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173-01-0911

DECLARATION OF COVENANTS AND RESTRICTIONS
WEST MEMORIAL SOUTH, SECTION ONE

THIS DECLARATION is made on the date hereinafter set forth by T. M. C. FUNDING, INC., Texas corporation, hereinafter referred to as "TMC":

W I T N E S S E T H:

T. M. C. Funding, Inc., a Texas corporation, the owner of the following described property in Houston, Harris County, Texas:

Being One Hundred Thirty-Eight (138) lots out of WEST MEMORIAL SOUTH, SECTION ONE, a subdivision located in Harris County, Texas, according to the map or plat thereof recorded in Volume 249, Page 116, of the Map Records of Harris County, Texas, said one hundred thirty-eight (138) lots being more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes;

hereby declares that the real property in West Memorial South, (as such term is hereinafter defined), to the extent provided herein, shall be held, sold, transferred, and conveyed subject to the reservations, covenants, obligations, assessments, liens, terms, and provisions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property.

ARTICLE I

DEFINITIONS

SECTION 1.1 - DEFINITIONS. The following words, when used in this Declaration, shall have the following meanings (unless the context clearly indicates otherwise):

- (a) "TMC" shall mean and refer to T. M. C. Funding, Inc., a Texas corporation, the declarant herein, and to any entity which succeeds to all or substantially all of its assets by any merger, consolidation, or conveyance of assets.
- (b) "West Memorial South" shall mean and refer to the property described in Exhibit "A" attached hereto.
- (c) "Lot" shall mean and refer initially to any of the One Hundred Thirty-Eight (138) numbered lots in West Memorial South, being the lots described in Exhibit "A" attached hereto. If a Subdivision Plat is hereafter filed for record by TMC in the Office of the County Clerk of Harris County, Texas, replatting the area within any of the Lots, then, with respect to the replatted area only, the term "Lot" shall thereafter mean and refer to any of the numbered lots shown on such Subdivision Plat. If building sites are created pursuant to Section 2.6 herein, the term "Lot" shall also thereafter mean and refer to any building site so created.

- (d) "Living Unit" shall mean and refer to any improvements in West Memorial South, which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons maintaining a common household.
- (e) "Detached Residence" shall mean and refer to a Living Unit no side wall of which is on a side boundary line of the Lot upon which such Living Unit is situated.
- (f) "Association" shall mean and refer to the West Memorial Civic Association, a Texas nonprofit corporation, and to any nonprofit corporation which succeeds to all or substantially all of its assets by any merger, consolidation, or conveyance of assets.
- (g) "Assessable Tract" shall mean and refer to any Lot in West Memorial South and to any Lot out of property other than West Memorial South, if such Lot is subjected by TMC to the jurisdiction of the Association and impressed by TMC with an assessment equivalent to the assessment imposed by Article IV hereinbelow. Provided, no Lot in West Memorial South shall become an Assessable Tract until the first day of the month immediately following the conveyance by TMC of the first Lot to an Owner; and further provided that no Lot out of property other than West Memorial South, which is subjected by TMC to the jurisdiction of the Association and is impressed by TMC with an assessment equivalent to the assessment imposed by Article IV hereinbelow, shall become an Assessable Tract until the first day of the month immediately following the conveyance by TMC of the first Lot out of said property to an Owner. At such time as one Lot in West Memorial South or located within other property subsequently subjected by TMC to the jurisdiction of the Association is conveyed by TMC to an Owner, all of the Lots in West Memorial South, or all of the Lots in the property subsequently subjected by TMC to the jurisdiction of the Association, whichever is the case, shall automatically become Assessable Tracts.
- (h) "Owner" shall mean and refer to the owner(s), whether one or more persons or entities, of the fee simple title to any Lot, but shall not mean or refer to any person or entity holding only a lien, easement, mineral interest, or royalty interest burdening the title thereto.
- (i) "Member" shall mean and refer to a member of the Association during the period of such membership, and shall include the Owner (during the period of his ownership) of each Assessable Tract.

- (j) "Community Properties" shall mean and refer to any properties, real or personal, hereafter conveyed to or otherwise acquired by the Association. References hereinafter made to "Community Properties" shall mean such properties whenever acquired by the Association.
- (k) "Properties" shall mean and refer to that certain property described on Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- (l) "Architectural Control Committee" shall mean, and refer to _____, and _____, all of Harris County, Texas, and their successors, who shall act as the Architectural Control Committee.
- (m) "Collector Street" shall mean and refer to _____, as shown on the plat of West Memorial South, irrespective of any change in the names thereof.
- (n) "Cul-de-Sac Street" shall mean and refer to _____.
- (o) "Fenestration" shall mean and refer to a door window, or other opening in a wall of a building.
- (p) "Greenways" shall mean and refer to any of the areas designated as such on the plat of West Memorial South, if any.

