

DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS

ENCHANTED VALLEY SECTION FOUR (4)

lee

THE STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

THAT, A. A. PROPERTIES, INC., a Texas corporation, acting herein by and through its duly authorized officers, Kurt L. Wallach, Albert and Norma Rosenfeld (the "Developers"), being the owners of that certain 26.3417 acres of land (the "Property"), more or less, in the A. Burnett Survey, Abstract No. 109, Harris County, Texas, which has heretofore been platted and subdivided into a residential subdivision of 56 lots and 1 commercial reserves known as ENCHANTED VALLEY, SECTION FOUR (4) (the "Subdivision"), according to the map or replat (the "Map"), thereof recorded in Volume 262, Page 54 of the Map Records of Harris County, Texas, desiring to establish and carry out a uniform plan for the improvement and development of the Property as a restricted residential subdivision for the benefit of the present and future owners of lots in said subdivision, do hereby adopt and establish certain restrictions, covenants, conditions, easements, charges and liens (the "Restrictions"), which shall be applicable to the use, occupancy and conveyance of all residential lots in the Subdivision (the term "lot" as used herein shall exclude the commercial reserves shown on the Map and include all residential building sites shown on the Map and any residential building site created by combining or re-subdividing originally platted lots, as permitted herein), and every contract or deed hereafter executed and covering any Lot shall conclusively be held to have been executed, delivered and accepted subject to the Restrictions, regardless of whether or not the Restrictions are set out in full or are incorporated by reference in such contract or deed.

29 25

1. RESERVATIONS

The Map dedicates for public use as such the streets and easements shown thereon and there was reserved and is hereby expressly reserved in Developer the following rights, titles and easements, which reservations shall be referred to and made a part of and construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Developer conveying any Lot.

(a) The legal and fee simple title in and to each and all of the several streets and drives as shown on the Map is hereby reserved in the Developer subject to the limited dedications herein expressed.

(b) Developer reserves the exclusive right to erect and maintain therein and thereon wires and poles for the purpose of constructing and maintaining a system of electric lights, power, telegraph and telephone line or lines and connections; and to construct, lay, and maintain in, along, and under any and all of said streets and drives and along easements provided therefor, all pipes and conduits necessary and proper for the construction and maintenance of a system of drainage and a system of sewage and for the supply of water, gas, light and power, telegraph and telephone service to the Property; and for all other purposes incident to the development and use of the Property.

Cable
TV
→
Easement

?

(c) Developer's reservations shall not prevent entry by any municipal authority, utility company or other entity providing utility services to the Subdivision or their successors or assigns, upon said easements and rights-of-way for the purposes aforesaid, and the right of entry by any such municipal authority, utility company or other entity providing such services is hereby expressly recognized.

(d) Neither Developer nor any municipal authority, any utility company or other entity providing such services using the easements and rights-of-way herein referred to shall be liable for any damage done by them or their assigns, their agents, employees or servants, to shrubbery, trees or flowers or any other property of the owner situated on the land burdened by said easements.

(e) The title conveyed by Developer to any Lot or to any tract or parcel of land out of the Property shall not in any event be held or construed to include the title to the water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone lines, poles or conduits or any other utility or appurtenances thereto constructed in or upon the Property, and the rights to maintain, repair, sell or lease such lines, utilities and appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in the Developer.

(f) In addition to the easements shown on the Map, there is also reserved and dedicated for the purposes aforesaid an unobstructed aerial easement, five (5) feet wide from a plane twenty (20) feet above the surface of the ground upward, the same being adjacent to all easements shown on the Map.

2. LAND USE AND BUILDING TYPE

No business or professional house, sanitarium, hospital, saloon, place of amusement or entertainment, factory warehouse, duplex apartment house, rooming house, boarding house or place of business of any kind, shall be constructed, built, kept, operated or maintained on any Lot, nor shall a house on any Lot be used for any such purpose or purposes, but each Lot shall be used for single-family residential dwelling purposes only. No trailer, tent or other out-building placed or erected in the Subdivision shall at any time be used as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used or occupied as a residence. No portion of the commercial reserves shall be used for any purposes which constitute a public or private nuisance.

