

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ATASCOCITA SOUTH, SECTION TWO  
A SUBDIVISION IN HARRIS COUNTY, TEXAS

THE STATE OF TEXAS    I  
 COUNTY OF HARRIS    I

THIS DECLARATION made by ELRO-ATASCOCITA, INC., a Michigan corporation, of Houston, Harris County, Texas, (successor in interest to Johnson-Loggins, Inc.), hereinafter called "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of that certain property known as ATASCOCITA SOUTH, SECTION TWO, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 286, Page 83, of the Map Records of Harris County, Texas; and

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

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon Atascocita South, Section Two, and declares the following reservations, easements, restrictions, covenants and conditions applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the land, which reservations, easements, covenants, restrictions and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to ATASCOCITA SOUTH COMMUNITY IMPROVEMENT ASSOCIATION, its successors and assigns, provided for in Article V hereof.

Section 2. "Properties" shall mean and refer to ATASCOCITA SOUTH, SECTION TWO.

Section 3. "The Subdivision" shall mean and refer to the Properties and any additional properties which may hereafter be brought within the scheme of this Declaration pursuant to the provisions set forth herein and hereafter brought within the jurisdiction of the Association.

Section 4. "Lot" and/or "Lots" shall mean and refer to the Lots shown upon the Subdivision Plat.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of 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 and those having only an interest in the mineral estate.

Section 6. "Subdivision Plat" shall mean and refer to the map or plat of Atascocita South, Section Two, recorded in Volume 286, Page 83, of the Map Records of Harris County, Texas, and any recorded replat thereof.

Section 7. "Architectural Control Committee" shall mean and refer to Atascocita South, Section Two, Architectural Control Committee provided for in Article IV hereof.

Section 8. "Declarant" shall mean and refer to ELRO-ATASCOCITA, INC., its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

Reservations, Exceptions and Dedications

Section 1. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, the streets and easements shown thereon, and such Subdivision Plat further establishes certain restrictions applicable to the Properties, including, without limitation, certain minimum setback lines, and all dedications, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property or any part thereof, whether specifically referred to therein or not.

Section 2. Declarant reserves the easements and rights-of-way as shown on the Subdivision Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, water lines, storm drainage, gas, sewers, or any other utility Declarant sees fit to install in, across and/or under the Properties.

Section 3. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements, but such changes and additions must be approved by the Federal Housing Administration and Veterans Administration.

Section 4. Neither Declarant nor any utility company using the easements herein referred to, shall be liable for any damages done by them or their assigns, their agents, employees or servants, to fences, shrubbery, trees or flowers or other property of the Owner situated on the land covered by said easements.

Section 5. It is expressly agreed and understood that the title conveyed by Declarant to any Lot or parcel of land within the Properties by contract, deed or other conveyance shall be subject to (a) any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph, telephone or other utility purposes and shall convey no interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenances thereto, constructed by or under Declarant or any easement owner, or their agents through, along or upon the premises affected thereby, or any part thereof, to serve said land or any other portion of the Properties and (b) the right of Declarant, its successors and assigns, to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party, and such right is hereby expressly reserved.

ARTICLE III

Use and Building Restrictions

Section 1. Land Use and Building Type. All Lots shall be known, described and used as Lots for Residential purposes only (hereinafter sometimes referred to as

"residential Lots"), and no structure shall be erected, altered, placed or permitted to remain on any residential Lot other than one single-family dwelling not to exceed two stories in height, a detached or an attached garage for not less than two (2) or more than three (3) cars and quarters for bona fide domestic employees; provided that the Architectural Control Committee may, in its discretion, permit the construction of a garage for less than two (2) or more than three (3) cars, such permission to be granted in writing as hereinafter provided; provided, however, nothing herein shall be construed to permit or allow the construction of a carport on any residential Lot or the use of any garage for other than primarily the housing of automobiles, and any enclosure of the garage which prevents its use for such purpose is specifically prohibited. As used herein, the term "Residential purposes" shall be construed to prohibit the use of the Lots for duplex houses, garage apartments, or apartment houses; and no Lot shall be used for business or professional purposes of any kind nor for any commercial or manufacturing purposes. No building of any kind or character shall ever be moved onto any Lot, it being the intention that only new construction shall be placed and erected thereon, except with the prior written consent of the Architectural Control Committee, but if all or any portion of such building is visible to full public view from the street or from adjoining lots, a fence or other suitable enclosure shall be constructed to screen the building from public view.

