

**CITY OF COLLEGE STATION
GROUND LEASE AGREEMENT**

**by and between
CITY OF COLLEGE STATION
a Texas Home Rule Municipal Corporation**

and

**The Arts Council of Brazos Valley
A Texas Non-Profit Corporation**

TABLE OF CONTENTS

ARTICLE I.

LEASE TERM AND RENTAL 2

SECTION 1 -I LEASE OF LAND 2

SECTION 1.2 TERM 2

SECTION 1.3 RENT 3

SECTION 1.4 ADDITIONAL CONSIDERATION 4

ARTICLE II.

RENEWAL 5

SECTION 2.1 OPTION TO RENEW 5

ARTICLE III.

MORTGAGING THE LEASEHOLD AND THE BUILDING 5

SECTION 3.1 LIMITATIONS ON MORTGAGES 6

SECTION 3.2 CONSENT OF MORTGAGEE REQUIRED 6

SECTION 3.3 NOTICE TO AND PERFORMANCE BY MORTGAGEE 6

SECTION 3.4 MORTGAGEE'S GRACE PERIOD TO CURE DEFAULTS
AND TO FILE FORECLOSURE PROCEEDINGS 7

SECTION 3.5 RIGHT OF MORTGAGEE TO A NEW LEASE 8

SECTION 3.6 FORECLOSURE OF LEASEHOLD LIEN 9

SECTION 3.7 CITY'S OPTION TO PURCHASE MORTGAGE 10

SECTION 3.8 ESTOPPEL CERTIFICATE 11

ARTICLE IV.

RESTRICTIONS ON USE 12

SECTION 4.1 USE 12

SECTION 4.2 COMPLIANCE 12

ARTICLE V.

IMPROVEMENTS, ALTERATIONS AND ADDITIONS 13

SECTION 5.1 PERMISSION TO CONSTRUCT 13

SECTION 5.2 CONSTRUCTION TIMETABLE 15

SECTION 5.3 CONSTRUCTION DELAYS 15

SECTION 5.4 OWNERSHIP OF BUILDING AND RIGHT OF REVERSION 15

ARTICLE VI.

COVENANTS AND RESTRICTIONS 16

SECTION 6.1 COVENANTS AND RESTRICTIONS 16

ARTICLE VII.

REPAIR AND MAINTENANCE 16

SECTION 7.1 REPAIR AND MAINTENANCE 16

SECTION 7.2 COMPLIANCE WITH GOVERNMENTAL REGULATIONS 17

SECTION 7.3 WASTE 17

SECTION 7.4 DESTRUCTION 17

ARTICLE VIII.	
UTILITIES AND OTHER SERVICES	19
SECTION 8.1 PROVISIONS FOR SERVICE	19
ARTICLE IX.	
UTILITY EASEMENTS AND IMPROVEMENTS	20
SECTION 9.1 RIGHT TO ENTER.....	20
SECTION 9.2 EASEMENTS.....	20
ARTICLE X.	
MECHANICS' AND OTHER LIENS	21
SECTION 10.1 MECHANICS' AND OTHER LIENS	21
SECTION 10.2 INTEREST OF CITY	21
SECTION 10.3 CONTESTING CLAIMS.....	21
ARTICLE XI.	
INDEMNITY	22
SECTION 11.1 INDEMNIFICATION OF CITY	22
ARTICLE XII.	
INSURANCE.....	23
SECTION 12.1 FIRE AND EXTENDED COVERAGE.....	23
SECTION 12.2 DETERMINATION OF LIMITS.....	23
SECTION 12.3 PARTIES COVERED	24
ARTICLE XIII.	
TAXES	24
SECTION 13.1 TAX LIABILITY	24
ARTICLE XIV.	
ASSIGNMENT AND SUBLEASE	26
SECTION 14.1 ASSIGNMENT	26
SECTION 14.2 RELEASE OF ARTS COUNCIL'S LIABILITY	27
SECTION 14.3 SUBLEASE	28
ARTICLE XV.	
WAIVER.....	28
SECTION 15.1 LIMITATIONS OF WAIVER.....	28
ARTICLE XVI.	
INSPECTION OF LAND	29
SECTION 16.1 RIGHT OF CITY TO INSPECT	29
ARTICLE XVII.	
CITY'S DEFENSE OF ACTIONS	29
SECTION 17.1 RIGHT TO DEFEND.....	29

ARTICLE XVIII.	
NO GENERAL OBLIGATION, NONAPPROPRIATION, IMMUNITIES AND DISPUTE RESOLUTION	29
SECTION 18.1 LIMITATIONS ON CITY'S OBLIGATION	29
SECTION 18.2 NONAPPROPRIATION TO CITY	30
SECTION 18.3. PRIVILEGES AND IMMUNITIES.....	30
SECTION 18.4 CONTRACT CLAIMS RESOLUTION.....	30
ARTICLE XIX.	
DEFAULT PROVISIONS	30
SECTION 19.1 EVENTS OF DEFAULT.....	30
SECTION 19.2 REMEDIES IN CASE OF DEFAULT.....	31
ARTICLE XX	
QUIET ENJOYMENT.....	33
SECTION 20.1 QUIET ENJOYMENT.....	33
ARTICLE XXI.	
FIXTURES	34
SECTION 21.1 RIGHT TO REMOVE	34
ARTICLE XXII.	
RECORDATION OF LEASE	34
SECTION 22.1 RECORDING	34
ARTICLE XXIII.	
TIME OF THE ESSENCE.....	35
SECTION 23.1 TIME OF THE ESSENCE.....	35
ARTICLE XXIV.	
NOTICE	35
SECTION 24.1 METHOD OF GIVING NOTICE.....	35
ARTICLE XXV.	
REMEDIES CUMULATIVE	36
SECTION 25.1 REMEDIES CUMULATIVE	36
ARTICLE XXVI.	
LEASE CONSTRUAL, APPLICABLE LAW, AND VENUE.....	36
SECTION 26.1 CONSTRUCTION OF LEASE.....	36
SECTION 26.2 APPLICABLE LAW.....	36
SECTION 26.3 VENUE.....	37
ARTICLE XXVII.	
MEANING OF TERMS.....	37
SECTION 27.1 GENDER AND NUMBER.....	37

