

E620356

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS

COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

131-20-1408

THAT THIS DECLARATION, made on the date hereinafter set forth by KUEHN, INC., a Texas corporation, having its principal office and place of business at 1300 Ward Road, Baytown, Harris County, Texas, hereinafter referred to as "Declarant", and DIAMONDHEAD CORPORATION and HARRIS COUNTY FEDERAL SAVINGS & LOAN ASSOCIATION, Lien holders on the property hereinafter described.

WITNESSETH:

WHEREAS, Declarant is the owner of the surface of certain property near Crosby, County of Harris, State of Texas, known as PATIOWOODS and which is more particularly described as follows:

All that certain 8.9961 acre tract of land, being a portion of that certain tract of land conveyed to Diamondhead Corporation by instrument of record under Film Code 134-23-0241, of Official Public Records of Real Property, of Harris County, Texas, and being located in the Humphrey Jackson Survey, A-37, Harris County, Texas, said 8.9961 acre tract being more particularly described (bearings being referenced to the Texas State Plane Coordinate System South Central Zone) as follows:

BEGINNING at a 5/8" Iron Rod found for the Northeast corner of the intersection of Dunes Drive (60.00 feet wide) and Cloister Drive (60.00 feet wide), said corner being a point in the boundary of Newport, Section 2, of record in Volume 195 at Page 35 of the Map Records of Harris County, Texas;

THENCE, Southeasterly along the North right-of-way line of said Cloister Drive, being also the boundary line of said Newport, Section 2, South 59°38'00" East, a distance of 330.00 feet to the P.C. of a curve;

THENCE, Southeasterly along the Arc of a tangent curve to the right, said curve being subtended by a Central Angle of 45°57'46", having a radius of 330.00 feet and an Arc Length of 264.73 feet to a point for the Southeast corner of the herein described tract;

THENCE, leaving said boundary, and right-of-way line, North 39°49'16" East, a distance of 114.31 feet to a point for corner;

THENCE, North 12°11'30" West, a distance of 70.96 feet to a point for corner;

THENCE, North 27°49'19" East, a distance of 100.82 feet to a point for corner;

THENCE, North 53°56'46" East, a distance of 429.20 feet to a point for corner;

THENCE, North 49°43'17" East, a distance of 175.11 feet to a point for corner;

THENCE, North 20°11'14" East, a distance of 227.50 feet to a point for corner;

THENCE, North 65°47'48" West, a distance of 64.59 feet to a point for corner;

THENCE, South 27°47'43" West, a distance of 91.34 feet to a point for corner;

THENCE, South 28°01'41" West, a distance of 122.12 feet to a point for corner;

THENCE, South 58°21'35" West, a distance of 54.85 feet to a point for corner;

THENCE, South 79°45'36" West, a distance of 73.88 feet to a point for corner;

THENCE, North 38°18'26" West, a distance of 80.02 feet to a point for corner;

THENCE, North 17°46'26" West, a distance of 94.59 feet to a point for corner;

THENCE, North 74°18'49" West, a distance of 128.65 feet to a point for corner;

THENCE, South 87°13'53" West, a distance of 125.53 feet to a point for corner;

THENCE, South 55°57'53" West, a distance of 164.88 feet to a point for corner;

THENCE, South 52°57'53" West, a distance of 292.27 feet to a point for corner;

RETURN TO:
REID, STRICKLAND, GILLETTE & ELKINS
P. O. BOX 809
BAYTOWN, TEXAS 77520

THENCE, South 77°45'49" West, a distance of 89.16 feet to a point for corner, being a point in the East right-of-way line of Dunes Drive, being also the boundary line of the aforementioned Newport, Section 2;
THENCE, Southerly along said East right-of-way, and boundary line, South 13°10'00" West, a distance of 78.98 feet to the P.C. of a curve;
THENCE, Southerly along the Arc of a tangent curve to the right, said curve being subtended by a Central Angle of 11°59'03", having a radius of 330.00 feet, and an Arc Length of 69.02 feet to the PLACE OF BEGINNING of the herein described tract containing an area of 8.9961 acres of land more or less.

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WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant and Lienholders hereby declare that all of the properties above described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions shall be binding on all parties having or acquiring any right, title or interest in the above described properties or any part thereof, and shall inure to the benefit of each present Owner or future of any part thereof and shall further inure to the benefit of Diamondhead Corporation, its successors and assigns, as Owner of surrounding property.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to PATIOWOODS HOMES ASSOCIATION, INC., its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property hereinbefore described.

