or to designate a representative with like authority.

Section 4. Minimum construction standards. The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and such Architectural Control Committee shall not be bound thereby.

Section 5. Term. The duties and powers of the Architectural Control Committee and of the designated representative shall cease on or run with the term of these restrictions.

Section 6. Variances. Article III of this Declaration contains a number of provisions wherein the Architectural Control Committee is expressly granted the authority, in its discretion, to permit variances from the effect of a particular restrictive covenant. The Architectural Control Committee may require the submission to it of such documents and items (including, as examples but without limitation, written request for and

description of the variances requested, plans, and specifications, plot plans and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for a variance. If the Architectural Control Committee shall approve such request for a variance, the Architectural Control Committee may evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Architectural Control Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including, as examples but without limitation, the type of alternate materials to be permitted, the alternate fence height approved or specifying the location, plans and specifications applicable to an approved carport), and signed by a majority of the then members of the Architectural Control Committee (or by the Committee's designated representative if one has been designated under the authority contained in Section 2. above). Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the Architectural Control Committee; or (b) failure by the Architectural Control Committee to respond to the request for variance. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning, and/or the term of the Architectural Control Committee shall have expired and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted, it being the intention of Declarant that no variances be available except in the discretion of the Architectural Control Committee or, if it shall have succeeded to the authority of the Architectural Control Committee in the manner provided herein, the Board of Directors of the Association.

ARTICLE V.

Westheimer Place Homeowners' Association

Section 1. Membership and Voting Rights. Every owner of a lot subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership.

Section 2. The Association shall have two classes of voting membership.

Class A. Class A members shall be Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever comes earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) January 1, 1990.

The Class A and Class B members shall have no rights as such to vote as a class, except as required by the Texas Non-Profit Corporation Act, and both classes shall vote upon all members as one group.

Section 3. Non-Profit Corporation. WESTHEIMER PLACE HOMEOWNERS' ASSOCIATION, a non-profit corporation, has been organized; and it shall be governed by the Articles of Incorporation of said Association; and all duties, obligations, benefits, lines and rights hereunder in favor of the Association shall vest in said corporation.

Section 4. By-Laws. The Association may make whatever rules or by-laws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof.

Section 5. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during the normal business hours.

ARTICLE VI.

Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned with the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, 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 the land and shall be continuing lien upon the property against which each such assessment is made. Each such assessment, together with interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them.

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 and for the improvement and maintenance of any common areas. The responsibilities of the Homeowners' Association shall include, but not be limited to the maintenance and repair of the walkways, steps, entry gates, or fountain areas, if any; construction and maintenance of parkways, right-of-ways, easements, esplanades and other public areas; construction and operation of all street lights; purchase and/or operating expenses of recreation areas, if any; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Properties to which the Maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employing policemen and watchmen; if desired, caring for vacant lots and doing other thing or things necessary or desirable in the opinion of the Association to keep the properties in the subdivision neat and in good order, or which is considered of general benefit to the owners or occupants of the Properties. It is understood that the judgment of the Association in the expenditure of said funds

shall be final and conclusive so long as good judgment is exercised in good faith.

Section 3. Rate of Assessment. The maintenance charge and/or assessment will be paid by the Owner of such Lot within Westheimer Place, Section Two, subdivision, in monthly installments, commencing on the first day of the month following conveyance of the property to the homeowner. However, the amount of such maintenance charge and/or assessment shall, anything to the contrary notwithstanding, be chargeable and payable by the owner or owners of any Lot at one-half ($\frac{1}{2}$) the rate assessed to homeowners until completion and occupancy of a permanent structure thereon by a homeowner.

Upon completion and occupancy, the assessment for the first year of ownership or any fraction thereof shall be the number of months the lot has been occupied by a homeowner times the monthly assessment rate payable on January 1, for the preceding first year or fraction of the first year. After the first year, the maintenance charge will be collected annually in the amount of an annual assessment; payable on January 1, of the specific year for the preceding year. The rate at which each Lot will be assessed will be determined annually, and may be adjusted from year to year by the Board of Directors as the needs of the subdivision may, in the judgment of the Board of Directors, require; provided that such assessment will be uniform and in no event will such assessment or charge exceed \$20.00 per Lot per month, or \$240.00 per Lot per year, unless increased as provided in Section 4. The Association can collect special assessments as well as annual charges above described whenever the members so vote.

Section 4. Maximum annual assessment. Until January 1, 1983, the maximum annual assessment shall be \$240.00. From and after January 1, 1983, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year with a two-thirds ($\frac{2}{3}$) vote of each class of membership who are voting in person or in proxy, at a meeting duly called for this purpose. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, and shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the annual assessment period, which shall begin on the first day of January of each year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The dates shall be established by the Board of Directors.