All exterior construction of the primary residential structure, garage, porches and any other appurtenances or appendages of every kind and character on any Lot and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior wall, ceilings, and doors completed and covered by paint, wallpaper, paneling, or the like and all floors covered by wood, carpet, tile or other similar floor covering) shall be completed not later than one (1) year following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.

Section 2. Architectural Control. No building or other structure shall be erected, placed or altered on any Lot until the construction plans and specifications therefor and a plot plan showing the location of the structure thereon have been approved by the Architectural Control Committee as to harmony with existing structures, with respect to exterior design and color with existing structures, as to location with respect to topography and finished grade elevation, and as to compliance with minimum construction standards, all as more fully provided for in Article IV hereof.

Section 3. Dwelling Size. The ground floor of the main residential structure, exclusive of open porches and garages, shall not be less than 1,000 square feet for a one-story dwelling, nor shall the ground floor area plus the upper floor area of the main residential structure of a one and one-half (1-1/2) story, or a two (2) story dwelling be less than 1,200 square feet.

Section 4. Type of Construction, Materials, and Landscape.

(a) Each residence shall have at least fifty-one percent (51%) masonry construction on the exterior wall area of the residence and garage except that detached garages may have wood siding of a type and design approved by the Architectural Control Committee. The Architectural Control Committee may, in its discretion, permit the use of a material or materials other than masonry on more than forty-nine percent (49%) of the exterior wall area of the residential structure and/or attached garage, such permission to be granted in writing as hereinafter provided.

(b) No external roofing material other than wood or 23% minimum composition shingles of a wood tone color shall be constructed or used on any building in any part of the Properties unless the Architectural Control Committee shall, in its discretion, permit the use of other roofing materials, such permissions to be granted in writing as hereinafter provided.

(c) No external television antennae will be placed or permitted to be maintained on any structure on any Lot from and after the earliest date on which cable television service is available to such Lot.

(d) A concrete sidewalk three (3) feet wide shall be constructed from the driveway to the front entrance of each residential structure to be situated thereon. A concrete sidewalk four (4) feet wide shall be constructed parallel to the curb two (2) feet from the property line (i.e., between said property line and curb line) along the entire fronts of all Lots. In addition thereto, four (4) foot wide sidewalks shall be constructed parallel to the curb two (2) feet from the property line along the side Lot line abutting any street of all corner Lots. The plans of each residential building on each of said Lots shall include plans and specifications for such sidewalks and same shall be constructed and completed before the main residence is occupied. At each street intersection and/or pedestrian crosswalk, where there is a sidewalk, there shall be provided curb ramps with rough, non-skid surface, to accommodate handicapped individuals in wheelchairs. The type of construction and the specifications for said curb ramps shall be as provided by the Harris County Engineering Department.

(e) No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any building in any part of the Properties.

(f) Each kitchen in each dwelling or living quarters situated on any Lot shall be equipped with a garbage disposal unit, which garbage disposal unit shall at all times be kept in a serviceable condition.

(g) Before any landscaping shall be done in the front of any newly constructed dwelling, the landscape layout and plans shall have been first approved by the Architectural Control Committee. Such landscaping is to be done in the parkway area and on the front of the Lot at the time the dwelling is being completed and before occupancy.

(h) No fence or wall shall be erected, placed, or altered on any Lot

(i) nearer to any street than the minimum building setback lines as shown on the Subdivision Plat.

All fences must be of ornamental iron, solid wood or masonry construction and no chain link fences shall be placed on any Lot except to enclose a swimming pool if such chain link fence is not visible from a street. Any fence constructed must be at least six (6) feet in height and no fence shall exceed eight (8) feet in height.

(i) A solid wood or masonry fence shall be constructed and thereafter maintained in a good state of repair on and along the rear (1.) Lot lines of Lots 40 through 57 in Block 1 and Lot 1 in Block 23 (2.) Lots 1 through 6 in Block 20. The obligation contained in this paragraph shall be binding upon the respective owners of the Lots specified.