Section 3. "Common Area" and/or "Open Space" shall mean that portion of the Property owned by the Association for the common use and enjoyment of the members of the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, pumps, trees, landscaping, sprinkler systems, pavements, streets (even though such street may not be owned by Association), pipes, wires, conduits and other public utility lines situated thereon.

Section 4. "Lot" shall mean and refer to each of those certain building locations to be conveyed by field note description by Declarant to purchasers of completed homes to be constructed by Declarant or others on the above described property.

Section 5. "Patio home" shall mean, a single family residence unit constructed on a lot.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "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 Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Declarant" shall mean and refer to KUEHN, INC., its successors and assigns, including especially any lienholder who may hereafter acquire title to any of the above described property from Kuehn, Inc. as a result of foreclosure or Deed in lieu of foreclosure.

Section 9. "Improved Lot" shall mean and refer to any Lot sold by Declarant improved with a completed patio home.

ARTICLE II

MEMBERSHIP

Declarant and DIAMONDHEAD CORPORATION and every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Each lot shall carry with it one membership in the Association and such membership shall be appurtenant to and may not be separated from ownership of any such lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

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ARTICLE III
VOTING RIGHTS

The Association shall have two (2) classes of voting memberships:

Class A. Class A members shall be all those Owners as defined in Article II. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and DIAMONDHEAD CORPORATION or their assignee of the voting rights. The Class B member shall initially be entitled to 123 votes which votes shall be reduced by three (3) votes for each Class A membership outstanding or upon agreement of Declarant and DIAMONDHEAD CORPORATION.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of members;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area;
- (c) the right of the Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;
- (d) the right of the Association to suspend the voting rights and right to use of the recreational facilities by a member 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;

(e) the right of the Association upon written consent of Declarant to dedicate or transfer all of any part of the Common Area 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 members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance;

(f) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area and recreational facilities, and the personal conduct of the members and their guest thereon, and to establish penalties for the infraction thereof.

Section 2. Delegation of Use. Any member may delegate, in accordance with By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property; however, delegation of such use to a tenant or contract purchaser shall exclude such member from such right of enjoyment except as a guest.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the surface of the Common Area (exclusive of the streets in the Subdivision) to the Association free and clear of all liens and subject only to easements and encumbrances of record in the office of the County Clerk of Harris County, Texas, prior to closing of the sale of the first patio home. Declarant further agrees to convey title to all streets in the Subdivision to Association, subject to all recorded easements for ingress and egress free and clear of liens or other encumbrances, after sale of the thirtieth patio home. The Common Area shall remain undivided, and shall at all times (except as above provided) be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the Common Area.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot improved with a completed Patio Home by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Only Lots improved with a completed Patio home shall be subject to such assessment. Such assessment shall begin on the 1st day of the month immediately following the closing of the sale of each completed Patio home. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The obligation shall pass to his successors in title and shall become a personal obligation of such successor in title; however, such prior owner shall not be released from his obligation to pay such assessment by reason of such transfer.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Property and in particular for the improvement and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Property. They shall include, but are not limited to, funds for the actual cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area as may from time to time be authorized by the Board of Directors, and other facilities and activities including, but not limited to, mowing grass, caring for the grounds (outside of enclosed courtyards), sprinkler system, landscaping (outside of enclosed courtyards), swimming pool, recreational building and equipment, utility expenses incurred in connection with the Common Area, streets (even though such streets are not owned by Association)

and recreational facilities, and other charges required by this Declaration of Covenants, Conditions and Restrictions or that the Board of Directors of the Association shall determine to be necessary to meet the primary purposes of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein.

Section 3. Basis and Maximum of Annual Assessments. Until January 1st of 1977, the annual assessment shall be THREE HUNDRED AND NO/100 (\$300.00) DOLLARS per Lot, which shall be the maximum assessment for such period.

(a) On and after January 1, 1977, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D. C.) for the preceding month of July.

(b) On and after January 1977, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding year and at the end of each such year for each succeeding year, provided that any such change shall have the assent of two-thirds (2/3) of the total votes cast by members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under the Articles of Incorporation.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 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 or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal

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property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the total votes cast by members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all improved lots. Regular annual assessments shall be payable annually in advance on January 1 of each year.