It is specifically agreed and understood that Developers, their successors and assigns shall be allowed to maintain one temporary building within the Subdivision for use in the orderly development of the Subdivision and in the sale of Lots. These restrictions shall not apply to such temporary building, and it shall be the only structure permitted as an exception of these restrictions. Developer's temporary building may be set up on any Lot, with the owner's permission, may be moved from time to time, and shall be removed from the Subdivision when, in the Developer's opinion, it is no longer required for the purposes aforesaid.

3. BUILDING SET-BACK LINES

No residence shall be constructed or located nearer to the front Lot line, or nearer to the side street line than the building setback lines shown on the Map, or closer to the nearest point on either side property line of same than three feet (3') on the garage side and five feet (5') on the living area side.

These restrictions establishing building lines, apply to galleries, porches, porte cocheres, steps, projections and every other permanent part of the improvements where there is a roof or other covering.

The Architectural Control Committee provided for hereinafter may approve minor variations from the foregoing restrictions establishing building lines.

4. MISCELLANEOUS RESTRICTIONS

(a) Only one residence may be constructed on any Lot, or on any Lot combined with a fractional part of an adjacent Lot, in this Subdivision.

(b) No spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication shall ever be sold or offered for sale on any Lot.

(c) No trash, ashes, or other refuse may be deposited on any tract of land in the Subdivision, any vacant Lot, avenue, boulevard, drive or street in the Subdivision.

(d) No nuisance or advertising sign, billboard, or other advertising device shall be placed on or suffered to remain upon any of the Land, except that the Developer may place thereon such advertising signs or devices as it may deem appropriate for the sale of Lots and the orderly development of the Land. Signs advertising the sale of any Lot, whether improved or unimproved, shall be permitted provided the same have an area of not more than five square feet and a height of not more than four feet above the surface of the ground.

(e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs, cats, and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

(f) No building material of any kind shall be placed or stored upon any Lot until the owner is ready to commence construction, and upon completion of construction all surplus materials shall be promptly removed from such Lot.

(g) No fence or wall of any kind or character or any purpose, which is over eight feet (8') in height, except a hedge, shall be erected or permitted on any Lot and no fence or wall of any character shall be erected or permitted on any Lot between the street and the projection of the residence building lines.

(h) No drilling, developing, or exploring for oil, gas, sulphur, or other minerals shall ever be permitted on any Lot.

(i) No residence shall exceed two (2) stories, or have a roof pitch of less than two-twelfths (2/12), or have any type of flat roof; provided, however, that the Architectural Control Committee may approve variations from the foregoing restrictions.

(j) The roof of any building on any Lot shall be constructed or covered with (1) wood shingles or (2) asphalt or composition shingles comparable in quality, weight and color to wood shingles and weigh 250 pounds or more per square, and the decision of such comparison shall be exclusively with the Architectural Control Committee (hereinafter defined).

(k) No residence shall have less than a two car, nor more than a three car garage, and all driveways shall be constructed of concrete.

(l) No house shall be moved on any Lot, except temporary structures may be moved on any Lot during the period of construction, and shall be promptly removed upon completion of such construction. All construction shall be promptly completed, and the yards graded to afford proper drainage away from the structures.

(m) All main residences shall have a minimum of 1,800 square feet of area, exclusive of porches, garages, or carports. At least fifty-one percent (51%) of the exterior walls of all main residence buildings shall be of masonry/brick veneer construction.

5. ARCHITECTURAL CONTROL

(a) No building shall be erected, placed or altered on any Lot until the building plan, specifications and plot plans showing the location of such building have been approved in writing as to conformity and harmony of external design with the existing structures in the Subdivision and as to the location of the building with respect to topography and finished ground elevation, by at least two (2) members of the Architectural Control Committee (the "Committee"). The Committee will be composed of John Clough, Richard Marxen and Bruce Littell or by representatives designated by the members of

the Committee. In the event that one or more of the members of the Committee resign, any two of the remaining members or their designated representatives shall have full authority to approve or disapprove such plans, design and location.