Section 5. Building Location. No structure shall be located on any lot between the building setback lines shown on the Subdivision Plat and the street. No building shall be located nearer than five (5) feet to any interior Lot line, except that a garage or other permitted accessory building located sixty-five (65) feet or more from the front Lot line may be located within three (3) feet of an interior Lot line; and no main residence building, nor any part thereof, shall be located on any Lot nearer than fifteen (15) feet to the rear lot line. For the purposes of this section, air conditioning compressors, eaves, steps and open porches shall not be considered as a part of the building; provided, however, that the foregoing shall not be construed to permit any portion of a building on any Lot to encroach upon another Lot or to extend beyond the building setback line. For the purposes of this Declaration, the front Lot line of each Lot shall coincide with and be the Lot line having the shortest dimension abutting a street. Unless otherwise approved in writing by the Architectural Control Committee, each main residence building and detached garage will face the front of the Lot, except that an attached

garage may face the front or the side of the Lot and each detached garage will be located at least sixty-five (65) feet from the front Lot line of the Lot on which it is situated and will be provided with driveway access from the front of the Lot only; except that driveway access may be provided to corner Lots from any side street. For purposes hereof, the term "Corner Lot" shall mean and refer to any Lot which abuts more than one street.

Section 6. Minimum Lot Area. No Lot shall be resubdivided, nor shall any building be erected or placed on any such resubdivided Lot, unless each Lot resulting from such resubdivided Lot shall have an area of not less than 6,000 square feet; provided, however, that nothing contained herein shall be construed to prohibit the resubdivision of any Lot or Lots within the Properties if such resubdivision results in each resubdivided Lot containing not less than the minimum Lot area aforesaid.

Section 7. Annoyance or Nuisances. (a) No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance to the neighborhood. (b) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets (not to exceed three (3) adult animals) may be kept provided that they are not kept, bred, or maintained for any commercial purpose. (c) No spirituous, vinous, malt liquor or medicated bitters capable of producing intoxication shall ever be sold or offered for sale on any Lot, nor shall any Lot or any part thereof be used for illegal or immoral purposes. (d) No truck, bus, boat or trailer shall be left parked in or on the street in front of any Lot or in any driveway or other portion of any such Lot exposed to public view (except for construction or repair equipment only while a house, or houses, are being built or repaired in the immediate vicinity). (e) No septic tank or private water well shall be permitted on any Lot. (f) No repair work, dismantling, or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any Lot, street, or on any portion of the Common Properties. (g) The use or discharge of firearms, firecrackers, or other fireworks in the Properties is prohibited. (h) No motor bikes, motorcycles, motor scooters, "go-carts", or other similar vehicles shall be permitted to be operated in the Properties, if, in the sole judgment of the Board of Trustees of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance.

Section 8. Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include, but not necessarily be limited to sales and construction offices, storage areas, model units, signs and portable toilet facilities. ~~XX~~ No truck, trailer, boat, automobile, motor home or other vehicle shall be stored, parked, or kept on any Lot or in the street in front of the Lot unless such vehicle is in day-to-day use off the premises and such parking is only temporary, from day to day; provided, however, that nothing herein contained shall be construed to prohibit the storage of an unused vehicle in an enclosed garage on any Lot.

Section 9. Signs and Billboards. No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Lot except (i) one sign of not more than ten (10) square feet advertising the particular Lot on which the sign is situated for sale or rent, and (ii) one sign of not more than five (5) square feet to identify the particular lot as may be required by the Federal Housing Administration or Veterans Administration during the period of actual construction of a single-family residential structure thereon. The right is reserved by Declarant to construct and maintain such signs, billboards or advertising devices as is customary in connection with the general sale of property in the subdivision. In no event shall any sign, billboard, poster or advertising device of any character, other than as specifically prescribed in the first sentence of this Section 9., be erected, permitted or maintained on any Lot without the express prior written consent of the Architectural Control Committee.

The term "Declarant" as used in this Section 9. and Section 8. above shall refer to ELRO-ATASCOCITA, INC., its successors or assigns to whom the rights under this Section 9. and/or Section 8. above are expressly and specifically transferred.