Section 5. Quorum for any Action Authorized under Section 3 and 4. At any meeting called, as provided in Section 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all improved lots on the date set forth in Section 1 of this Article. 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; provided, however, that the Board of Directors shall have the right to adjust the annual assessment as long as any such adjustment does not exceed the maximum permitted hereunder with thirty (30) days written notice given to each Owner. Written notice of the annual assessment or any adjustment thereof shall be sent to every Owner subject thereto. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

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Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 8% per annum, and the Association may bring an action of law against the Owner personally obligated to pay the same, or foreclose the lien against the property; and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner by his acceptance of a Deed to a lot, hereby expressly vests in the PATLOWOODS HOMES ASSOCIATION, INC., or its agents, 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 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 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. The Association acting on behalf of the Lot Owners shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding non-payment of such defaulting Owner's portion of the premium. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which become 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.

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Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements: Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled at any time by an affirmative vote or written petition of sixty per cent (60%) of the votes of each class of the Members of the Association in existence at any time prior to January 1, 1977, or by vote of sixty per cent (60%) of the votes of the Class A membership taken at any time after January 1, 1977. In no event shall the effective date of the cancellation of any such management agreement be made prior to the effecting by the Association by its Board of Directors of a new management agreement with a different party or parties, which new management agreement will become operative immediately upon the effective cancellation date of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management contract prior to the expiration of the term of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

Section 12. Insurance: Each Owner shall at all times maintain in full force and effect an insurance policy from an insurance company carrying a rating of AAAAA or better in Best's Key Rating Guide, insuring each such Owner's Patio home against loss in an amount equal to the full insurable value of such property to cover the replacement costs of any repair or reconstruction work, required to be performed upon such property in the event of damage or destruction from any such hazard. Each Owner shall have the absolute right and privilege to select the company and agent through whom such insurance is procured, subject

only to the general requirement hereinabove contained. Each Owner shall be responsible for the payment of the premium due and owing on such insurance policy and shall pay same promptly each year prior to the anniversary date of such policy. Each Owner shall furnish to the Association a memorandum copy of such insurance policy and shall likewise furnish to the Association each year proof of payment of the premium due and owing on such policy.

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In the event that any Owner should fail or refuse to obtain such insurance coverage for any reason, or should any Owner obtain such insurance coverage and thereafter fail or refuse for any reason to continue such coverage in full force and effect, then the Board of Directors, or its duly authorized agent, shall have the authority to obtain such insurance coverage on such defaulting Owner's Patio home and/or to advance the necessary premium to continue the existing insurance coverage in full force and effect. Any such insurance coverage obtained or continued in force by the Association by reason of default of any Owner in this regard shall be either written in or endorsed into the name of the Association as Trustee for such defaulting Owner, or at the option of the Association, in the name of such individual Owner. Any person or corporation known to the Association who holds a lien on such property shall be shown as a mortgagee thereon. The premium for any insurance coverage obtained or continued in force by the Board of Directors on individual Patio homes as authorized herein shall not be part of the common expense, but shall be an expense of the specific Patio home so covered and shall be a debt owed by the Owner thereof and shall be collectable by any lawful procedure permitted by the laws of the State of Texas. In addition, if such debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien upon such Owner's Lot and Patio home, and shall continue to be such a lien until fully paid. This lien shall be subordinate to the lien of any mortgage and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments.

The right and authority of the Association to obtain or continue in force insurance for or on behalf of any Owner is limited to those instances in which Owner has defaulted in obtaining or continuing in force the insurance as herein

above required, and shall never extend to or cover any other type of coverage than as hereinabove required, it being specifically provided that the Association shall never obtain for the benefit of any individual Owner any type of liability insurance covering such individual Owner.

The Board of Directors, or its duly authorized agent, shall likewise have the authority to and shall obtain insurance for any buildings or other improvements situated upon the Common Area, insuring such buildings or improvements against damage or loss by reason of fire, windstorm, hurricane, hail or other casualty loss in such companies and in such amounts as the Board of Directors may determine. The Board of Directors, or its duly authorized agent, shall likewise obtain a broadform public liability policy covering all of the Common Area and all damages or injuries caused by the negligence of the Association or any of its agents. Said insurance may also include coverage against vandalism. Premiums for all insurance authorized by this paragraph shall be a common expense and all of such policies shall be written in the name of the Association.

In addition to the required casualty insurance to be maintained by each Owner as hereinabove provided, any Owner may, if he wishes, at his own expense, carry any and all other types of insurance that he deems advisable. It shall be the individual option and responsibility of each Owner, at his own expense, to provide, as he sees fit, homeowners' liability insurance, theft and other insurance covering personal property damage and loss.

