

6835649

COPY

177-92-0208

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS X
COUNTY OF HARRIS X

This Declaration, made on the date hereinafter set forth
by Commonwealth Development Co., a Texas corporation, hereinafter
referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain property
in Westheimer Place, Section I, a subdivision in Harris County,
Texas as described as follows:

All the lots in Westheimer Place, Section I, Subdivision,
Harris County, Texas according to the Map or Plat thereof,
recorded in Volume 300, Page 40, in the Map Records of
Harris County:

Block One (1), Lots Three (3) through Thirty-eight (38);
Block Two (2), Lots One (1) through Fifty-six (56); Block
Three (3), Lots One (1) through Thirty-six (36); Block Four
(4), Lots One (1) through Twenty (20); Block Five (5), Lots
One (1) through Twenty (20); Block Six (6), Lots One (1)
through Thirty-two (32); Block Seven (7), Lots One (1) through
Sixteen (16) and Lots Twenty-One (21) through Thirty-six (36);
Block Eight (8), Lots One (1) through Sixteen (16).

WHEREAS, it is the desire of Declarant to place certain
restrictions, covenants, conditions, stipulations and reservations
upon and against such property in order to establish a uniform plan
for the development, improvement and sale of such property, and to
insure the preservation of such uniform plan for the benefit of
both the present and future owner of lots in said subdivision:

NOW, THEREFORE, Declarant adopts, establishes and imposes
upon those above described lots in Westheimer Place, Section I,
and declares the following reservations, easements, restrictions,
covenants and conditions, applicable thereto, all of which are for
the purposes of enhancing and protecting the value, desirability
and attractiveness of the land, which reservations 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.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to WESTHEIMER PLACE, a non-profit corporation, its successors and assigns.

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

Section 3. "Properties" shall mean and refer to those certain Lots in Westheimer Place, Section 1, described above, subject to the Reservations set forth herein and/or in the Subdivision Plats, and any additional properties made subject to the terms hereof pursuant to the provisions set forth herein.

Section 4. "Lot" and or "Lots" shall mean and refer to any plot of land as described above and all plats or lots annexed pursuant to Section 7, Article VI hereof.

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 set-back 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 I, 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, 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 I, 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 on interior lots of the dwelling is 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 license 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. 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 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 covenant 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. 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 by 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 need to be accomplished shall prepare a written description and cost of the work to be accomplished to the Westheimer Place, Section I, 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, Section I, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, within sixty (60) days of written notification to said owner, through the Associations'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 cost 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 1, 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 its 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, ^{Lot 20} 4669 ^{Some 200} Southwest Frwy. #720, Houston, TX 77025

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 been 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 5. 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 bylaws 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 judgement of the Association in the expenditure of said funds shall be final and conclusive so long as good judgement 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 as set forth under Witnesseth on Page 1. within Westheimer Place. Section I, 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 (½) 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 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 judgement 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, 1982 the maximum annual assessment shall be \$240.00. From and after January 1, 1982, 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 (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 (6) percent 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.

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 these 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 judgement 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 5th day of February, 1981, A.D.

COMMONWEALTH DEVELOPMENT COMPANY

ATTEST:

BY: Jane Ford
Jane Ford
Assistant Secretary

BY: Wallace H. Claypool
Wallace H. Claypool

ALLIED AMERICAN BANK

ATTEST:

BY: G. H. Beckham
G. H. Beckham

BY: David B. Moulton
David B. Moulton
Senior Vice President

THE STATE OF TEXAS I
COUNTY OF HARRIS I

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 5th day of February, 1981.

Cristela N. Harrison
Notary Public in and for Harris County, Texas

My commission expires 10-9-84



THE STATE OF TEXAS I
COUNTY OF HARRIS I

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

BEFORE ME, the undersigned authority, on this day personally appeared JANE FORD, Assistant Secretary of Commonwealth Development Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein express and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 5th day of February, 1981.

Cristela N. Harrison
Notary Public in and for Harris County, Texas

My commission expires 10-9-84

THE STATE OF TEXAS I
COUNTY OF HARRIS I

CRISTELA N. HARRISON
Notary Public - State Of Texas
My Commission Expires Oct. 9, 1984
Bonded by: Harris Ins. Services

BEFORE ME, the undersigned authority, on this day personally appeared David E. Moulton, Sr. V. P. of Allied American Bank, 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 express and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 5th day of February, 1981.

Cristela N. Harrison
Notary Public in and for Harris County, Texas

My commission expires 10-9-84

CRISTELA N. HARRISON
Notary Public - State Of Texas
My Commission Expires Oct. 9, 1984
Bonded by: Harris Ins. Services

THE STATE OF TEXAS I
COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on this day personally appeared G. H. Beckham, V. Pres. of Allied American Bank, 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 express and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 5th day of February, 1981.

Cristela N. Harrison
Notary Public in and for Harris County, Texas

My commission expires 10-9-84



CRISTELA N. HARRISON
Notary Public - State Of Texas
My Commission Expires Oct. 9, 1984
Largest E. Marc Ins. Services

RETURN TO:

REAMER, DYER & CLAYPOOL
4669 SOUTHWEST FREEWAY, #720
HOUSTON, TX. 77027

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 stated hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

FEB - 5 1981



Quita Ledebere
COUNTY CLERK,
HARRIS COUNTY, TEXAS

FILED
FEB 5 2 33 PM 1981
Quita Ledebere
COUNTY CLERK
HARRIS COUNTY, TEXAS