ARTICLE XXVIII.	
BENEFIT	37
SECTION 28.1 BENEFIT	37

ARTICLE XXIX	
ACCESS RIGHT OF WAY.....	37
SECTION 29.1 ACCESS	37

ARTICLE XXX.	
CONDEMNATION	38
SECTION 30.1 CONDEMNATION	38

ARTICLE XXXI.	
NON-MERGER.....	40
SECTION 3 1. 1. NON-MERGER	40

ARTICLE XXXII.	
ENVIRONMENTAL ASSURANCES	41
SECTION 32. 1. ENVIRONMENTAL ASSURANCES	41

EXHIBITS

- Exhibit A - Land
- Exhibit B - Covenants and Restrictions

GROUND LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is effective as of the ____ day of _____, 2002, (the "Effective Date") by and between the CITY OF COLLEGE STATION ("Lessor", but hereafter referred to as "CITY"), a Texas Home-Rule Municipal Corporation, and the ARTS COUNCIL OF BRAZOS VALLEY, a Texas non-profit corporation, ("Lessee", but hereafter referred to as (ARTS COUNCIL).

RECITALS

WHEREAS, the City of College Station owns property in the Wolf Pen Creek Corridor.

WHEREAS, the ARTS COUNCIL wishes to lease the land owned by the CITY and to construct and operate administrative offices and instructional facilities together with other ancillary improvements to support and promote the arts in College Station and the surrounding Brazos Valley communities;

WHEREAS, the City has determined that promotion of the arts in College Station and the Brazos Valley serves a public purpose and need, and benefits the citizens of the City of College Station; and

NOW, THEREFORE, in consideration of the covenants, conditions and agreements contained in this Agreement CITY and ARTS COUNCIL agree to the following terms and conditions:

ARTICLE 1. LEASE TERM AND RENTAL.

SECTION 1. LEASE OF LAND.

CITY, under the authority of this Agreement leases to ARTS COUNCIL a tract of land (the "Leased Land" or the "Land"), consisting of Lots 1, 2, 3, 4, 5 and 6, Block H, Eastmark Subdivision, Phase II, Morgan Rector Survey, A-46, College Station, Brazos County, Texas, as set out and described in Exhibit "A", attached and incorporated into this Lease for all purposes,

located in College Station, Brazos County, Texas, within the boundaries of the Wolf Pen Creek Zoning District. ARTS COUNCIL accepts the Land in its current condition AS IS, WHERE IS, and WITH ALL FAULTS and acknowledges it has examined the Land. ARTS COUNCIL has satisfied itself that no Hazardous Substances (defined in Article XXXII) are on the Leased Land as of the Effective Date of this Lease. ARTS COUNCIL has not relied on any representation or warranty by CITY or CITY's representatives, except as otherwise expressly stated in this Lease, regarding the Land, including any warranty or representation relating to value, suitability, fitness for a particular purpose or condition of the Land.

ARTS COUNCIL expressly acknowledges this Lease does not convey to nor establish in ARTS COUNCIL any right, title, or interest in CITY'S fee simple title in the Land. By execution of this Lease ARTS COUNCIL's sole interest in the Leased Land is that of a leasehold estate.

SECTION 1.2. TERM.

The term of this Lease commences on the Effective Date and extends for thirty (30) years following the Rent Commencement Date, unless extended in accordance with Section 2.1. The "Rent Commencement Date " is the date which is the first to occur of (a) the ninetieth (90th) day following the date upon which the Initial Improvements (defined in Article ____) have been substantially completed, as evidenced by a letter from CITY to ARTS COUNCIL confirming that substantial completion has been achieved, or (b) the date upon which ARTS COUNCIL takes occupancy of any portion of the Building (defined in Article V) and commences the conduct of its ordinary and customary business.

SECTION 1.3 RENT.

Rental will not accrue or be due or payable to CITY from ARTS COUNCIL until the Rent Commencement Date. ARTS COUNCIL will pay such rental to CITY at the Finance Department located at 1101 Texas Avenue, College Station, Brazos County, Texas, or such other place as CITY may from time to time designate in writing upon not less than thirty (30) days prior notice. Rental will be paid in the following manner:

- (a) The sum of \$19,800.00 per year, payable under the terms and conditions of this Lease, constitutes the "Base Land Rental" for the period from the Rent Commencement Date through ten (10) years after the Rent Commencement Date. The start of the Rent Commencement Date will not, under any circumstances, be delayed more than two (2) years from the Effective Date of this Lease. The Base Land Rental will be paid in advance without demand in monthly installments equivalent to one-twelfth (1/12th) of the Base Land Rental.
- (b) The sum of \$22,770.00 per year, payable under the terms and conditions of this Lease, constitutes the "Base Land Rental" for the period beginning in the eleventh year through the twentieth (20th) year after the Rent Commencement Date. The Base Land Rental will be paid in advance without demand in monthly installments equivalent to one-twelfth (1/12th) of the Base Land Rental.
- (c) The sum of \$26,185.50 dollars per year, payable under the terms and conditions of this Lease, constitutes the Base Land Rental for the period beginning in the twenty-first (21st) Rent year after the Rent Commencement Date through the thirtieth (30th) year after the Rent Commencement Date. The Base Land Rental will be paid in advance without demand in monthly installments equivalent to one-twelfth (1/12th) of the Base Land Rental.
- (d) If this Lease is renewed as set forth in Section 2.1, the sum of \$30,113.33 dollars per year, payable under the terms and conditions of this Lease, constitutes the Base Land Rental for the period from the start of the thirty-first (31st) year after the Rent Commencement Date through the fortieth year after the Rent Commencement Date. The Base Land Rental will be paid in advance in monthly installments equivalent to one twelfth (1/12th) of the Base Land Rental.