In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damages or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of the President and Secretary of the Association. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who

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shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all owners of the damaged Patio homes in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained by such Patio homes to make up any deficiency, except that the special assessment shall be levied against all Owners, as established by Article V, Section 1, above, to make up any deficiency for repair or rebuilding of the Common Area not a physical part of a Patio home. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and Owners of the damaged Patio homes as their interest may then appear. In the event of damage or destruction by fire or other casualty to any Patio home, garages, storage area or other property covered by insurance written in the name of an individual Owner, said Owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the Patio home, garage, storage area or other property covered by insurance in a good workmanlike manner in conformance with the original plans and specifications of said Patio home. In the event such Owner refuses or fails to begin to repair and rebuild any and all such damage to the Patio home, garage, storage area or other property covered by insurance within thirty (30) days, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such Patio home, garage, storage area or other property covered by insurance in a good and workmanlike manner in conformance with their original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs, and the Association shall have a lien securing the payment of same

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identical to that provided above in this Section securing the payment of insurance premiums; and subject to foreclosures as above provided.

ARTICLE VI
ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made; until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an architectural committee composed of three (3) or more representatives appointed by Diamondhead Corporation. In the event said committee fails to approve in writing such design and location within thirty (30) days after said plans and specifications have been submitted to it, such design and location will be deemed to have been disapproved by such Committee.

ARTICLE VII
EXTERTOR MAINTFNANCE

The Association shall provide no exterior maintenance upon any building except those located on any common area.

In the event that the need for maintenance or repair to any building on any common area is caused through the willful or negligent act of the Owner, his family, or gurests, or invitees, and not covered or paid for by insurance on such common area, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner's Lot is subject.

ARTICLE VIII
USE RESTRICTIONS

Section 1. All Lots are hereby restricted to residential dwellings for residential use. All building or structures erected upon said Property shall

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be of new construction and no buildings or structures shall be moved from other locations onto said Property.

Section 2. Each Lot shall be conveyed as a separately designed and legally described freehold estate subject to the terms, conditions and provisions hereof.

Section 3. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant or the Builder of said Patio homes to maintain during the period of construction and sale of the Patio home, in or upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Patio homes, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 4. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

Section 5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on said Property without the express written consent of the architectural committee referred to in Article VI hereof, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Patio home or any resident thereof. No business activities of any kind whatever shall be conducted in any building or upon any Lot in such subdivision; provided, however, the foregoing covenants shall not apply to the business activities or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns during the construction and sale period, and PATIOWOODS HOMES ASSOCIATION, INC., a non-profit corporation incorporated or to be incorporated under the laws of the State of Texas, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 6. All equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Patio homes and streets. All rubbish,

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trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. No exterior clotheslines shall be permitted on any Lot.

Section 7. No fences, hedges or walls shall be erected or maintained upon said property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the designated architectural committee mentioned in Article VI hereof. Except for the right of ingress and egress and the right and easement as defined in Article IV, the Owners of Lots are hereby prohibited and restricted from using any of said Property outside the exterior Property lines of each Lot. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Lots in the subdivision and Diamondhead Corporation and is necessary for the protection of said Owners and Diamondhead Corporation.

Section 8. Maintenance, upkeep and repairs of any patio shall be the sole responsibility of the individual Owner and not in any manner the responsibility of the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area including but not limited to, recreation and parking areas and walks, shall be taken by the Association or by its duly delegated representative.

Section 9. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot shall be maintained and kept in repair by the Owner thereof.

Section 10. Without prior written approval and the authorization of the architectural committee mentioned in Article VI hereof, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Property, nor upon any structure situated upon the Property, including an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 11. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners of improved or unimproved Lots in favor of the other Owners of similar Lots.

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Section 12. Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded Plat of the Subdivision and/or as created by separate instrument filed for record in the office of the County Clerk of Harris County, Texas, and no structure other than driveways or streets shall be erected on any of said easements. Neither Declarant nor any utility company using the easements shall be liable for any damage done by either them or their assigns, their agents, employees or servants to shrubbery, trees, flowers, driveways, or improvements of the Owner located on the land covered by said easements.

Section 13. Any activity which is not related to single family residence purposes, whether for profit or not, shall not be carried on, on any Lot or residence. No noxious or offensive activity of any sort shall be permitted, nor shall anything be done on any Lot which may be or become an annoyance or nuisance to the neighborhood.