Section 5. Effect of non-payment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Maintenance Area or abandonment of his Lot.

Section 6. Subordination of the Lien to Mortgages. To secure the payment of the maintenance fund and all annual and special assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each Deed (whether specifically stated therein or not) by which the Declarant shall convey such lots, a Vendor's Lien for benefit of the Association, said lien to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that each such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the instance and request of the Declarant and the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or the construction of improvements on any such lot to the extent of any such maintenance fund charge or

annual or special assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further provided that as a condition precedent to any proceeding by the Association to enforce such lien upon any lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage holder by prepaid U. S. registered mail, and shall contain a statement of the delinquent maintenance charges or annual or special assessments upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Lot covered by such mortgage lien to the holder thereof.

Sale or transfer of any lot shall not affect the lien in favor of the Association provided, however, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien securing such assessment or charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot or the owner thereof from liability for any charges or assessments thereafter becoming due or from the lien thereof.

Section 7. Additions to Existing Property. Additional lands may become subject to the scheme of this Declaration in the following manner:

(a) Additions by Declarant. The Declarant, its successors and assigns, shall have the right to bring within the scheme of Homeowners' Association any additional properties in future stages of the development of Westheimer Place, upon approval of the Board of Directors of the Association, in its sole discretion. Any additions authorized under this and the succeeding subsections, shall be made by filing of record of Declaration of Covenants and Restrictions and Annexation Agreement with respect to the additional property or properties which shall extend the scheme of the covenants and restrictions of this Declaration to such property and the execution thereof by the President of the Board of Directors. Such Declaration must impose an annual maintenance charge assessment on the property covered thereby, on a uniform, per Lot basis, substantially equivalent to the maintenance charge and assessment imposed by this Declaration, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands.

(b) Other Additions. Upon the approval of the Board of Directors of the Association, in its sole discretion, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record an Annexation Agreement and Declaration of Covenants and Restrictions upon the satisfaction of the conditions specified in subsection (a) above.

(c) Mergers. Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration and all Supplemental Declarations, together with the covenants and restrictions applicable to the properties of the other association as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the

covenants established by this Declaration or any Supplemental Declaration.

ARTICLE VII.

General Provisions

Section 1. Term. These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the Lots has been recorded agreeing to change or terminate said covenants in whole or in part. The terms and provisions of the restrictions may be amended at any time when an instrument setting forth said changes and signed by those persons holding a majority of votes in the Association is placed on record in the real property records of Harris County, Texas. Upon any violation or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other lot owner to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from doing so or to recover damages or other dues for such violations. Failure by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation of the Association and this Declaration of Covenants, Conditions and Restrictions, the Declaration of Covenants, Conditions and Restrictions shall control, and in the case of any conflict between the By-Laws of the Association and this Declaration of Covenants, Conditions and Restrictions, the Declaration of Covenants, Conditions and Restrictions shall control.

Section 3. Severability. Invalidation of any one of these covenants by judgment or other court order shall in no ways affect any of the other provisions which shall remain in full force and effect.

Section 4. FHA/VA Approval. So long as the Declarant, its successors and assigns, are in control of the WESTHEIMER PLACE HOMEOWNERS' ASSOCIATION, the following actions will require the prior approval of the Federal Housing Administration and/or the Veteran's Administration; Annexation of additional properties; dedication of common area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

EXECUTED this 30th day of August, 1982, A.D.

ATTEST:

Jane Ford
Assistant Secretary

COMMONWEALTH DEVELOPMENT COMPANY

BY: Wallace H. Claypool
Wallace H. Claypool
Vice President

THE STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, on this day personally appeared WALLACE H. CLAYPOOL, Vice President of Commonwealth Development Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 30th day of August, 1982.



Cristela M. Harrison
Notary Public in and for Harris
County, T E X A S


My commission expires 10-9-84

CRISTELA M. HARRISON
Notary Public - State Of Texas
My Commission Expires Oct. 9, 1984
Bonded By Harco Ins. Services

FILED
SEP 9 2 12 PM 1982
Cristela M. Harrison
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

SEP 3 1982


Quita Padilla
County Clerk, Harris County, Texas

Please return to:
Mr. Wallace H. Claypool
Reamer, Dyer & Claypool, Inc.
1010 Lamar, Suite 220
Houston, Texas 77002

FILED
SEP 3 9 00 AM 1982
Quita Padilla
COUNTY CLERK
HARRIS COUNTY, TEXAS