**Section 10. Storage and Disposal of Garbage and Refuse.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. There is hereby reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal service. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

**Section 11. Underground Electric System.** An underground electric distribution system will be installed in that part of Atascocita South, Section Two, designated herein as Underground Residential Subdivision, which underground service area embraces all of the Lots which are platted in Atascocita South, Section Two. In the event that there are constructed within the Underground Residential Subdivision structures containing multiple dwelling units such as town houses, duplexes or apartments, then the underground service area embraces all of the dwelling units involved. The Owner of each Lot containing a single dwelling unit, or in the case of a multiple dwelling unit structure, the Owner/Developer, shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the Subdivision Plat or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit, or in the case of a multiple dwelling unit structure, the Owner/Developer, shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 240/120 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Underground Residential Subdivision is being developed for residential dwelling units, including homes, and if permitted by the restrictions applicable to such subdivision, townhouses, duplexes and apartment structures, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale

or rent and all of which multiple dwelling unit structures are wired so as to provide for separate metering to each dwelling unit. Should the plans of the Declarant or the Lot Owners in the Underground Residential Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Declarant has paid to the Company an amount representing the excess in cost, for the entire Underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected Lot, or the applicant for service to any mobile homes, shall pay to the Company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such Lot, which arrangement and/or addition is determined by Company to be necessary.

The provisions of the two preceding paragraphs also apply to any future residential development in Reserve(s), if any, shown on the plat of Atascocita South, Section Two, as such plat exists at the execution of the agreement for underground electric service between the electric company and Declarant or thereafter. Specifically, but not by way of limitation, if a Lot Owner in a former Reserve undertakes some action which would have invoked the above per front lot foot payment if such action had been undertaken in the Underground Residential Subdivision, such owner or applicant for service shall pay the electric company \$1.75 per front lot foot, unless Declarant has paid the electric company as above described. The provisions of the two preceding paragraphs do not apply to any future nonresidential development in such Reserve(s).

No provision of this Section 11. (the text of which is prescribed by the electric company) shall in any manner operate or be construed to permit the construction on any Lot of any type of residential structure other than a single-family residence as provided in Section 1. of this Article III.

Section 12. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any or in any Lot nor shall oil 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.

#### ARTICLE IV

##### Architectural Control Committee

Section 1. Approval of Building Plans. No building shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure, have been approved in writing as to harmony of exterior design and color with the existing structures, as to location with respect to topography, finished ground elevation and orientation relative to lot lines and building setback lines, and as to compliance with minimum construction standards by the Atascocita South, Section Two Architectural Control Committee. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee, or its designated representative, prior to commencement of construction. The Architectural Control Committee may require the submission of such plans, specifications, and plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect at its entire discretion. In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the same are submitted to it, approval will not be required and the requirements of this Section will be deemed to have been fully complied with; provided, however, failure to timely approve or disapprove such plans and specifications shall not be deemed to permit the erection, construction, placing or altering of any structure on any Lot in a manner prohibited under the terms of this Declaration.

Section 2. Committee Membership. The Architectural Control Committee shall be initially composed of J. M. Tipps (who is Chairman of the Committee), A. L. Williams and Sam Calleri, who by majority vote may designate a representative to act for them.

Section 3. Replacement. In the event of death or resignation of any member or members of said committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plot plans submitted or to designate a representative with like authority.

Section 4. Minimum Construction Standards. The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and such Architectural Control Committee shall not be bound thereby.

Section 5. Term. The duties and powers of the Architectural Control Committee and of the designated representative shall cease on and after ten (10) years from the date of this instrument. Thereafter, the approval described in this covenant shall not be required, and all power vested in said Committee by this covenant shall cease and terminate; PROVIDED, that any time after January 1, 1989, whether or not the term of the Architectural Control Committee specified in the preceding sentence shall have expired, by a two-thirds (2/3) vote of the members present and voting, the Board of Trustees of the Anascocita South Community Improvement Association may assume the duties and powers of the Architectural Control Committee, and thereafter the Board of Trustees of the Association shall have all of the rights, benefits and powers provided herein for the Architectural Control Committee.