(b) In the event that the Committee or its designated representatives fail to approve or disapprove such plans, designs or locations within thirty (30) days after complete and final plans and specifications have been submitted to it, or in the event that the person seeking to build cannot locate any member of the Committee in Harris County, Texas, after making a bona fide effort to do so and shall file with the County Clerk's office of Harris County, an affidavit attesting to such facts, approval by the Committee shall not be required for such construction. Further, if any residence or other building is completed without a suit having been filed to enjoin the construction thereof, it will be presumed that such construction shall have received the approval of the Committee.

(c) In the event of a vacancy on the Committee for whatever reason, the remaining members shall be empowered to select a replacement member. In the event of death, resignation or incapacity of all members of the Committee, then a majority of the record owners of the Lots may designate a new Committee to act in the place of the Committee. Such designation shall be evidenced by written declaration signed and acknowledged by such owners and recorded in the Real Property Records of Harris County, Texas.

(d) The Committee shall have power to and may allow reasonable variances and adjustments to the Restrictions in order to overcome practical difficulties and to prevent unnecessary hardships in the application of the Restrictions; provided, however, that such is done in conformity with the intent and purposes hereof; and, provided further, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property, improvements or the owners thereof and such variances and adjustments as may be granted hereunder may include, without limitation, the height, size and building setback restrictions as set forth herein or on the Map. In the event there shall be governmental regulations which conflict with or prevent construction of improvements in the manner as required hereby, such circumstance shall be deemed and constitute a practical difficulty justifying the allowance of variances and adjustments

187-17-0305

of these restrictions in order to prevent unnecessary hardships; provided, however, that in every instance the variance or adjustment shall not be materially detrimental or injurious to the Property or improvements situated thereon.

6. MAINTENANCE CHARGE AND PROGRAM

Each Lot shall be subject to a maintenance charge for the purpose of providing for certain herein enumerated services, but no charge shall be made for any period prior to the recording date of this declaration. The maintenance charge applicable to the Lots shall be assessed against each Lot as of the date the street adjacent to such Lot and utility services to such Lot have been substantially completed and such Lot is ready for the construction of improvements thereon, and annually thereafter as of January 1st of each calendar year. Notice of the amount of the assessment shall be mailed or otherwise delivered to each lot owner as soon as practicable after assessment is made each year. The amount of the assessment shall be paid annually in advance by the owner of each Lot within fifteen (15) days after notice of such assessment has been mailed or otherwise delivered to such owner.

The maximum annual maintenance charge on each Lot from and after the time a dwelling located thereon is ready for occupancy (whether such dwelling is occupied or not) shall be as follows:

(a) For the period covering the initial partial calendar year and the first full calendar year after the date hereof, the maximum annual maintenance charge shall be the sum of Ninety Dollars (\$90.00) for each Lot.

(b) For the calendar years following the first full calendar year after the date hereof, the maximum annual maintenance charge shall be calculated and determined as of assessment day as follows: the percentage by which the average of the Consumer Price Index (All Items, United States City Average, as published by the Bureau of Labor Statistics) for the most recent twelve months for which such information is available on each assessment day may have increased over the annual average of said Index for the calendar year 1971 shall be determined, and the maximum annual maintenance charge hereunder for the particular calendar year shall be the sum of Ninety Dollars (\$90.00), increased by the same percentage increase as the Consumer Price Index shall have increased according to the aforesaid determination (adjusted to the nearest one-tenth of one percent). If the aforescribed determination as to any particular calendar year shows that the average of said Index shall have not increased, or shall have decreased, the maximum annual maintenance charge for such calendar year shall be the same as the preceding year and never less than Ninety Dollars (\$90.00).