Rent Concession. CITY agrees to reduce the amount of the Base Monthly Rental to the amount of taxes that would accrue on the land minus any improvements based upon the value of the land as included in the Brazos County certified appraisal records, such agreement subject to and conditioned upon the agreement of ARTS COUNCIL to (1) construct, maintain and operate a facility consisting of an approximately 5,000 sq. ft. with parking facilities for administrative office space, an art gallery, educational classrooms, parking facilities, sculpture gardens and pathways and (2) convey said facility to CITY at the end of the lease term at no cost and free and clear of all liens and encumbrances. In the event Lessee abandons, vacates or assigns this Lease prior to the end of the lease term the total amount of the Base Monthly Rental at the rate payable for the deferred period shall thereupon become immediately due and payable for each month for the Rent Concession Period, such amount not intended as a penalty, but as a payment for all Base Monthly Rental which would otherwise have been due and payable during the Rental Deferral Period had CITY not agreed to defer such payment.

SECTION 1.4

Early Termination of Lease. ARTS COUNCIL may terminate this Lease in advance of the termination date by providing written notice to CITY one hundred eighty days in advance of the termination date. In the event that ARTS COUNCIL terminates this Lease prior to the end of the lease term, CITY has the right but not the obligation to purchase the building from ARTS COUNCIL for an amount equal to the unpaid principal of the indebtedness secured by the leasehold mortgage plus the down payment on the original leasehold mortgage and the accrued but unpaid interest (to the date of such purchase). If CITY exercises such option the purchase shall be closed within 45 days after such exercise and at such closing the CITY shall pay the aforesaid sums as full compensation for the improvements and ARTS COUNCIL's mortgagee shall release any liens upon the property.

ARTS COUNCIL agrees CITY is not required to make any expenditure, incur any obligation (other than those expressly set forth in this Lease), or incur any liability of any kind resulting from ARTS COUNCIL's financing, ownership, construction, maintenance, operation, or repair of the Land or the Building. It is expressly understood and agreed this is a net lease intended to compensate CITY on an absolute net basis.

SECTION 1.5 ADDITIONAL CONSIDERATION.

In addition to the rental described in Section 1.3, as part of the consideration for this Lease and as additional rent, ARTS COUNCIL covenants and agrees to bear, pay and promptly discharge as they become due and before delinquency all ad valorem taxes, charges, license fees, or similar ordinary or extraordinary charges due and payable during the term of this Lease as a result of this Lease and because of ARTS COUNCIL's leasehold estate in the Land. ARTS COUNCIL has the right in good faith to contest such taxes, assessments, license fees, or charges and is obligated to pay such contested amount during the contest, plus any penalties and interest imposed if and when the amount is finally determined to be due.

ARTICLE II. **RENEWAL**

SECTION 2.1 OPTION TO RENEW.

ARTS COUNCIL may renew this Lease for one (1) term of ten (10) years upon the same terms and conditions as contained in this Lease. Renewal may be exercised by ARTS COUNCIL on or before one hundred eighty (180) calendar days prior to the expiration of the then expiring term of this Lease by delivery to CITY of written notice of ARTS COUNCIL's election in the manner provided by this Lease.

ARTICLE III.
MORTGAGING THE LEASEHOLD AND THE BUILDING.

SECTION 3.1 LIMITATIONS ON MORTGAGES

ARTS COUNCIL has the right, at any and from time to time, to mortgage the leasehold estate and the interest in the Building and all other ARTS COUNCIL improvements upon the Leased Land by mortgage or trust deed; provided, (a) at the time such mortgage or trust deed is executed ARTS COUNCIL has not been notified of any uncured default under this Lease, and (b) no mortgagee or trustee or anyone claiming by, through or under such mortgagee or trustee has acquired any rights in the Land or rights in the Building other than those of ARTS COUNCIL under this Lease, except to the extent this Lease expressly allows. The mortgagee in any such mortgage or trust deed and the owner of the indebtedness secured by such mortgage or trust deed upon acquiring ownership of the leasehold estate to the Leased Land and the Building will become liable for all covenants of ARTS COUNCIL under this Lease. No mortgagee or trustee can acquire any rights in the Leased Land or Building except as granted to ARTS COUNCIL by the provisions of this Lease. No mortgagee is entitled to enforce any right or remedy contained in this Lease or by law until a photocopy, or an original executed counterpart of such mortgage has been delivered to CITY at the address for notices contained in this Lease, notwithstanding any other form of notice, actual or constructive. If ARTS COUNCIL is unable to secure a mortgage for construction of the Initial Improvements within ninety (90) calendar days after the Effective Date, CITY and ARTS COUNCIL may by mutual written agreement extend the time period. If the parties fail to do so this Lease will be void and of no further force and effect at 5:00 p.m., ninety (90) days after the Effective Date.

SECTION 3.2 CONSENT OF MORTGAGEE REQUIRED.

There will not be a cancellation, modification, surrender, or amendment of this Lease by ARTS COUNCIL or CITY without the written consent of the mortgagee, if any. Such consent will not be required if the default was caused by the mortgagee and remains uncured.

SECTION 3.3 NOTICE TO AND PERFORMANCE BY MORTGAGEE.