Section 6. Variances. Article III of this Declaration contains a number of provisions wherein the Architectural Control Committee is expressly granted the authority, in its discretion, to permit variances from the effect of a particular restrictive covenant. The Architectural Control Committee may require the submission to it of such documents and items (including, as examples but without limitation, written request for and description of the variances requested, plans, specifications, plot plans and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for a variance. If the Architectural Control Committee shall approve such request for a variance, the Architectural Control Committee may evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Architectural Control Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including, as examples but without limitation, the type of alternate materials to be permitted and the alternate fence height approved or specifying the location), and signed by a majority of the then members of the Architectural Control Committee (or by the Committee's designated representative if one has been designated under the authority contained in Section 2. above). Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the Architectural Control Committee; or (b) failure by the Architectural Control Committee to respond to the request for variance. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning, and/or the term of the Architectural Control Committee shall have expired and the Board of Trustees of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted, it being the intention of Declarant that no variances be available except in the discretion of the Architectural Control Committee or, if it shall have succeeded to the authority of the Architectural Control Committee in the manner provided herein, the Board of Trustees of the Association. The Architectural Control Committee shall have no authority to approve any variance except as expressly provided in this Declaration.



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ARTICLE V

Atascocita South  
Community Improvement Association

Section 1. Membership. Every owner of a Lot in the Subdivision which is subject to a maintenance charge assessment by the Association, including contract sellers, shall be a member of the Atascocita South Community Improvement Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. Membership shall be appurtenant to and may not be separated from ownership of the Lots which are subject to assessment by the Association. Ownership of such Lots shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Section 1. of this Article V., with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in the Subdivision in which they hold the interest required for membership by Section 1. 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 such Lot.

Class B. The Class B member shall be the Declarant defined in this Declaration. The Class B member shall be entitled to three (3) votes for each Lot in the Subdivision in which it holds the interest required for membership by Section 1.; provided, however, that 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, 1989.

Except as may be specifically provided to the contrary in this Declaration, the Class A and Class B. members shall have no rights as such to vote as a class, and both classes shall vote together upon all matters as one group.

Section 3. Non-Profit Corporation. A non-profit corporation has been organized to assume and perform the duties and functions of the Association, which non-profit corporation's Articles of Incorporation and Bylaws have been approved by the Federal Housing Administration and the Veterans Administration. All duties, obligations, benefits, Hens and rights hereunder in favor of the Association shall vest in said corporation.

Section 4. Bylaws. The Association may make whatever rules or bylaws it may choose to govern the organization, provided that same are not in conflict with the terms and provisions hereof.

Section 5. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours.

ARTICLE VI

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot is hereby subjected to an annual maintenance charge, and the Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any

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Lot by 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 annual maintenance charge assessments, such assessments to be established and collected as hereinafter provided and shall constitute the proceeds of a fund (hereinafter called "the maintenance fund") to be used for the purposes hereinafter provided. The annual maintenance charge assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Subdivision, and the Association shall use the proceeds of said maintenance fund for the use and benefit of all residents of the Subdivision; provided, however, that each future section of Atascocita South (and any other property or properties included in the Subdivision), to be entitled to the benefit of this maintenance fund, must be impressed with and subjected to an annual maintenance charge and assessment on a uniform per Lot basis, and further made subject to the jurisdiction of the Association in the manner provided in Article VIII hereof. The uses and benefits to be provided by said Association, shall include, by way of example, but without limitation, at its sole option, any and all of the following: maintaining parkways, rights-of-ways, easements, esplanades and other public areas; furnishing and maintaining landscaping, lighting and beautification of the Properties; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the properties to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment employing policemen and watchmen; caring for vacant lots and doing such other things and taking such other actions as are necessary or desirable in the opinion of the Association to keep the Properties and the Subdivision neat and in good order, or which is considered of general benefit to the Owners or occupants of the Lots in the Subdivision, it being understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 3. Maximum Annual Assessment. Until January 1, 1980, the maximum annual assessment shall be One Hundred Eighty and No/100 Dollars (\$180.00) per Lot, per annum.

(a) From and after January 1, 1980, the maximum annual assessment may be increased each year (beginning with the year 1980), without a vote of the membership, by an amount not in excess of five percent (5%) of the maximum annual assessment for the previous year.

(b) From and after January 1, 1980, the maximum annual assessment may be increased for any year (beginning with the year 1980) by an amount in excess of five percent (5%) of the maximum annual assessment for the previous year, only by a vote 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.