(c) The maximum annual maintenance charge against Lots in Section IV shall not exceed annual maintenance charges in other sections of Enchanted Valley.

So long as any Lot subject to assessment hereunder does not have a dwelling thereon which is ready for occupancy, the maintenance charge against such Lot shall be fifty percent (50%) of the then assessed charge for Lots which have dwellings thereon ready for occupancy. At such time as a dwelling on any Lot becomes completed and ready for occupancy, the full maintenance charge assessed shall become due and payable for the balance of the year in which such dwelling is completed, on a pro rata basis, such additional amount to be paid by the lot owner within fifteen (15) days after notification of the additional amount due.

Any maintenance charge assessed hereunder and not paid when due shall bear interest from the date due until paid at the rate of ten percent (10%) per annum.

The services which may be provided for out of the maintenance fund to the extent funds are available shall include, by way of illustration, but not limitation, the maintenance of streets and parkways, mowing of esplanades and vacant lots; providing fire, police and security services; providing and maintaining street lighting; providing and maintaining shrubbery and trees at Subdivision entrances, in esplanades, and in parkways; fogging for insect control; garbage and rubbish pickup; providing recreational services and amenities; payment of legal and other expenses for the enforcement of these restrictions; and all other things necessary or desirable for the maintenance or improvement of the Land within the Subdivision and the approaches thereto.

EVHOA - Developer designates Enchanted Valley Recreation and Maintenance, Inc., a Texas non-profit corporation (the "Corporation"), to cause the maintenance charge imposed hereby to be assessed, collected, retained, managed and disbursed for the purposes herein set forth or for such other purposes as the members of the Corporation or its Board of Directors may direct. Every person or entity owning of record either the entire fee title or an undivided interest in the fee title to any Lot shall be a member of the Corporation. (The foregoing is not intended to include persons or entities holding an interest in a Lot merely as security for the performance of an obligation.) Membership in the Corporation shall be appurtenant to and may not be separated from ownership of each Lot.

The Developer hereby establishes a lien on the Lots to secure the payment to the Corporation of the maintenance charge established hereby, and the Developer and the subsequent owner of each Lot shall convey the same with an appropriate reference to the record of these Restrictions in the Real Property Records of Harris County, Texas, and with a recitation that a vendor's lien is retained against each Lot to secure the payment of such maintenance charge, and that such lien shall be subordinate and inferior to all liens given to secure the payment of monies in connection with the purchase of any Lot or improvements, or the construction of improvements on any Lot. The grantee in any deed conveying any Lot in the Subdivision shall be deemed to have covenanted and agreed to pay the aforesaid maintenance charge by acceptance of such deed.

The aforesaid lien to secure payment of the maintenance charge, together with all interest, expenses and costs of collection, and reasonable attorneys' fees incurred in connection with the collection of said charge or the enforcement of said lien, shall run with title to the Lots and be a continuing charge on the Lot assessed, and shall also be a personal obligation of the owner of a Lot at the time of the assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish such lien only as to any assessments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from any maintenance charge thereafter becoming due or from the lien thereof.

The Corporation shall provide, among other things, that the owner of any Lot may inspect the books and records of the Corporation at its principal offices, at all reasonable times. Further, the Corporation is authorized to conduct its affairs so that the services for which said maintenance charge may be spent may be rendered or performed in concert with similar associations or organizations now or hereafter existing in other sections of Enchanted Valley Subdivision. The Corporation is authorized to spend the maintenance funds so collected by contracting with third parties for the performance of all or any of the services herein authorized and for which maintenance funds may be expended. Nothing contained in this paragraph shall be deemed to have restricted the Corporation from adopting by-laws or amendments thereto as it may from time to time deem necessary to carry out the

purposes of the Restrictions.