ARTICLE II

SUBDIVISION PLAT; EASEMENTS; RIGHTS RESERVED; BUILDING SITES; ADJACENT PROPERTY

SECTION 2.1 - SUBDIVISION PLAT. All dedication, easements, limitations, restrictions, and reservations shown on the West Memorial South Plat are incorporated herein for all purposes, insofar as they relate to West Memorial South.

SECTION 2.2 - EASEMENTS. TMC hereby reserves easements and rights-of-way to construct, maintain, repair, and operate a system or systems of electric light and power, telephone, telegraph, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities over, on, and under the Community Property. Further, TMC reserves the right to dedicate or convey specific easements over, on, or under any part of the Community Properties for any or all of said systems, and the right to reserve, dedicate, or convey additional easements in any other part of West Memorial South for streets and/or any or all of said systems at or prior to the time TMC parts with title thereto.

SECTION 2.3 - LIABILITY. No municipal authority using any dedicated public utility easement over, on, or under the Community Properties shall ever be liable for any damages done by them to fences, trees, shrubbery, plants, landscaping, or other improvements situated on the land covered by said easement except to the extent any such municipal authority may have agreed otherwise with TMC or has a standard practice of remedying or repairing such damage. If any such damage is occasioned by operations of a municipal authority in accordance with its standard practice or its agreement with TMC, such damage shall be remedied or repaired by the Association at its expense. If any damage to fences, trees, shrubbery, plants, landscaping, or other improvements situated on the Community Properties is occasioned by operations of any party other than a municipal authority, such damage shall be remedied or repaired by the party causing same at its expense.

SECTION 2.4 - RESERVATIONS. The title conveyed by TMC to any Lot by contract, deed, or other conveyance shall never be intended, construed, or held to include the title to any of the Community Properties, any of the easements referred to in Sections 2.1 or 2.2, or any improvements at any time located over, on, or under the Community Properties or any such easement, and title to all of the same shall be considered as excluded from any such conveyance, except to the extent that any of the same are specifically referred to in the instrument of conveyance and are stated therein to be conveyed thereby. Any system of utility lines and facilities constructed by TMC over, on, or under any such easement may be given, sold, or leased by TMC to any public authority, utility company, or holder of a public franchise.

SECTION 2.5 - RIGHT TO SUBDIVIDE OR RESUBDIVIDE. TMC shall have the right (but shall never be obligated) to subdivide or resubdivide into lots, by recorded plat or in any other lawful manner, all or any part of the property in West Memorial South.

SECTION 2.6 - BUILDING SITES. With the written approval of the Architectural Control Committee, a living unit may be constructed on any combination of lots or portions of lots having (1) a width at the building line of not less than the narrowest width at the building line of any lot shown on the West Memorial South Plat, and (2) an area of not less than the area of the smallest lot shown on the West Memorial South Plat.

SECTION 2.7 - NO OBLIGATION AS TO ADJACENT PROPERTY. West Memorial South is part of a larger tract or block of land owned by TMC. While TMC may subdivide other portions of its property, or may subject the same to a Declaration, TMC shall have no obligation to do so, and if TMC elects to do so, any Subdivision Plat or Declaration executed by TMC with respect to any of its other property may be the same or similar or dissimilar to any Subdivision Plat covering West Memorial South or any part thereof, or to this Declaration. The property shown as Unrestricted Reserves on the West Memorial South Plat is a part of the other property of TMC referred to in this Section 2.7.

RIGHT TO FORM A COMMUNITY
The Community Association
ARTICLE III

PROPERTY RIGHTS IN THE COMMUNITY PROPERTIES

SECTION 3.1 - MEMBERS' EASEMENTS OF ENJOYMENT. Subject to the provisions of Section 3.2, every Member shall have a common right and easement of enjoyment in the Community Properties, and such right and easement shall be appurtenant to and shall pass with the title to every Assessable Tract.

SECTION 3.2 - EXTENT OF MEMBERS' EASEMENTS. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of TMC or others as referred to or provided for in Article II, and shall also be subject to the following rights of the Association:

(a) The Association shall have the right to borrow money and in aid thereof to mortgage the Community Properties upon approval by two-thirds (2/3rds) of the votes cast by each class of Members at a meeting of Members. In the event of a default under, or foreclosure of, any such mortgage, the rights of the lender or foreclosure sale purchaser shall have the right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members of any recreational facilities and to open the enjoyment of such recreational facilities to a reasonably wider public until the mortgage debt owed to such lender, or the purchase price paid by the foreclosure sale purchaser, and interest thereon at the rate of ten per cent (10%) per annum, shall be satisfied or recovered, whereupon the possession of such properties shall be returned to the Association and all rights hereunder of the Members shall be fully restored.