If a mortgagee, before any default has occurred or before cure of a default, has given to CITY written notice, specifying the name and address of mortgagee, CITY must give to each such mortgagee a copy of each default notice provided to ARTS COUNCIL. Such notice will be addressed to such mortgagee at the address last furnished to CITY and provided at the same time as such notice is given by CITY to ARTS COUNCIL. No default predicated on the giving of notice will be complete unless a copy of such notice is given to all mortgagees. CITY agrees to accept performance by any mortgagee of any term, covenant, agreement, provision, condition or limitation performed on ARTS COUNCIL's behalf as though performed by ARTS COUNCIL. CITY agrees the cure or remedy by the mortgagee will be deemed the curing or remedying of the default by ARTS COUNCIL. With respect to any default which mortgagee can not cure until it obtains possession, mortgagee will have a reasonable time after it acquires possession to cure such default, provided it diligently proceeds in good faith to enforce its remedies under its mortgage in order to obtain possession.

SECTION 3.4 MORTGAGEE'S GRACE PERIOD TO CURE DEFAULTS AND TO FILE FORECLOSURE PROCEEDINGS.

CITY will not terminate this Lease or invoke its right to take possession of the Leased Land and Building on the occurrence of an Event of Default (as defined in Section 19.1) under this Lease without first giving the mortgagee, whose address has been delivered to CITY as provided in Section 3.3, sixty (60) calendar days written notice of such Event of Default and allowing such

mortgagee the notice period in which to cure the default, such period subject to extension as provided in Section 3.3.

CITY will not terminate this Lease or invoke its right to take possession of the Land and Building so long as mortgagee diligently proceeds in good faith to enforce its foreclosure remedy, or obtains possession without enforcing its foreclosure remedy, and so long and only so long as, such mortgagee **fully** performs all the obligations of ARTS COUNCIL under this Lease within a reasonable time after mortgagee gains possession of the Leased Land and Building including, but not limited to, payment of all rent and any and all other moneys due and payable by ARTS COUNCIL.

In the event mortgagee acquires title to the leasehold estate and Building through a foreclosure proceeding, or otherwise, it becomes subrogated to all the rights of ARTS COUNCIL under this Lease and as a result:

- (a) ARTS COUNCIL will have no further rights under this Lease, and
- (b) Mortgagee will be obligated to assume and perform and expressly agrees to assume and perform all of ARTS COUNCIL's obligations and covenants from and after the date of such foreclosure sale as if mortgagee or its assignee was the lessee. CITY and ARTS COUNCIL agree mortgagee has no legal liability for events occurring after the date such mortgagee subsequently assigns its interests in this Lease.

SECTION 3.5 RIGHT OF MORTGAGEE TO A NEW LEASE.

As an alternative to the rights and obligations of the mortgagee set forth in Section 3.3 and 3.4, upon receipt by mortgagee of a notice of Event of Default specified in under Section 3.3, if within sixty (60) calendar days after the receipt of notice and continuing thereafter or at any time while mortgagee is diligently proceeding in good faith to enforce its foreclosure remedy in accordance with Section 3.4, mortgagee:

- (a) pays all rent and any and all other moneys due and payable from ARTS COUNCIL (but for such default and termination); and
- (b) performs all other obligations of ARTS COUNCIL under this Lease to the extent ARTS COUNCIL has failed to perform, except with respect to any default which cannot be cured by mortgagee until it obtains possession (mortgagee will have a reasonable time after possession to cure such default, provided, however, such extension of time does not subject CITY to any additional legal liability), CITY will, on written request of mortgagee made at any time within such time period, terminate this Lease and deliver a new lease to mortgagee or its nominee. The new lease will have a term equal to the remainder of the term of this Lease, and remain at the rent and upon the terms and conditions contained in this Lease, except for provisions which are no longer applicable or have already been performed. The new lease will be subject to the rights of CITY and any other person, firm or entity claiming through or under ARTS COUNCIL and any and all matters created or caused by acts or omissions of ARTS COUNCIL. The mortgagee must pay all rent due up to and including the date of commencement of the term of the new lease. Mortgagee will have the right to receive a new lease provided mortgagee reimburses CITY for all reasonable expenses, including attorney's fees, incident to the execution and delivery of the new lease, and provided mortgagee has paid to CITY all the rent and other sums, charges, costs and expenses due under this Lease up to and including the date of the commencement of the term of the new lease. CITY has no duty or obligation to deliver physical possession of the Leased Land and Building to mortgagee and mortgagee must take and is responsible for all steps

used to remove ARTS COUNCIL. CITY agrees to execute documents which, in its sole reasonable discretion, it believes are required to effect and enforce the provisions of this section.

SECTION 3.6 FORECLOSURE OF LEASEHOLD LIEN.

No mortgagee is entitled to enforce any right or remedy provided in this Lease or by law until a photocopy, facsimile copy or an executed counterpart of the mortgage has been delivered to CITY, regardless of any other form of notice, actual or constructive. Prior to commencement of any action to foreclose a leasehold mortgage, the leasehold mortgagee, or its assigns must notify CITY in writing of the default by ARTS COUNCIL and include a statement of the amount due and offer to withhold any acceleration of maturity of the promissory note, payment of which is secured by the leasehold mortgage, if, within thirty (30) days thereafter, CITY pays to the leasehold mortgagee all amounts then in arrears on the leasehold mortgage in accordance with the terms of such leasehold mortgage. Upon such payment mortgagee must reinstate the leasehold mortgage in all respects as if no default had occurred, such reinstatement to be conditioned upon the continued payment of all sums due under such mortgage in accordance with its terms. CITY may, at its sole option, make such payments on the leasehold mortgage, and the amounts of such payments will be additional rental due from ARTS COUNCIL to CITY under this Lease. Subsequent defaults by ARTS COUNCIL in making payments required by any leasehold mortgage are subject to this provision each time such default occurs. A judgment foreclosing the leasehold mortgage and the foreclosure sale does not release ARTS COUNCIL from any of its prior obligations to CITY under this Lease.