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the

required quorum at the 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 5. Rate of Assessments. The Board of Trustees, in its discretion, may fix, by resolution specifying such amount, the annual assessment at any amount not in excess of the maximum then permitted under the terms of Section 3. above, and such annual assessment for the Lots, when fixed, shall be assessed and paid at the following uniform rates:

X (a) The rate for all Lots, other than those Lots owned by Declarant, shall be fifty percent (50%) of the annual assessment fixed by the Board of Trustees until the first day of the month following completion and occupancy of a permanent residential structure on such Lot; thereafter, such rate shall be one hundred percent (100%) of the applicable annual assessment as to such Lot owned by the Owner on whose property such permanent structure has been erected.

(b) The rate for all Lots owned by Declarant shall be separately determined by the Association, but in no event shall such rate be less than Fifty percent (50%), nor more than one hundred percent (100%) of the applicable annual assessment.

Section 6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the date fixed by the Board of Trustees to be the date of commencement, and the annual assessment period shall be the calendar year. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, the Board of Trustees 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 (which may be monthly, quarterly, semi-annually or annually) shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

X Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. If any annual maintenance charge or assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest interest rate allowed under the laws of the State of Texas. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien created hereby against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein, as it applies to any Lot, shall be second, subordinate, and inferior to all liens, present and future, given, granted, and created by or at the instance or request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot, and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting mortgage lien, said beneficiary shall give the holder of such mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such mortgage holder by prepaid U. S. Registered Mail, to contain a statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such mortgage lienholder, said beneficiary shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Lot covered by such mortgage lien to the holder thereof. No sale or transfer of a Lot shall relieve the Owner of such Lot from liability for any assessments theretofore having become due or such Lot from the lien thereof. The above maintenance charge and assessment will remain effective for the full term and extended term, if applicable, of the within covenants.

## ARTICLE VII

General Provisions

**Section 1. Term.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of the Association and all Owners, their respective legal representatives, heirs, successors and assigns for an initial term commencing on the effective date hereof and ending December 31, 2018. During such initial term, the covenants and restrictions of the Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than ninety percent (90%) of all Lots in Atascocita South, Section Two, and properly recorded in the appropriate records of Harris County, Texas. Upon the expiration of such initial term, said covenants and restrictions (if not previously terminated and as changed, if changed); and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such ten (10) year extension periods, the covenants and restrictions of the Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than seventy-five percent (75%) of all of the Lots in Atascocita South, Section Two, and properly recorded in the appropriate records of Harris County, Texas. Upon any violation or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other Owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from doing so or to recover damages or other dues for such violations.

**Section 2. Severability.** Invalidation of any one of these covenants by judgment or other court order shall in no manner affect any of the other provisions, which shall remain in full force and effect.

**Section 3. Additions to Existing Property.** Additional lands may become subject to the scheme of this Declaration in the following manner:

(a) **Additions by Declarant.** The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development of Atascocita South, upon the approval of the Board of Trustees of the Association, in its sole discretion. Any additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property and the execution thereof by members of the Board of Trustees of the Association shall constitute all requisite evidence of the required approval thereof by such Board of Trustees. Such Supplemental Declaration must impose an annual maintenance charge assessment on the property covered thereby, on a uniform, per lot basis, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands.

(b) **Other additions.** Upon the approval of the Board of Trustees of the Association, in its sole discretion, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Covenants and Restrictions upon the satisfaction of the conditions specified in subsection (a) above.

(c) **Mergers.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration and all Supplemental Declarations, together with the covenants and restrictions applicable to the properties of the other association as one

scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration or any Supplemental Declaration.

Section 4. FHA/VA Approval. So long as there shall be a Class B Membership in the Association, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, merger or consolidation of the Association with another association, dedication of common areas, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Approval of Lienholders. Gibraltar Savings Association, the holder of liens on the Properties, joins in the execution hereof to evidence its joinder in, consent to, and ratification of the imposition of the foregoing covenants, conditions and restrictions.

EXECUTED this 9th day of April, 19 79 (5)

ATTEST:

ELRO-ATASCOCITA, INC.