(b) The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties against foreclosure of any such mortgage.

(c) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid.

(d) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Community Properties and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.

(e) The Association shall have the right to assess and collect the assessments provided for herein.

(f) Upon approval by two-thirds (2/3rds) of each class of Members, the Association shall have the

right to transfer or convey all or any part of the Community Properties, or interest therein, to any public authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3rds) of each class of Members.

SECTION 3.3 - EXTENSION OF MEMBERS' RIGHTS AND EASEMENTS. Each Member shall have the right to extend the rights and easements of enjoyment vested in him hereunder to the members of his family and/or to his tenants who reside in West Memorial South or in other property which TMC subjects to the jurisdiction of the Association and impresses with an assessment equivalent to the assessment imposed by Article IV hereinbelow, and to such other persons as may be permitted by the Association.

ARTICLE IV

THE ASSOCIATION AND MAINTENANCE ASSESSMENT

SECTION 4.1 - ANNUAL MAINTENANCE CHARGE. Each Assessable Lot in West Memorial South is hereby subjected to an annual maintenance charge and maximum annual assessment not to exceed \$_____ per month or \$_____ per annum to create a "maintenance fund".

SECTION 4.2 - PAYABLE. The maintenance charge and assessment will be payable monthly as it accrues by the Owner of each Lot within West Memorial South to West Memorial Civic Association, or its designated agent, on or before January 1, 1978, and on or before January 1, of each succeeding year to commence as to all Lots on the first day of the month immediately following the conveyance by TMC of the first Lot to an Owner and thereafter during the period in which these restrictions are in force. The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by West Memorial Civic Association or its successor committee as the needs of the subdivision may, in the judgment of that Association or its successor committee, require provided that such assessment will be uniform and in no event will such assessment or charge exceed \$_____ per Lot per month or \$_____ per Lot per year except as hereinafter provided for increase of the maximum annual assessment. Annual assessments may be payable monthly and the first annual assessment may be adjusted according to the number of months remaining in the calendar year and the due dates established by the Association, or its successor committee. The Association, or its successor committee, upon demand, and for a reasonable charge, will furnish a certificate setting forth whether the assessments on a specified lot have been paid.

SECTION 4.3 - INCREASE OF MAXIMUM ANNUAL ASSESSMENT. Until January 1 of the year immediately following the conveyance by TMC of the first Lot to an Owner, the maximum annual assessment shall be _____ Dollars (\$_____) per Lot.

From and after January 1 of the year immediately following the conveyance by TMC of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than three percent (3%) above the maximum assessment for the previous year without a vote of the membership.

From and after January 1 of the year immediately following the conveyance by TMC of the first Lot to an Owner, the maximum annual assessment may be increased above three percent (3%) by a vote of two-thirds of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

SECTION 4.4 - UNIFORM RATE OF ASSESSMENT. Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. TMC or its successor developer shall pay fifty percent (50%) of the homeowner's assessment on building sites ready for construction or improvements, such payment to continue until the Lot is sold by TMC to an Owner. The developer or TMC will not be obligated for payments on undeveloped Lots.

SECTION 4.5 - EFFECT OF NONPAYMENT OF ASSESSMENTS. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due 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 for herein by nonuse or abandonment of his Lot.

SECTION 4.6 - REPLACEMENT OF COMMITTEE. When seventy-five percent (75%) of the Lots in West Memorial South, and all succeeding sections are sold, the Owners of the Lots may create a committee or form a non-profit corporation which shall replace West Memorial Civic Association in the collection of this maintenance fund and performance of the duties and purposes for which the fund is established.

SECTION 4.7 - PURPOSE. All funds collected by West Memorial Civic Association or its successor committee in accordance with these provisions shall be used for the purpose of maintaining the streets, public parks, drainage ditches and walks, or any other facilities which are made or maintained for the benefit of the subdivision as a whole. The uses and benefits which may be provided by West Memorial Civic Association, or its successor committee, at its sole option depending upon the funds available and prevailing circumstances, may include, but are not limited to, any and all of the following: Maintaining public parks, parkways, rights-of-way, easements, esplanades and other public areas, collecting and disposing of garbage, ashes, rubbish, etc. payment of all legal and other expenses incurred in connection with the collection and administration of the maintenance fund and assessments, covenants, restrictions and conditions affecting the property to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance fund, and assessment, caring for vacant Lots, providing for payment and maintenance of street lights, grass cutting, and doing any other thing or things necessary or desirable to keep the property in the subdivision neat and in good order and to do those things which, in the opinion of the West Memorial Civic Association or its successor committee, are considered of general benefit to the Owners or occupants of the property. It is understood that the judgment of West Memorial Civic Association, or its successor committee, in the expenditure of these maintenance funds shall be final and conclusive so long as such judgment is exercised in good faith.