SECTION 3.7 CITY'S OPTION TO PURCHASE MORTGAGE.

If CITY has exercised its option to make payments as described in Section 3.6 and thereafter either it or ARTS COUNCIL continues to pay the indebtedness secured by the

leasehold mortgage in accordance with its tenants, then in addition to its rights under Section 3.6, or ARTS COUNCIL has terminated the lease early under Section 1.4 CITY has the right (but not the obligation), exercisable within nine (9) months following its receipt of notice from mortgagee of commencement of action to foreclose the leasehold mortgage as is required by Section 3.6, to purchase the leasehold mortgage from the mortgagee for an amount equal to the unpaid principal of the indebtedness secured by such mortgagee and accrued but unpaid interest (to the date of such purchase) plus all attorneys' fees and other charges due and owing under such leasehold mortgage. If CITY exercises such option, the purchase shall be closed within thirty (30) days after such exercise and at such closing the leasehold mortgagee shall assign to CITY (or its designee) the leasehold mortgage, the note described in it, and all of the other loan documents securing or guaranteeing such indebtedness.

SECTION 3.8 ESTOPPEL CERTIFICATE.

Upon the written request of any mortgagee or prospective mortgagee or any tenant, prospective tenant, purchaser or prospective purchaser and for the exclusive benefit of such party, CITY will promptly deliver to the requesting party written instrument certifying as to any of the following facts or matters, to the extent such facts are correct and applicable:

- (a) There are no existing defaults under this Lease and this Lease is unmodified and in full force and effect;
- (b) Plans and specifications covering improvements proposed to be constructed on the Leased Land have been approved by or on behalf of the CITY;
- (c) Improvements constructed upon the Leased Land have been completed and have been constructed pursuant to and in compliance with this Lease;
- (d) The actual or projected uses of the Land are permissible under this Lease;
- (e) The date on which the Building was occupied by ARTS COUNCIL;

- (f) The amount of the Base Land Rental and the Rent Commencement Date; and
- (g) Other reasonable inquiries of a requesting party.

ARTICLE IV.
RESTRICTIONS ON USE.

SECTION 4.1 USE.

ARTS COUNCIL may use and occupy the Leased Land for any lawful purpose permitted by the Wolf Pen Creek Zoning District, this lease and any Covenants and Restrictions, dated _____, attached as Exhibit "B" to and made a part of this Lease. ARTS COUNCIL will comply with all applicable federal and state laws and regulations as well as City of College Station Codes and Ordinances relating to its use and occupancy of the Leased Land and the improvements.

SECTION 4.2 COMPLIANCE.

ARTS COUNCIL must comply with all ordinances, laws and regulations of all governmental authorities applicable to and as are required for ARTS COUNCIL's use of the Leased Land as such ordinances, laws, and regulations are enforced by any governmental authority having jurisdiction with respect to the Leased Land. Additionally, ARTS COUNCIL shall comply with the Wolf Pen Creek Zoning District, and the dedication and development regulations for said District. ARTS COUNCIL expressly understands that any obligation or requirement imposed on CITY or imposed by CITY with respect to the Leased Land by subsequent law or regulation is fully applicable to ARTS COUNCIL and ARTS COUNCIL will be responsible for such compliance costs to the extent of its leasehold interest. CITY may enforce and apply the Regulations on the Leased Land and to any person in or on the Land, and may authorize CITY officers and commissioned peace officers to provide such enforcement.

ARTICLE V.
IMPROVEMENTS, ALTERATIONS AND ADDITIONS.

SECTION 5.1 PERMISSION TO CONSTRUCT.

ARTS COUNCIL, at ARTS COUNCIL's sole cost and expense agrees to construct upon the Leased Land a building ("Building") and any auxiliary structures, parking areas, signage, sculpture garden, pathways and other facilities as required (collectively, the "Initial Improvements"). ARTS COUNCIL also has the right to develop the remaining Leased Land in accordance with general plans and specifications reviewed by CITY, subject to the express approval of CITY at the time of any additional construction on the Lease Land. Written approval or notice of disapproval of ARTS COUNCIL's plans and specifications will be provided by CITY, through its Director of Finance Services or Director of Development Services, no later than forty-five (45) calendar days after submission by ARTS COUNCIL. If CITY rejects such plans and specifications notice must be in writing and set forth with specificity the reasons for rejection, whereupon ARTS COUNCIL, at ARTS COUNCIL's option may resubmit or terminate this Lease. If CITY fails to respond within such forty-five (45) day period, the plans shall be deemed approved. All improvements must be constructed substantially in accordance with the plans and specifications and in compliance with the Covenants and restrictions and City of College Station Codes and Ordinances. For purposes of this Lease, "plans and specifications" means a site plan reflecting the location and configuration of the improvements, the elevations of the improvements, exterior colors and materials, exterior lighting and landscaping.

Any and all improvements must be constructed in accordance with the following "Construction Standards": (1.) The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Texas Architectural Barriers Act (Texas Revised Civil Statutes article 9102), and all City of College Station Codes and Ordinances. Furthermore all such work must be performed without cost, expense or other liability to CITY and in a good and workmanlike manner in accordance with good industry practice for the type of work in question, substantially in accordance with the

approved plans and specifications and in accordance with all City of College Station Codes and Ordinances. All work must be performed by ARTS COUNCIL's contractors, subcontractors or agents and at the sole cost and risk of ARTS COUNCIL. ARTS COUNCIL will pay all architectural and engineering fees, for any permits, if any, and/or for licenses, if any, and all other costs and expenses associated with the work. All such work shall be done in compliance with the Adopted Building Code, and other laws or regulations of governmental authorities having jurisdiction. No work will be commenced until all licenses, permits, and authorizations required by all governmental authorities having jurisdiction have been obtained.