Mary L. Menden  
Assistant Secretary

A. H. Jigs  
President

"DECLARANT"

ATTEST:

GIBRALTAR SAVINGS ASSOCIATION

Ken L. Kinsler  
Assistant Secretary

Charles L. Johnson  
Vice President

"LIENHOLDER"

*J. M. Tipps*

J. M. TIPPS, Member.  
Board of Trustees, ATASCOCITA SOUTH  
COMMUNITY IMPROVEMENT ASSOCIATION

*Andrew L. Williams III*

ANDREW L. WILLIAMS, III, Member  
Board of Trustees, ATASCOCITA SOUTH  
COMMUNITY IMPROVEMENT ASSOCIATION

*Jerry Langlois*

JERRY LANGLOIS, Member.  
Board of Trustees, ATASCOCITA SOUTH  
COMMUNITY IMPROVEMENT ASSOCIATION

*Olin L. Harn*

OLIN L. HARN, Member.  
Board of Trustees, ATASCOCITA SOUTH  
COMMUNITY IMPROVEMENT ASSOCIATION

*Mary L. Molandes*

MARY L. MOLANDES, Member.  
Board of Trustees, ATASCOCITA SOUTH  
COMMUNITY IMPROVEMENT ASSOCIATION



THE STATE OF TEXAS I

COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on this day personally appeared CHARLES R. ACKERMAN VICE President of GIBRALTAR SAVINGS ASSN a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of such corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12TH day of APRIL, 1979.

Carmen Wallis  
Notary Public in and for Harris County  
TEXAS

CARMEN WALLIS  
Notary Public in and for Harris County, Texas  
My Commission Expires June 22, 1980



My Commission Expires: \_\_\_\_\_

THE STATE OF TEXAS I

COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on the day personally appeared J. M. TAPP President of \_\_\_\_\_ ELRO MASCOTA INC., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of such corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9TH day of APRIL, 1979.

Frank G. Howard  
Notary Public in and for Harris County,  
TEXAS

Frank G. Howard

My Commission Expires: \_\_\_\_\_

Oct 31, 1980



THE STATE OF TEXAS I  
COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on this day personally appeared J. M. TIPPIS, Member of the Board of Trustees, ATASCOCITA SOUTH COMMUNITY IMPROVEMENT 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, as the act and deed of said association, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9<sup>th</sup> day of APRIL, 1979.

[Signature]  
Notary Public in and for Harris County, TEXAS

My Commission Expires: Oct. 31 1980

FRANK G. HALLMAN

THE STATE OF TEXAS I  
COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on this day personally appeared ANDREW L. WILLIAMS, III, Member of the Board of Trustees, ATASCOCITA SOUTH COMMUNITY IMPROVEMENT 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, as the act and deed of said association, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9<sup>th</sup> day of April, 1979.

[Signature]  
Notary Public in and for Harris County, TEXAS

My Commission Expires: Oct 31, 1979

FRANK G. HALLMAN

THE STATE OF TEXAS I  
COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on this day personally appeared OLIN L. HAED, Member of the Board of Trustees, ATASCOCITA SOUTH COMMUNITY IMPROVEMENT 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, as the act and deed of said association, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9<sup>th</sup> day of APRIL, 1979.

[Signature]  
Notary Public in and for Harris County, TEXAS

My Commission Expires: Oct. 31, 1979

FRANK G. HALLMAN



THE STATE OF TEXAS I

COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on this day personally appeared JERRY LANGLOIS, Member of the Board of Trustees, ATASCOCITA SOUTH COMMUNITY IMPROVEMENT 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, as the act and deed of said association, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9<sup>th</sup> day of April, 1979.



Frank G. Hubbard  
Notary Public in and for Harris County,  
TEXAS

My Commission Expires: Oct 31, 1981

THE STATE OF TEXAS I

COUNTY OF HARRIS I

BEFORE ME, the undersigned authority, on this day personally appeared MARY L. MOLANOS, Member of the Board of Trustees, ATASCOCITA SOUTH COMMUNITY IMPROVEMENT 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, as the act and deed of said association, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9<sup>th</sup> day of April, 1979.



Frank G. Hubbard  
Notary Public in and for Harris County,  
TEXAS

My Commission Expires: Oct 31, 1981

Frank G. Hubbard

RETURN RECORDED TO:  
ELRO-ATASCOCITA, INC.  
1500 FIRST CITY EAST BLDG.  
HOUSTON, TEX. 77002

125-95-1702

STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in  
File Number *125-95-1702* on the date and at the time stamped  
hereon by me and was duly RECORDED, in the Official  
Public Records of said County of Harris County, Texas on

APR 19 1979



*John L. ...*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

FILED

APR 19 3 29 PM 1979

*John L. ...*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS