

1074690

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
(Knollcreek Planned Unit Development)

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

THIS DECLARATION, made on the date hereinafter set forth by
NASH PHILLIPS/COPUS-SAN ANTONIO, INC., a Texas corporation,
hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of certain property in Bexar
County, Texas, which is more particularly described as follows:

Lots 1-3, Block 1; Lots 1-10, Block 2; Lots 1-7, Block
3; Lots 1-15, Block 4; Lots 1-19, Block 5; Lots 1-14,
Block 6; Lots 1-3, Block 7; Lots 1-3, Block 11; Lots
1-33, Block 12; Lots 1-21, Block 13; Lots 1-9, Block
14; and Lots 1-6, Block 15, all inclusive, KNOLLCREEK
UNIT-1, situated in the City of San Antonio, Bexar
County, Texas, according to a plat thereof recorded in
Volume _____, Page _____, Deed and Plat Records
of Bexar County, Texas;

Lots 4-21, inclusive, Block 1; and Lots 22-45,
inclusive, Block 2; Lots 1-43, Block 21; Lots 1-35,
Block 22; and Lots 1-25, Block 23, KNOLLCREEK,
UNIT-2-A, situated in the City of San Antonio, Bexar
County, Texas, according to a plat thereof recorded in
Volume _____, Page _____, Deed and Plat Records
of Bexar County, Texas; and

Lot 1, Block 19, KNOLLCREEK, UNIT-4, situated in the
City of San Antonio, Bexar County, Texas, according to
a plat thereof recorded in Volume _____, Page
_____, Deed and Plat Records of Bexar County, Texas;

NOW, THEREFORE, Declarant hereby declares that all of the
Properties described in the paragraphs above shall be held, sold
and conveyed subject to the following easements, restrictions,
covenants and conditions, which are for the purpose of protecting
the value and desirability of, and which shall run with, the real
property and be binding on all parties having any right, title or
interest in the described Properties or any part thereof, their
heirs, successors and assigns, and shall inure to the benefit of
each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1 "Association" shall mean and refer to KNOLLCREEK HOMEOWNERS ASSOCIATION, a Texas nonprofit corporation, its successors and assigns.

Section 1.2 "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 1.3 "Properties" shall mean and refer to that certain real property described hereinabove and such additions thereto as may hereafter be brought within the jurisdiction of the Association as set out in Exhibit "A" hereto.

Section 1.4 "Common Area" shall mean all real property and facilities situated thereon owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot shall be the recreational facilities situated on Lot 1, Block 19 of Knollcreek Subdivision, Unit 4, according to the plat thereof recorded in Volume _____, Page _____, of the Deed and Plat Records of Bexar County, Texas, and any common entry areas, islands, medians, greenbelts and signs serving the Properties as a whole which are conveyed by Declarant to the Association.

Section 1.5 "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map or plat of the Properties with the exception of the Common Area.

Section 1.6 "Declarant" shall mean and refer to NASH PHILLIPS/COPUS-SAN ANTONIO, INC., a Texas corporation, and its successors and assigns, if such successors or assigns should acquire more than one Lot from the Declarant for the purpose of constructing residences thereon and selling the same to Members

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of the general public; and provided Declarant expressly assigns, in writing, its rights as Declarant in and to such acquired lots.

ARTICLE II

PROPERTY RIGHTS

Section 2.1 Owner's Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use of the aforesaid facilities by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded; provided, however, that except as to the grant of easements for utilities and similar or related purposes, the Common Area may not be alienated, released, transferred, hypothecated or otherwise encumbered without the approval of all holders of first mortgage liens covering any Lots;

(c) the right of the Association to limit the number of guests of Owners using the facilities;

(d) the right of the Association, in accordance with its Articles of Incorporation or Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said Properties shall be subordinate to the rights of the Owners hereunder.

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Section 2.2 Delegation of Use: Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the Members of his immediate family, his tenants or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Every Owner of a Lot which is 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.

Section 3.2 The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) 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 (1) 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 occurs earlier:

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

(b) on January 1, 2000.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by

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acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual Assessments or charges, and
- (b) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided.

The Annual and Special Assessments, together with interest accruing thereon and reasonable collection fees and attorney's fees attributable to collecting same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest and reasonable late fees, collection fees and/or attorneys' fees attributable thereto, 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 successors in title unless expressly assumed by them.

Section 4.2 Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to:

(a) promote the recreation, health, safety and welfare of the residents in the Properties, including, without limitation, enforcing any restrictive covenants affecting the Properties;

(b) the improvement, maintenance of the Common Area in a manner as deemed appropriate by the Board of Directors of the Association from time to time.

Section 4.3 Maximum Annual Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be \$144.00.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year not more than ten per cent (10%) (such percentage increase may be

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cumulative from year to year) above the maximum Assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased above ten per cent (10%) by the vote or written assent of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

Section 4.4 Special Assessments for Capital Improvements:

In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such Assessment shall have the vote or written assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.5 Notice and Quorum for Any Action Authorized

Under Sections 4.3 and 4.4: Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, a second meeting may be called subject to the same notice requirements, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting. If the required quorum is not present at

the second meeting, a third meeting may be called, subject to the same notice requirements, and the required quorum at such third meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting permitted herein shall be held more than sixty (60) days following the preceding meeting.

Section 4.6 Uniform Rate of Assessment: Both annual and special Assessments, subject to Section 4.7, must be fixed at a uniform rate for all Lots and may be collected on a annual basis. Notwithstanding the foregoing, in the event any duplexes are constructed on the Lots now or hereafter within the jurisdiction of the Association, each Living Unit of such duplex shall be subject to a separate Assessment (i.e., an Owner of a duplex Lot shall pay twice the Assessment of a single family Lot Owner).

Section 4.7 Date of Commencement of Annual Assessments-Due Dates: The annual Assessments provided for herein shall commence to accrue as to each Lot other than those owned by Declarant on the first day of the month following the conveyance of such Lot by Declarant. Notwithstanding the foregoing, each platted Lot which is owned by Declarant (or a builder to whom Declarant has conveyed same) shall be assessed at the rate of one-fourth (1/4th) of the Annual Assessment hereinabove provided until that date on which such Lot is first occupied for residential purposes, whereupon the full Assessment shall commence to accrue. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the

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Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 4.8 Effect of Nonpayment of Assessments - Remedies of the Association: Any Assessment not paid within ten (10) days after the due date shall bear interest from the due date at the rate of ten per cent (10%) 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. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or an agent or trustee designated by the Association, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association (or its trustee) a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. Each Owner shall be further responsible for any reasonable late fees imposed by the Association, together with any reasonable collection and/or attorney's fees incurred by the Association in connection with the collection of delinquent assessments.

Section 4.9 Subordination of the Lien to Mortgages: 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 4.10 Exempt Property: All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the Assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.1 Development Objectives: The aesthetic and ecological quality of the Properties requires that all dwellings be compatible with other dwellings and be in harmony with the natural surroundings. To this end, an Architectural Control Committee (sometimes hereinafter called "the Committee") has been created as described in Section 5.2 of this Article. The Architectural Control Committee has the responsibility to carry out the goals and functions that have been adopted and are described below and which may be amended from time to time.

Section 5.2 Architectural Control Committee: The Architectural Control Committee shall be Bruce Friesenhahn, E. Thomas Stafford and Patrick Loy, or a representative or representatives appointed by such Committee. In the event of the death or resignation of any Member of the Committee, the remaining Members shall have full authority to carry out the duties of the Committee and the authority to designate a successor Committee Member or Members with like authority.

Section 5.3 Goal of Architectural Control Committee: The goal of the Committee is to encourage the construction of

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dwellings of good architectural design, quality and proper size compatible with Declarant's conceptual plan for the Properties. Dwellings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such materials as well, which, in the sole judgement of the Committee, create an attractive and harmonious blend with existing and proposed dwellings in the immediate area and the natural surroundings. The Committee may disapprove the construction or design of a home on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or values of the neighborhood and of other homeowners or to preserve the serenity and natural beauty of any surroundings. Prior judgements regarding matters of design or aesthetics shall not be deemed binding upon the Architectural Control Committee if the Committee feels that the repetition of such matters will have an adverse affect on the Properties.

Section 5.4 Function of the Architectural Control Committee:

The Committee shall function as the representative of the Owners for the purposes herein set forth as well as for all purposes consistent with the creation and preservation of a first-class development. No building, roof, fence, wall or any other additions or improvements of any nature shall be erected, placed, altered or removed on any Lot (nor may any such item be subsequently replaced, treated, stained or repainted in a manner which materially alters the exterior appearance of the improvement) until plans and specifications, in such form and detail as the Committee may deem necessary, shall have been submitted to and approved in writing by such Committee. The Architectural Control Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decision of the Architectural Control Committee shall be final, conclusive, and binding upon the applicant. All

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submissions to the Architectural Control Committee shall be at the address specified herein.

Section 5.5 Procedures of the Architectural Control

Committee: The Committee may establish and publish from time to time reasonable administrative procedures and separate building guidelines to supplement these restrictions.

Section 5.6 Plans and Specifications: Review and approval of plans and specifications by the Committee shall be mandatory prior to the Owner undertaking any improvements. In order that the Committee may give just consideration to a proposed dwelling, such plans and specifications must adequately describe the site plans, floor plans, foundation plans, elevations and exterior materials, color and other characteristics of the proposed structure (or modification thereto). Plans and specifications shall be in duplicate and must include all items required by the Committee (they may not be submitted on a piecemeal basis).

Section 5.7 Basis of Approval: Approval of plans and specifications shall be based upon the following:

- (a) The architectural and structural integrity of the design;
- (b) Harmony and conformity of the design with the surroundings both natural and built;
- (c) Adequacy of the design to conditions of the site;
- (d) Relation of finished grades and elevations to neighboring sites;
- (e) Conformity to specific and general intent of the then recorded Restrictive Covenants covering the particular platted unit of which the Lot in question forms a part; and
- (f) Aesthetic considerations determined in the Committee's sole discretion.

Section 5.8 Failure of the Committee to Act: If the Architectural Control Committee fails to approve or to disapprove the plans and specifications or to reject them as being inadequate

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within thirty (30) days after submittal thereof, it shall be conclusively presumed that such Committee has disapproved such plans and specifications. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject the balance.

Section 5.9 Limitation of Liability: The Committee shall have the express authority to perform fact-finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable or more than one construction. All decisions of the Committee shall be final and binding, and there shall be no revisions of any action of the Committee except by procedure for injunctive relief when such action is patently arbitrary and capricious. Neither the Declarant, the Architectural Control Committee, nor any Member of such Committee shall be liable in damages, or otherwise, to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgement, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

Section 5.10 Disclaimer: No approval of plans and specifications and no publication or designation of architectural standards shall ever be construed as representing or implying that such plans and specifications or standards will result in a properly designed structure or as satisfying any legal requirements.

ARTICLE VI

GENERAL PROVISIONS

Section 6.1 Enforcement: The Association, the Declarant, or any Owner, shall have the right to enforce, by any proceeding

at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 6.2 Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 6.3 Amendment: The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of the legal title to not less than ninety per cent (90%) of the platted Lots then within the Properties, and, thereafter, by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any amendment must be recorded in the Real Property Records of Bexar County, Texas.

Section 6.4 Annexation:

(a) Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Members.

(b) Notwithstanding the foregoing, Declarant may, from time to time, annex such additional property as Declarant may designate from property situated in Bexar County, Texas, and more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes, without the consent of other Members within fifteen (15) years from date hereof.

(c) Once annexed, voting rights attributable to the platted residential Lots situated within the additional property shall

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immediately become effective, and annual Assessments for such areas shall be governed by Section 4.7 hereof (i.e., Declarant shall be assessed at the rate of one-fourth [1/4th] of the Annual Assessment attributable to each such Lot until that date on which each such Lot is first occupied for residential purposes).

Section 6.5 Rights of Mortgagees: Each lienholder or mortgagee of a Lot, upon prior written request to the Association, shall possess the right to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive an annual unaudited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association; and

(c) receive written notice of all meetings of the Members of the Association and be entitled to designate a representative to attend such meetings.

Section 6.6 Leases: Any lease agreement between an Owner and a lessee shall provide that the lease shall be subject in all respects to the provisions of this Declaration and to the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default in the lease. All such leases shall be in writing.

Section 6.7 FHA/VA Approval: As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: Annexation of additional Properties; dedication of Common Area; and amendment of this Declaration of Covenants, Conditions and Restrictions; provided, however, this provision shall be of no force and effect unless the Federal Housing Administration and/or the Veterans Administration has theretofore made, insured or guaranteed a loan within the Properties at the time of the aforesaid actions.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 15th day of November, 1985.

NASH PHILLIPS/COPUS-SAN ANTONIO, INC.

By: E. Thomas Shafford
Its: Vice President

DECLARANT

FILED IN MY OFFICE
ROBERT D. GREEN
COUNTY CLERK BEXAR CO.

NOV DEC 13 P 3 54

THE STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on Nov. 15th, 1985, by E. THOMAS SHAFFORD, VICE PRESIDENT of NASH PHILLIPS/COPUS-SAN ANTONIO, INC., a Texas corporation, on behalf of said corporation.

My Commission expires: Oct 29-87

Barbara E. Hale
Notary Public, State of Texas
BARBARA E. HALE
(Please type or print name)

NOTARY PUBLIC
STATE OF TEXAS
My Commission Expires
OCT 29 1987
DEC 16 1985

AFTER RECORDING RETURN TO:

Mr. Richard L. Kerr
Foster, Lewis, Langley, Gardner
& Banack, Incorporated
Frost Bank Tower, Sixteenth Floor
100 West Houston Street
San Antonio, Texas 78205-2878

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