SECTION 4.8 - LIEN. An express lien is hereby granted to West Memorial Civic Association, or its successor committee, to secure payment of the maintenance charge but the lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 4.9 - ADDITIONAL PROPERTIES. The proceeds of the maintenance fund may be used for the use and benefit of Lot Owners and residents in other and subsequent sections of that certain 479 acre tract known as West Memorial Subdivision, provided, however, that each future section to be entitled to the benefit of this maintenance fund, must be impressed with and subject to the annual maintenance charge and assessment on a uniform, per Lot basis, equivalent to the maintenance charge and assessment imposed by these restrictions, and further made subject to the jurisdiction of West Memorial Civic Association or its successor committee. Annexation of additional sections revives the Class B membership and voting rights provided for in Section 4.11.

SECTION 4.10 - RIGHT TO INSPECT BOOKS. The Owner of any Lot shall have the right to inspect the books and records of West Memorial Civic Association or its successor committee at any reasonable time.

SECTION 4.11 - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION. Every Owner of a Lot which is subject to assessment shall be a member of West Memorial Civic Association, a non-profit corporation, whose initial Board of Directors is comprised of John R. Howard, Jesse Brown and Frank H. Howard, Jr., and the street address of the initial registered office of the corporation is 3200 Kirby Drive, Houston, Texas, and the name of its initial registered agent at such address is John R. Howard. In the event West Memorial Civic Association is replaced by a successor committee, the right to membership provided herein shall cease but every Owner of a Lot subject to assessment through the successor committee shall be entitled to a vote in connection with the administration of the fund by the committee. Membership in West Memorial Civic Association is not limited to those subjected to this assessment but the Association may accept other members and operate for broad civic purposes in accordance with its charter and bylaws. The West Memorial Civic Association will maintain a separate "maintenance fund" for the management and disbursement of funds provided for by these restrictions. The West Memorial Civic Association has designated its initial Board of Directors listed herein as the original committee to administer the maintenance fund.

The West Memorial Civic Association will have two classes of membership, being Class A and Class B.

and
QWO Class A. Class A Members shall be all Owners ~~with the~~ *and* ~~subject to the~~ *W.C.* 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 Members shall be TMC and shall be entitled to three 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 occurs earlier:~~

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- ~~(a) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or~~
- ~~(b) On January 1, 1981.~~

~~The annexation of subsequent sections of West Memorial Subdivision entitles the Class B Members to votes in the association for administration of the maintenance fund as to all sections of West Memorial Subdivision so that the total votes outstanding in the Class A membership shall not equal or exceed the total votes outstanding in the Class B membership until the completion of development of the last section of West Memorial Subdivision. Should the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership in any section, then the annexation of any subsequent section will revive the Class B membership and voting rights of TMC.~~

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

SECTION 5.1 - TENURE. The persons serving on the Architectural Control Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association have Living Units thereon occupied as residences, at which time the Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association. In the event of the death or resignation of any person serving on the Architectural Control Committee, the remaining person(s) serving on the Committee shall designate a successor, or successors, who shall have all of the authority and power of his or their predecessor(s). A majority of the Architectural Control Committee may designate someone serving on the Committee to act for it. No person serving on the Committee shall be entitled to compensation for services performed pursuant to this Article V. However, the Committee may employ one or more architects, engineers, attorneys, or other consultants to assist the Committee in carrying out its duties hereunder; and the Association shall pay such consultants for such services as they render to the Committee.