Section 14. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, mobile home, or other outbuilding shall be used or maintained on any Lot at any time unless such use or location thereof has been approved by the architectural committee set forth in Article VI. Temporary structures used as building offices and for other related purposes during the construction period must be inconspicuous and sightly.

Section 15. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 16. The drying of clothes in public view is prohibited.

Section 17. The digging of dirt or the removal of any dirt from any such Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such Lot.

Section 18. The use or discharge of pistols, rifles, shotguns or other firearms is expressly prohibited on any part of the Property.

Section 19. All boats, boat trailers, camp trailers, and all other types of trailers, and any automobile or truck which is not capable of being driven

in its present condition shall be housed inside the garage of any residence at all times, it being the intent to prohibit visible location of such properties on any Lot or street other than for short temporary periods while such properties are being washed, cleaned or loaded in preparation for use.

Section 20. No building structure or any other improvement shall be constructed in any common area nor shall any use be made of any such common area by Association or any Owner unless such proposed construction and/or use has been approved in writing by the architectural committee set forth in Article VI hereof.

Section 21. Enforcement may be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages, or enforcement may be made by either Association, Declarant or Diamondhead after fifteen (15) days from delivery of written notice to Owner specifying the nature and extent of such violation and making demand on Owner to cure or remedy such violation immediately, if Owner should fail or refuse to cure or remedy such violation in such fifteen (15) day period. In such event Association, Declarant or Diamondhead Corporation shall have the legal authority to come onto any Owner's Lot without his permission and to cure or remedy such violation by taking such action as may be necessary, including not by way of limitation, the removal of any structure, personal property or other matter which is in violation of these provisions without any liability to such Owner for such removal. All property so removed shall be stored by the party removing same at the expense of such Owner and all costs incidental to such storage or removal, including any Attorney fees incurred by Declarant, Association or Diamondhead in this connection, shall be the expense of such Owner and shall be paid and advanced to the proper party by Association. All money so advanced by Association shall be secured by a lien on such Owner's Lot in favor of Association to the same extent as the annual maintenance charge hereinabove provided and shall be due and payable to Association on demand plus interest thereon at 8% per annum from the date Association should advance such funds.

Section 22. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

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ARTICLE IX

EASEMENTS

Section 1. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs of any patio home or fence as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event any patio home is partially or totally destroyed, and then rebuilt, the Owners of adjacent property agree that minor encroachments of parts of such patio home or fence onto such adjacent property or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof, shall exist, including the temporary easement for construction workers to go onto such adjacent property in person and with such equipment as may be necessary to repair such damaged patio home.

Section 2. There is hereby created a blanket easement upon, across, over and under all of said Property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewers, gas, telephones and underground electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on said property. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pick-up vehicles and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agent, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance or repair of the patio home, Lot or Common Area as provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programmed and approved by the Declarant or thereafter approved by the architectural committee as set forth in Article VI hereof. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said Property without

conflicting with the terms hereof. The easements provided for in this Article X shall in no way affect any other recorded easement on said premises.

Section 3. Underground Electric Service:

A. Underground single phase electric service shall be available to the residential patio homes on the aforesaid Lots, and the metering equipment shall be located on the exterior surface of the wall at a point to be designated by the utility company. The utility company furnishing the service shall have a two (2) foot wide easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service on the patio home.

B. For so long as such underground service is maintained, the electric service to each patio home and the recreation building or buildings shall be uniform and exclusively of the type known as single phase, 120/240 volt, 3 wire, 60 cycle alternating current.

C. Easements for the underground service may be crossed by driveways, streets and walkways provided the Declarant or Builder makes prior arrangements with the utility company furnishing electric service. Such easement for the underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossing walkways, streets or driveways, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to shrubbery, trees, flowers, or other improvements of the Owner located on the land covered by said easements.

Section 4. Parking:

All Owners shall park their vehicles on their own Lot. All guests shall park their vehicles on areas designated for such parking by Association.

ARTICLE X

LIEN TO SECURE THE PAYMENT OF DUES, CHARGES,
AND ASSESSMENTS OF NEWPORT YACHT AND COUNTRY
CLUB, INC. ON ITS ASSIGNEE

All Lots situated in the property are hereby subjected to a monthly maintenance charge at a rate to be established from time to time by the Board of Directors of Newport Yacht and Country Club, Inc., a Texas corporation, or its successors and assigns, for the purpose of maintaining the streets, roads and common recreational facilities and areas of "Newport."