ARTS COUNCIL must maintain in force and effect the insurance coverage required in Article XII with respect to the type of construction or work in question. After commencement, such work shall be prosecuted with due diligence to its completion. All improvements to the Leased Land must be designed, constructed, maintained and operated in accordance with (i) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Texas Architectural Barriers Act (Texas Revised Civil Statutes article 9102), and all regulations promulgated thereunder.

SECTION 5.2 CONSTRUCTION TIMETABLE.

Upon execution of this Lease, ARTS COUNCIL must, to the extent it has not already done so, commence planning and preparations for the construction of the Building and related improvements on the Leased Land and complete construction of the Building as expeditiously as good business practices permit. Such construction must be completed on or before the third (3rd) anniversary of the Effective Date.

SECTION 5.3 CONSTRUCTION DELAYS.

If construction is delayed because of changes, deletions, additions in construction requirements or delays in approvals by CITY regarding plans and specifications, strikes, lockouts, casualties, acts of God, war, material or labor shortages, governmental regulation or control, or

other causes beyond the control of ARTS COUNCIL, the construction time period will be extended for the amount of time construction is delayed. Failure to timely complete such construction will be deemed by CITY to be an Event of Default.

SECTION 5.4 OWNERSHIP OF BUILDING AND RIGHT OF REVERSION.

So long as this Lease or any substitute lease under Section 3.5 remains in force, any building, structure and other improvements constructed by ARTS COUNCIL on the Leased Land will be owned by ARTS COUNCIL or its permitted successors and assigns under this Lease. Subject to the provisions of Article XXI, all buildings, structures and improvements constructed by ARTS COUNCIL on the Leased Land revert to and become the property of the CITY immediately upon the termination of this Lease by lapse of time, default or otherwise, except in connection with a termination resulting in a new lease as provided in Section 3.5 or early termination as provided in Section 1.4.

ARTICLE VI.
COVENANTS AND RESTRICTIONS.

SECTION 6.1 COVENANTS AND RESTRICTIONS.

ARTS COUNCIL must improve and use the Land subject to the Covenants and Restrictions, which are attached and made a part of this Lease for all purposes.

ARTICLE VII.
REPAIR AND MAINTENANCE.

SECTION 7.1 REPAIR AND MAINTENANCE.

ARTS COUNCIL, at ARTS COUNCIL's own cost and expense and without contribution by CITY, must keep and maintain the Building and other improvements erected on the Leased Land, in good order and repair, reasonable wear and tear excepted (the provisions of this section are subject to the other provisions of this Lease regarding casualty and condemnation). Without limiting the preceding sentence, ARTS COUNCIL shall keep the Land free from all trash and

rubbish and shall cause the Building to be maintained in a manner which causes it to appear in a neat, clean, and attractive condition, reasonably commensurate with the appearance of buildings in the Wolf Pen Creek Zoning District. ARTS COUNCIL must also keep and maintain the grounds, sidewalks, access roadways, parking and landscaped areas on the Leased Land in good order and repair and in substantial conformity with the Covenants and Restrictions.

SECTION 7.2 COMPLIANCE WITH GOVERNMENTAL REGULATIONS.

ARTS COUNCIL must comply with all federal and state statutes, ordinances, laws and regulations applicable to the Leased Land, the improvements or any activity or condition on the Leased Land.

SECTION 7.3 WASTE

ARTS COUNCIL will not commit or permit waste upon the Leased Land other than to the extent necessary for the removal of any buildings or improvements on the Leased Land for the purpose of constructing and erecting the Building and other improvements.

SECTION 7.4 DESTRUCTION.

If there is a partial or total destruction of the Building on the Leased Land from any cause, the Building and Leased Land must be restored to a safe condition and ARTS COUNCIL, at ARTS COUNCIL's sole option and cost, must either:

- (a) Diligently restore and rehabilitate the Building and improvements and pay the cost of such restoration and rehabilitation. If ARTS COUNCIL elects to re-build, CITY, in its sole discretion, has the option to reduce rentals during such period of reconstruction; if CITY does not agree to such reduction in writing, there will be no abatement of rental under this Lease (it is ARTS COUNCIL's responsibility to obtain business interruption insurance to insure against this risk);

(b) Within ninety (90) calendar days after such destruction notify CITY of ARTS COUNCIL'S election to terminate this Lease and surrender the Leased Land to CITY. In such event ARTS COUNCIL must (1) promptly remove all buildings, excluding sidewalks and paved areas, from the Leased Land; (2) restore the Land as nearly as possible to the condition existing prior to the construction of the Building, except usable improvements may remain; (3) execute, acknowledge and deliver to CITY any documents necessary conveying to CITY all rights and interests granted by this Lease to ARTS COUNCIL; and (4) redeliver the Land to CITY in a neat and clean condition and (5) tender to CITY all rentals that would have been due had the rental not been reduced under this Lease. In the event ARTS COUNCIL elects under this section, all proceeds of insurance will remain the sole property of ARTS COUNCIL.

Notwithstanding such termination, ARTS COUNCIL must fully perform any obligation under this Lease (except the obligation of restoring and rehabilitating the Building and improvements if ARTS COUNCIL adopts option (b) of this section) relating to an event occurring or circumstances existing prior to the date of termination of this Lease, including the payment of any taxes, assessments, or any charges which ARTS COUNCIL is obligated to pay under the terms of this Lease which may be a lien upon the Land at the date of termination.

ARTICLE VIII.
UTILITIES AND OTHER SERVICES.