SECTION 5.2 - APPROVAL OF PLANS. No buildings or other improvements, including streets, driveways, sidewalks, drainage facilities, landscaping, fences, walks, fountains, statuary, outdoor lighting and signs, shall be commenced, constructed, erected, placed, or maintained in West Memorial South, nor shall any exterior addition to or alteration therein be made,

unless and until (i) a preliminary site plan showing all uses and dimensions, the location of buildings, entries, streets, driveways, parking areas, pedestrian ways, and storage areas, and the location of Greenways, if any, in their relationship to existing or planned Greenways on adjoining property, and a schematic plan for the landscaping and lighting of the property, have been submitted to and approved in writing by the Architectural Control Committee, and thereafter (ii) the final working plans and specifications for the work shown on the preliminary site plan and schematic plan have been submitted to and approved in writing by the Architectural Control Committee as to compliance with this Declaration and as to harmony of external design and location in relation to property lines, building lines, easements, grades, surrounding structures, existing or planned Greenways, if any, walks, paths, and topography. The final working plans and specifications shall not be commenced until the preliminary site plan and the schematic plan have been so approved. The final working plans and specification shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, exterior color scheme, materials, and location of the proposed improvements or alterations hereto. In the event the Architectural Control Committee fails to approve or disapprove the preliminary site plan and schematic plan within ten (10) working days after they have been submitted to it, approval thereof will not be required and the provisions of this Section 5.2 will be deemed to have been fully complied with. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration, or repair of any improvement.

Where not otherwise specified herein, it also shall have the right to specify requirements for each building site as follows: Minimum setbacks; the location, height, and extent of fences, walls, or other screening devices; and the orientation of structures with respect to streets, walks, paths, existing and planned Greenways, if any, and structures on adjacent property. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in its judgment, with the overall character and aesthetics of West Memorial South.

SECTION 5.3 - APPROVED CONTRACTORS. No construction of a building, structure, fence, wall, or other improvements shall be commenced in West Memorial South until the contractor to perform such construction shall have been approved in writing by the Architectural Control Committee. In the event the Committee fails to approve or disapprove a contractor within ten (10) working days after his name is submitted to it, approval will not be required, and the provisions of this Section 5.3 will be deemed to have been fully complied with.

ARTICLE VIRESTRICTIONS

SECTION 6.1. All buildings, structures, and other improvements erected, altered, or placed in West Memorial South shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or outbuilding shall be used in West Memorial South at any time as a residence, either temporarily or permanently. Unless the Architectural Control Committee otherwise agrees in writing, the exterior finish or construction of any Living Unit shall be at least fifty-one per cent (51%) brick, stone, or other masonry; in computing such percentage, roof areas shall be excluded, but attached garages, porches, and other structures constituting part of the Living Unit proper shall be included.

SECTION 6.2. No nuisance shall ever be erected, placed, or suffered to remain upon any property in West Memorial South, and no Owner of or resident on any property in West Memorial South shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. The Association is hereby authorized to determine what constitutes a violation of this restriction.

SECTION 6.3. No sheep, goats, horses, cattle, swine, poultry, dangerous animals (the determination as to what is a dangerous animal shall be in the sole discretion of the Association), snakes, or livestock of any kind shall ever be kept in West Memorial South, except that dogs, cats, or other common household pets (not to exceed a total of three adult animals) may be kept by the Owner or Tenant of any Living Unit, provided they are not kept for any commercial purpose.

SECTION 6.4. No trash, rubbish, garbage, manure, or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight-fitting lids in an area adequately screened by planting or fencing so as not to be seen from neighboring Lots or existing or planned Community Properties. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of improvements thereon.

SECTION 6.5. No oil or natural gas drilling, oil or natural gas development, or oil refining quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained, or permitted in West Memorial South.

SECTION 6.6. No privy, cesspool, or septic tank shall be placed or maintained in West Memorial South.

SECTION 6.7. No boat, trailer, camping unit, or self-propelled or towable equipment or machinery of any sort shall be permitted to park on any Lot except in an enclosed structure, or in any area adequately screened by planting or fencing so as not to be seen from other Lots or existing or planned Community Properties, except that, during the construction of

improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of necessity therefor. No boat, trailer, camping unit, or self-propelled or towable equipment or machinery of any sort shall be permitted to park on any street abutting any Lot in West Memorial South, for longer than six (6) consecutive hours.

SECTION 6.8. No clothing or other materials shall be aired or dried in West Memorial South, except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from other Lots or existing or planned Greenways.

SECTION 6.9. Except in an emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only after 7:00 a.m. and before 9:00 p.m.

SECTION 6.10. No radio or television aerial wires or antennae shall be maintained on any portion of any Lot forward of the front building line of said Lot; nor shall any free standing antenna of any style be permitted upon the Lot which extends more than ten (10) feet above the height of the roof of the living unit on said Lot.

SECTION 6.11. All electrical, telephone, and other utility lines and facilities which (i) are located on a Lot, (ii) are not within a part of any building, and (iii) are not owned by a governmental entity, a public utility company, or the Association, shall be installed in underground conduits or other underground facilities. Lighting fixtures may be installed above ground if approved in writing by the Architectural Control Committee.