131-20-1427

Said monthly maintenance charges hereby imposed, together with all collection expenses and attorney's fees incurred in connection therewith, shall be secured by an express vendor's lien which is hereby expressly created and imposed upon each and every Lot and every conveyance of any or all of the Lots hereafter made, shall be made subject to such vendor's lien subsequent to the initial conveyance of such Lot by Declaration. Such monthly maintenance charges and other sums shall be paid by each and every Lot Owner at the time, in the manner and at such place as Newport Yacht and Country Club, Inc., its successors or assigns shall from time to time designate and said express vendor's liens are hereby transferred and assigned to Newport Yacht and Country Club, Inc.

131-20-1428

Said Newport Yacht and Country Club, Inc., its successors or assigns shall have the power and authority to enforce collection of, collect, hold, administer and expend any and all moneys, paid or to be paid, pursuant hereto and to carry out the purposes hereof.

A like maintenance charge for similar purposes is placed and imposed upon all lots, tracts and parcels sold within Newport, and said maintenance charge, collected from other sections of Newport, may be pooled, merged and combined into and with the monthly maintenance charges set forth in this Article X, and all such moneys may be pooled, combined or merged with the general funds of Diamond-head Corporation, the developer of Newport, its successors and assigns.

The monthly maintenance charge and liens securing same for which are herein provided shall remain in effect and shall be collectible until the restrictions, covenants and liens set forth and recorded as to Newport Section Two shall have expired according to their terms.

The vendor's lien prescribed herein as security for the payment of said monthly maintenance charge shall be enforceable by Newport Yacht and Country Club, Inc., its successors and assigns through appropriate legal proceedings, in the manner prescribed by law. No proceedings for enforcement of such liens shall be commenced except upon the expiration of four (4) months from and after the date the charge or assessment giving rise to such lien became due and payable.

Liens of deeds of trust, purchase money, mortgages and mechanic's and materialman's liens placed upon any of the Lots for the purpose of constructing

a residence or improvements thereon or thereto and recorded in accordance with the laws of the State of Texas, shall be, from the date of such recordation, superior to any and all liens for which are herein provided. Diamondhead Corporation or Newport Yacht and Country Club, Inc., may, if requested, execute instruments to subordinate any and all liens provided for herein to such liens of deeds of trust, purchase money, mortgages and mechanic's and materialman's liens put on the Lots for such purpose.

Diamondhead Corporation or Newport Yacht and Country Club, Inc., at their option, by appropriate written instrument recorded in accordance with the laws of the State of Texas, may subordinate any and all liens provided for in this Article X to the liens of any other encumbrances.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, Diamondhead, 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, Association, Diamondhead or Declarant, shall additionally have all of the rights and remedies set forth in Section 21 of Article VIII hereof. Failure by the Association, Diamondhead, Declarant or by 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 2. Severability. Invalidity 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 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Diamondhead, Declarant or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended or terminated as to all or any portion of subject property at any time hereafter by an instrument signed by Association, Diamondhead Corporation and Declarant. Any amendment must be properly recorded in the Deed Records of Harris County, Texas.

Section 4. Gender and Grammar. * The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF, the undersigned, being the Declarant and the Lienholders herein, have hereunto set their hand and seal this the 1st day of September, A. D. 1975.

131-20-1430

ATTEST:

KUEHN, INC.

Robert L. Deane
Assistant Secretary

BY: William H. Kuehn
(William H. Kuehn) President

ATTEST:

DIAMONDHEAD CORPORATION

Paul E. Powell
Assistant Secretary

BY: William O. Jameson
(William O. Jameson) Vice-President

ATTEST:

HARRIS COUNTY FEDERAL SAVINGS & LOAN
ASSOCIATION

James S. Davis
Secretary

BY: David H. Hille

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ZELMAN H. KUEHN, President of Kuehn, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE,
this the 15 day of September, A. D. 1975.


NOTARY PUBLIC, HARRIS COUNTY, TEXAS

31-20-1431

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM O. JAMESON, Vice-President of Diamondhead Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE,
this the 15 day of September, A. D. 1975.


NOTARY PUBLIC, HARRIS COUNTY, TEXAS

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared JOHN W. STRICKLER, President of Harris County Federal Savings & Loan Association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE,
this the 15 day of September, A. D. 1975.


NOTARY PUBLIC, HARRIS COUNTY, TEXAS