SECTION 8.1 PROVISIONS FOR SERVICE.

ARTS COUNCIL will pay all costs of installation of any utilities needed to provide service to the leased land.

ARTICLE IX.
UTILITY EASEMENTS AND IMPROVEMENTS.

SECTION 9.1 RIGHT TO ENTER.

CITY expressly reserves the right to enter upon the Land for the purposes of installing, using, maintaining, renewing and replacing such underground water, sewer and other pipe lines and electric, power and other lines and conduits as CITY may deem desirable in connection with the development or use of any other property in the neighborhood of the Land. Such entry and work will not interfere with ARTS COUNCIL's use and development of the Land and any building, structure or improvements. In the event this right is exercised, CITY must restore the Land and improvements including landscaping to its original condition. CITY agrees it will give ARTS COUNCIL ten (10) business days prior written notice of entry upon the Land, indicating the time and location of such work and the expected date of completion. However, **CITY** has the right to enter upon the Leased Land in the event of an emergency. **CITY** agrees to use best efforts to inform ARTS COUNCIL of any emergency requiring immediate action by **CITY**. Prior to the execution of this Lease, CITY will provide ARTS COUNCIL with a survey plat of the Leased Land depicting all easements and utility lines identified.

SECTION 9.2 SERVICE EASEMENTS.

CITY has no obligation to pay any costs or expenses in connection with the installation or operation of facilities.

ARTICLE X.
MECHANICS'AND OTHER LIENS.

SECTION 10.1 MECHANICS'AND OTHER LIENS.

ARTS COUNCIL covenants and agrees to keep all of the Leased Land and the Building and other improvements free and clear of any mechanics', materialmen's, and other liens for labor or services performed, materials used or furnished or to be used on Leased Land in connection with any operations of ARTS COUNCIL, any alteration, improvement or repairs or additions

which ARTS COUNCIL may make or cause to be made, or any work or construction, by, for or permitted by ARTS COUNCIL on the Leased Land. ARTS COUNCIL must promptly and fully pay and discharge any and all claims upon which any such lien may or could be based, and will save and hold CITY and all of the Land, the Building and improvements free and harmless from any and all such liens and claims of liens and suits or other proceeding.

SECTION 10.2 INTEREST OF CITY.

No mechanics' or materialmen's liens, or mortgages, or deeds of trust (other than mortgages on ARTS COUNCIL's interest in the leasehold estate) or other liens of any character whatsoever created or suffered by ARTS COUNCIL will to any extent, affect the future interests or rights of CITY in the Building or other improvements on the Leased Land, or attach to or affect its title to or rights in the Leased Land, except as might be specifically provided under the terms and conditions of this Lease.

SECTION 10.3 CONTESTING CLAIMS.

ARTS COUNCIL is not required to immediately pay or discharge any mechanics' or other lien so long as ARTS COUNCIL in good faith proceeds to contest such lien by appropriate proceedings. ARTS COUNCIL must give notice in writing to CITY of ARTS COUNCIL's intention to contest the validity of such lien and agrees to indemnify and hold CITY harmless from all liability for damages. ARTS COUNCIL must bond around such lien in accordance with the provisions of the Texas Property Code.

ARTICLE XI. **INDEMNITY.**

SECTION 1. INDEMNIFICATION OF CITY.

ARTS COUNCIL COVENANTS AND AGREES CITY WILL NOT BE LIABLE, RESPONSIBLE OR IN ANY WAY ACCOUNTABLE FOR ANY LOSS, INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY WHICH MAY BE SUFFERED OR SUSTAINED BY ARTS COUNCIL, ARTS COUNCIL'S EMPLOYEES OR BY ANY PERSON WHO MAY BE USING, OCCUPYING OR VISITING THE LEASED LAND

AND BUILDING UNLESS CAUSED BY THE NEGLIGENCE OR INTENTIONAL CONDUCT OF CITY, ITS AGENTS, CONTRACTORS OR EMPLOYEES. EXCEPT AS PROVIDED IN THIS SECTION CITY WILL NOT BE LIABLE REGARDLESS OF WHETHER OR NOT SUCH LOSS, INJURY, DEATH OR DAMAGE IS CAUSED BY OR IN ANY WAY THE RESULT OF OR ARISES OUT OF ANY ACT, OMISSION OR NEGLIGENCE OF ARTS COUNCIL, ARTS COUNCIL'S EMPLOYEES OR AGENTS OR OF ANY OCCUPANT, SUBTENANT, VISITOR OR USER OF ANY PORTION OF THE LEASED LAND. ARTS COUNCIL WAIVES ALL CLAIMS AGAINST CITY FOR DAMAGES TO THE BUILDING AND IMPROVEMENTS PLACED OR BUILT UPON THE LEASED LAND AND TO THE PERSONAL PROPERTY OF ARTS COUNCIL IN, UPON OR ABOUT THE LEASED LAND, AND FOR INJURIES TO PERSONS IN OR ABOUT THE LAND, FROM ANY CAUSES ARISING AT ANY TIME, EXCEPT THOSE ARISING BY REASON OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS AGENTS CONTRACTORS OR EMPLOYEES.

ARTICLE XII.
INSURANCE

SECTION 12.1 FIRE AND EXTENDED COVERAGE.

ARTS COUNCIL shall, at ARTS COUNCIL's sole expense, obtain and keep in force during the term of this Lease fire and extended coverage insurance on the Building and improvements placed or built upon the Leased Land. The amount of such insurance must not be less than eighty percent (80%) of the actual cash value of such building and improvements. ARTS COUNCIL is responsible for the twenty percent (20%) coinsurance payment portion until the improvements are conveyed to CITY in fee simple. ARTS COUNCIL waives as against CITY any and all claims and demands, of whatsoever nature, for damages, loss or injury to the Building and improvements and

to the personal property of ARTS COUNCIL in, upon or about the Leased Land which may be caused by or resulting from fire and/or other casualty.