SECTION 6.12. Mailboxes, house numbers and similar matter used in West Memorial South must be harmonious with the overall character and aesthetics of the community and the decision of the Architectural Control Committee that any such matter is not so harmonious shall be final.

SECTION 6.13. No fence, wall, tree, hedge, or planting shall be maintained in West Memorial South in such manner as to obstruct sight lines for vehicular traffic. No fence or hedge shall be maintained within the front building setback line as shown on the recorded plat of West Memorial South.

SECTION 6.14. No Owner of any Lot in West Memorial South, nor any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets abutting such Lots other than work of a temporary nature.

SECTION 6.15. No outbuildings may be erected on any Lots in West Memorial South, without the written approval of the Architectural Control Committee.

SECTION 6.16. No billboards or other signs may be erected in West Memorial South, without the prior written consent of the Architectural Control Committee. Such Committee shall furnish, upon request, a sign manual setting forth the limitations and guidelines for signs, which shall be reasonable in scope and restriction, and shall grant its written approval.

of signs which satisfy the requirements of such manual. In no event shall the use of flags or banners be permitted in the promotion or sale of any Living Unit in West Memorial South.

SECTION 6.17. The Owner of each Lot shall maintain the name, and the improvements, trees, hedges, and plantings thereon, in a neat and attractive condition. The Association shall have the right, after twenty (20) days' notice to the Owner of any Lot, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner, (i) to mow the grass thereon, (ii) to remove any debris therefrom, (iii) to trim or prune any tree, hedge, or planting that, in the opinion of the Association, by reason of its location or height or the manner in which it has been permitted to grow, is detrimental to the enjoyment of adjoining property or is unattractive in appearance, (iv) to repair or paint any fence thereon that is in need of repair, not in harmony with respect to color with fencing on adjacent property, and (v) to do any and all things necessary or desirable in the opinion of the Association to place such property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such property at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) days after it is performed by the Association, and if such amount is not paid within said period of time, such Owner shall be obligated thereafter to pay interest thereon at the rate of ten per cent (10%) per annum, and to pay any attorney's fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on such Owner's property, subject only to liens then existing thereon.

SECTION 6.18. Except for the easement rights elsewhere recognized in this Declaration, the Lots and the Community Properties shall be used for the following purposes only:

- (a) Each lot shall be used only for a single-family, Detached Residence, and no Lot shall be used for business or professional purposes of any kind. With each Detached Residence, there shall be an attached or detached, private, enclosed garage. Each such garage shall accommodate at least two automobiles. Bona fide domestic servants may live in the improvements on any such property.
- (b) The Greenways, if any, shall be used only for utility easements, pedestrian ways, recreation facilities, landscaping, and other purposes deemed by the Association to promote the recreation, safety, convenience, and welfare of the Members. No motorized vehicles shall be permitted upon the Greenways, if any, except those that are used in the maintenance and upkeep of the Greenways, or of any utility easement over, on, or under the Greenways. By way of illustration, but not limitation, such prohibited motorized vehicles shall include automobiles, motorcycles, motor bicycles, and motor scooters.

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SECTION 6.19. A Lot which fronts upon a Collector Street shall have direct driveway access from such Collector Street. A garage on a Lot which fronts on a Cul-de-sac Street shall have direct driveway access only from the abutting Cul-de-sac Street. The Owner of each Lot shall construct and maintain at his expense the driveway from his garage to the abutting Collector or Cul-de-sac Street, whichever is permitted, including the portion in the street easement, and he shall repair at his expense any damage to the street occasioned by connecting his driveway thereto.

SECTION 6.20. No building or Living Unit in West Memorial South shall exceed in height two (2) stories or twenty-four feet (24'), measured from the finished grade of the building site. No Detached Residence of one story shall contain less than 1200 square feet of living area, no Detached Residence of two stories shall contain less than 1600 square feet of living area (all such computations of living areas to be exclusive of open or screened porches, terraces, patios, driveways, carports, garages, and/or living quarters for bona fide domestic servants), unless the Architectural Control Committee agrees to the contrary in writing.