The Corporation or the owner of any Lot shall have the right to file suit for damages or for injunction, mandatory or prohibitory, to compel compliance with the Restrictions. Also, the Corporation shall have the right to bring an action at law to foreclose the lien established to secure the payment of the aforesaid maintenance charge if a Lot owner fails to cure any such default within thirty (30) days after notice thereof. The plaintiff in any of the foregoing proceedings shall be entitled to recover from the defendant in such suit all reasonably necessary costs and expenses attendant upon bringing such action, including reasonable attorneys' fees. The foregoing provisions for recovery of costs, expenses and attorneys' fees shall be deemed agreed to by the purchaser upon acceptance of a deed or execution of a contract to purchase any Lot in the Subdivision.

7. GENERAL PROVISIONS

(a) Term of Restrictions: These restrictions are to run with title to the Lots, and shall be binding on the parties hereto, their successors and assigns, and all persons claiming under them, and on all owners of Lots located within the Subdivision for a period of thirty (30) years following the date of recording this instrument. These restrictions shall be extended automatically after the expiration of said 30-year period for successive periods of ten (10) years duration each, unless an instrument revoking these restrictions, in whole or in part, is recorded prior to said initial expiration date or prior to the end of any ten (10) year extension period; it being made a requirement hereunder that such instrument of revocation must be executed by a majority of the then owners of the Lots. No Lot owner shall be liable for breach of these restrictions except in respect to breaches caused by him or occurring or committed during his ownership of the Lot involved in such breach. Conveyance of any Lot affected hereby may contain the Restrictions by reference to the public record of this document, but whether or not such reference is made, each and all the Restrictions shall be binding and valid upon the respective grantees in any such deeds.

These Restrictions may be amended prior to the expiration of the initial thirty (30) year term thereof, or prior to the expiration of any ten (10) year extension term, by the recording of an instrument signed by the then owners of at least two-thirds (2/3) of the Lots.

(b) Violations not Affecting Mortgages: Any violation of any of the covenants, agreements, reservations, easements, and restrictions contained herein shall not impair or affect the rights of any mortgagee, trustee, or guarantor under any mortgage or deed of trust, or the assigns of any mortgagee, trustee, or guarantor, under any such mortgage or deed of trust outstanding against the property covered by any such mortgage or deed of trust at the time that the covenants, agreements, reservations, restrictions, or easements may be violated.

(c) Assignments: Developer or the Committee or both may assign to the Corporation any rights reserved to Developer or to the Committee hereunder, such as the right to approve or disapprove plans and specifications, location of structures, control of signs, and all other approvals required to be obtained from Developer or the Committee. Any such assignment shall be evidenced by a proper instrument in writing recorded in the Real Property Records of Harris County, Texas. If not previously assigned, all such rights reserved to Developer hereunder shall automatically vest in the Corporation when all Lots in the Subdivision have been sold by Developer.

(d) Severability: Invalidation of anyone of these Restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

(e) Joinder of Lienholder: The undersigned lienholder joins in the execution of this instrument for the purpose of evidencing their consent and agreement to the establishment of the Restrictions on the Land, and retains the rights to consent and agree to any future amendments to the Restrictions only as long as the undersigned lienholder retains a lien on any portion of the Land covered by these Restrictions, but further agrees that future amendments accomplished by the procedure set forth herein may be effected without the consent of any lienholder other than the undersigned lienholder.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the 2nd day of July, 1977.

Kurt L. Wallach
Kurt L. Wallach
"Developer"

Albert Rosenfeld
Albert Rosenfeld

Norma Rosenfeld
Norma Rosenfeld
"Developers"

RECORDS'S MEMORANDUM
At the time of recording, the instrument was found to be inadequate for the best possible reproduction because of illegible carbon and photo copy, discolored paper, etc. All blank-out, additions and changes were present at the time the instrument was filed and recorded.

A. A. PROPERTIES, INC., a Texas corporation

By George Gibalski
President
George Gibalski
"Developer"



AMERICAN SAVINGS & LOAN ASSOCIATION OF HOUSTON

By D.R. Veazey
Senior Vice - President
D.R. Veazey "Lienholder"

(5)
/su

/su