SECTION 6.21. The following building requirements shall apply to Detached Residences to be constructed, unless the Architectural Control Committee agrees to the contrary in writing, to-wit:

- (a) No building, fence, or other structure shall be placed or built on any such Lot nearer to the front lot line or nearer to a side street line than the building lines shown on the West Memorial South Plat.
- (b) No building shall be located nearer than five feet (5') to any interior lot line, except that a garage or other permitted building located seventy feet (70') or more from the front lot line may be located within three feet (3') of an interior side lot line. No building shall be located on any such Lot nearer than eight feet (8') to the rear lot line.
- (c) Before the construction of the Detached Residence is completed, the Builder shall construct in the adjacent street right-of-way a concrete sidewalk four feet (4') in width parallel to the street curb and two feet (2') away from the front lot line. The sidewalk shall extend the full width of the Lot and up to the street curb at a corner Lot.
- (d) Pursuant to 23 U.S.C.A. §402 (b)(1)(F) (Supp. 1976), curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalk and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Curb ramps at crosswalks shall not be required for curbs without an accompanying sidewalk, however, the subsequent addition of a sidewalk will require the addition of the curb ramps as well. All curb ramps shall be constructed in accordance with specifications provided by the Engineering Department of Harris County, Texas.

SECTION 6.22. The Owner of each Lot used for a Living Unit, as a minimum, shall spot sod or sprig with grass the area between the front of his Living Unit and the curb line of the abutting Cul-de-sac or Collector Street. The grass shall be of a type and within standards prescribed by the Architectural Control Committee.

SECTION 6.23. The Owner of any Lot may construct, at his expense and at his election, a fence upon such Lot, which fence shall be six feet (6') in height and shall otherwise comply with the provisions herein contained and the specifications established by the Architectural Control Committee. All fences so constructed shall be of wood or masonry construction and shall be maintained in good and attractive condition by the respective Owners of the Lots, except that the Association, at its election and at its expense, may paint the side of any fence facing a Greenway, if any.

SECTION 6.24. No Owner of a Lot shall have the right, by virtue of such ownership, to make any improvement to a Collector Street, a Cul-de-sac Street, or a Greenway, if any.

SECTION 6.25. Notwithstanding the foregoing provisions of this Article VI, TMC and its permittees shall have the exclusive right to erect, place, and maintain on their respective properties in West Memorial South, such facilities (including, but not limited to, offices, storage areas, model units, and signs) as in TMC's sole discretion may be necessary or convenient to improve and/or sell properties in West Memorial South.

ARTICLE VII

UNDERGROUND ELECTRIC SERVICE

SECTION 7.1. An underground electric distribution system will be installed within the properties which will be designated an Underground Residential Subdivision and which underground service area shall embrace all Lots in the properties. The Owner of each Lot in the Underground Residential Subdivision shall, at his own cost, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own, and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

SECTION 7.2. The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to TMC (except for certain conduits, where applicable) upon TMC's representation that the Underground Residential Subdivision is being developed for residential dwelling units which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Therefore, should the plans of Lot Owners in the Underground Residential Subdivision be changed and this Declaration be amended so as to permit the erection therein of one or more mobile homes, the company shall not be obligated to provide electric service to any such mobile home unless (a) TMC has paid to the company an amount representing the excess in cost for the entire Underground Residential Subdivision of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision, or (b) the Owner of each affected Lot, or the applicant for service to any mobile home, shall pay to the company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot over the cost of equivalent overhead facilities to serve such Lot, plus (2) the cost of rearranging and adding any electric facilities serving such Lot, which rearrangement and/or addition is determined by the company to be necessary, provided that in no instance shall TMC be obligated to pay the electric company such amount representing the excess in cost should the Lot Owners amend the Declaration to allow dwellings of a different type.

SECTION 7.3. The provisions of the two preceding sections shall also apply to any future residential development in Reserve(s) shown on the plat of West Memorial South, as such plat exists at the execution of the Agreement for Underground Electric Service between the electric company and TMC or thereafter. Specifically, but not by way of limitation, if a Lot Owner in a former Reserve undertakes some action which would have invoked the above per front lot foot payment if such action has been undertaken in the Underground Residential Subdivision, such Owner shall pay the electric company \$1.75 per front lot foot unless the Developer has paid the electric company as above-described. The provisions of this section and the two preceding sections do not apply to any future nonresidential development in such Reserve(s).

ARTICLE VIII

GENERAL PROVISIONS

SECTION 8.1 - INCORPORATION. The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter executed by TMC conveying all or any part of the land in West Memorial South, whether or not referred to therein, and all estates conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Declaration.

SECTION 8.2 - ENFORCEMENT. The terms and provisions of this Declaration shall run with and bind the land in West Memorial South, and shall inure to the benefit of and be enforceable by TMC, the Association, or the Owner of any Lot and by their respective legal representatives, heirs, successors and assigns. This Declaration may be enforced in any proceeding

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at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain violation, or to recover damages, and against the property to enforce any lien created by this Declaration, and failure of TMC, the Association, or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the right to do so thereafter.

SECTION 8.3 - SEVERABILITY. Invalidation of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated.

SECTION 8.4 - DURATION. This Declaration shall remain in full force and effect until December 31, 2010, after which date this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the holders of three-fourths (3/4ths) of the votes of each class of Members with voting privileges has been filed for record in the Office of the County Clerk of Harris County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or one (1) year after it is so filed for record, whichever is the later date.

SECTION 8.5 - AMENDMENTS. This Declaration may be amended in whole or in part by an instrument executed by the President of the Association when approved by two-thirds (2/3rds) of the votes cast by each class of Members at a meeting of Members. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration as so amended.

SECTION 8.6 - GENDER AND GRAMMAR. The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

SECTION 8.7 - TITLES. The titles of this Declaration of Articles and Sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

SECTION 8.8 - EXECUTION BY THE ASSOCIATION. The Association, by joining in the execution hereof (i) agrees to be bound by all of the terms and provisions of this Declaration, and (ii) acknowledges and consents to the annexation of West Memorial South to the Association as part of that certain 478 acre tract of land known as West Memorial Subdivision.

SECTION 8.9 - SUCCESSORS IN TITLE. The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of TMC and the Association and their respective successors and assigns.

ARTICLE IX

MINERAL EXCEPTION

There is hereby excepted from the Properties, and TMC will hereafter except from all its sales and conveyances of the

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Properties, or any part thereof, including the Lots and Community Properties, all oil, gas, and other minerals in, on, or under the Properties, but TMC hereby waives, and will waive in each such conveyance, its right to use the surface of such land for exploration for or development of oil, gas and other minerals.

ARTICLE X

LIENHOLDER

First City National Bank of Houston, a national banking association with its business domicile located in Houston, Harris County, Texas, the owner and holder of the lien covering the Properties, have executed this Declaration to evidence their joinder in, consent to, and ratification of the imposition of the foregoing covenants, conditions and restrictions.

IN WITNESS WHEREOF, this Declaration is executed this 13th day of July, 1977 A.D.

T.M.C. FUNDING, INC.

By: [Signature]
Name: Harry W. Bond
Title: President

AND WHEREBY HE ACKNOWLEDGES TO THIS INSTRUMENT TO THE SUBSCRIBERS FOR PHOTOGRAPHIC REPRODUCTION AND TO THE PUBLIC BY THE DEPOSIT OF THIS INSTRUMENT IN THE PUBLIC RECORDS OF HIS COUNTY AND STATE AND TO THE PUBLIC BY THE DEPOSIT OF THIS INSTRUMENT IN THE PUBLIC RECORDS OF HIS COUNTY AND STATE

FIRST CITY NATIONAL BANK OF HOUSTON

By: [Signature]
Name: PAUL M. BOND, JR.
Title: VICE PRESIDENT

WEST MEMORIAL CIVIC ASSOCIATION

By: [Signature]
Name: [Signature]
Title: [Signature]

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Harry W. Bond, known to me to be the person whose name is subscribed to the foregoing instrument as President of T.M.C. FUNDING, INC., a Texas corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 13th day of July, 1977 A.D.

[Signature]
Notary Public in and for
Harris County, T e x a s

173-01-3329

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared W. P. K. ..., known to me to be the person whose name is subscribed to the foregoing instrument as Vice President of FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 1st day of August, 1977 A.D.

W. P. K. ...
Notary Public in and for
Harris County, Texas
My Commission Expires April 22, 1982

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared John W. Oak, known to me to be the person whose name is subscribed to the foregoing instrument as ... of WEST MEMORIAL CIVIC ASSOCIATION, a Texas non-profit corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 7th day of July, 1977 A.D.

W. P. K. ...
Notary Public in and for
Harris County, Texas

173-01-0930

EXHIBIT "A"

Lots 18 through 57, both inclusive, in Block 6; Lots 1 through 23, both inclusive, in Block 46; Lots 1 through 28, both inclusive, in Block 47; Lots 1 through 23, both inclusive, in Block 48; Lots 1 through 19, both inclusive, in Block 49; Lots 1 through 4, both inclusive, in Block 50; and Lots 1 through 6, both inclusive, in Block 51, all in West Memorial South, Section One, according to the plat thereof recorded in Volume 249, at Page 116, of the Map Records of Harris County, Texas.

Return To: The Mischer Corporation
740 Esperson Building
Houston, Texas 77002

Attn: Mr. Jim Rader

Attached to Declaration of Covenants and
Restrictions for West Memorial South, Section One