ARTS COUNCIL must also obtain and keep in force during the term of this Lease liability insurance with a limit of not less than One Million Dollars (\$1,000,000) per occurrence and \$2,000,000.00 annual aggregate, and insurance on all boilers and other pressure vessels, whether fired or unfired, located in the Leased Land in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). All insurance must provide coverage to insure the performance by ARTS COUNCIL of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property contained in this Lease Agreement.

SECTION 12.2 DETERMINATION OF LIMITS

CITY's Broker and/or Risk Manager will establish property coverage and adequate limits on the structure built on the property leased under this ground lease. In the event either party deems at any time the limits of any insurance to be either excessive or insufficient, the parties will agree upon proper and reasonable limits for such insurance. If the parties are unable to agree upon reasonable limits for such insurance, the insurance may be increased but in no event more than the lesser of the following:

- (1) up to an additional \$ 1,000,000 in amount;
- (2) up to the amount of liability insurance then being required for other CITY buildings;
or,
- (3) up to but not to exceed an amount which would trigger any excess or umbrella coverage requirements.

SECTION 12.3 PARTIES COVERED.

CITY will be named as an additional insured on ARTS COUNCIL's commercial general liability insurance to the extent of ARTS COUNCIL's indemnification obligations under this

Lease. The fire and extended coverage insurance must contain a standard mortgage clause naming the leasehold mortgagee, if any. Any loss adjustment requires the written consent of ARTS COUNCIL, and the leasehold mortgagee, if any. All policies provided for in this section must expressly provide the policies can not be canceled or altered without thirty (30) calendar days prior written notice to CITY and leasehold mortgagee, if any. Upon the issuance of a policy each policy or a duplicate of such policy or a certificate of insurance must be delivered to CITY and the leasehold mortgagee, if any.

ARTICLE XIII.
TAXES.

SECTION 13.1 TAX LIABILITY.

CITY and ARTS COUNCIL acknowledge the Leased Land is presently tax exempt city property but may be used for both public and private purposes. ARTS COUNCIL expressly agrees with regard to any taxes assessed, ARTS COUNCIL shall, as further consideration for this Lease:

- (a) pay and discharge any such Taxes each calendar year (or portion of such year) of this Lease. The term "Taxes" refers to all taxes, and assessments, upon the Land impositions, levies, charges, excises, fees, licenses and other sums (whether now existing or hereafter arising, whether foreseen or unforeseen and whether under the present system of real estate taxation or some other system substitute system of real estate taxation), which during the term of this Lease are levied, assessed, charged or imposed by any governmental authority or other taxing authority or accrue on the Leased Land and any improvements or other property on the Leased Land, whether belonging to CITY or ARTS COUNCIL, or to which ARTS COUNCIL or CITY may become liable in relation to such improvements or other property because of ARTS COUNCIL's activities. The term "Taxes" also includes all

penalties, interest and other charges payable by reason of any delay, failure or refusal of ARTS COUNCIL to make timely tax payments; and

- (b) assume all liability for any and all Taxes, together with any interest, penalties or other sums imposed, and from any sale or other proceeding to enforce payment of such Taxes; and
- (c) pay all Taxes directly to the applicable taxing authority not less than fifteen (15) calendar days prior to the date of delinquency.

Nothing in this Lease limits ARTS COUNCIL's ability to protest tax assessments.

ARTICLE XIV.
ASSIGNMENT AND SUBLEASE.

SECTION 14.1 ASSIGNMENT.

- (a) Voluntary Assignment - Except for a leasehold mortgage permitted by this Lease ARTS COUNCIL agrees not to sell, assign or transfer any part, portion, or interest in this Lease, without first obtaining the written consent of CITY, such consent not to be unreasonably withheld, conditioned or delayed. In granting or denying such consent, CITY may consider, among other factors, the proposed assignee's character, financial qualifications, business reputation, and experience in operating similar projects. If consent is given, no subsequent sale, assignment or transfer will be entered into by ARTS COUNCIL or ARTS COUNCIL's assignee without again obtaining the written consent of CITY in accordance with this section. If ARTS COUNCIL desires to sell, assign, or transfer any part, portion, or interest in this Lease under this section, ARTS COUNCIL must give written notice to CITY. ARTS COUNCIL must provide, in writing, the name of the Proposed assignee along with reasonable documentation that such person or entity has the requisite financial stability and business experience to fulfill the obligations of this Lease.

CITY, upon receipt of such documentation will advise ARTS COUNCIL in writing within thirty (30) days thereafter whether CITY consents to such proposed transfer and, if CITY does not consent, CITY shall specify the reasons why it does not consent. If CITY fails to respond within the thirty (30) day period, ARTS COUNCIL must give CITY a second notice requesting consent (such notice shall be marked "SECOND NOTICE, FAILURE TO RESPOND RESULTS IN APPROVAL OF TRANSFER OF LEASE"). If CITY fails to approve or disapprove the proposed transfer within ten (10) business days following such second notice, CITY will be deemed to have consented to the proposed sale, assignment, or transfer.

- (b) Involuntary - Without limiting the preceding paragraph, ARTS COUNCIL covenants and agrees if any proceeding under bankruptcy laws is commenced by or against ARTS COUNCIL, and, if against ARTS COUNCIL, such proceeding is not dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement, plan, or reorganization, or in the event ARTS COUNCIL is adjudged insolvent or makes an assignment to ARTS COUNCIL's creditors, or if a writ of attachment or execution is levied on the leasehold estate and is not released or satisfied within forty-five (45) calendar days, or if a receiver is appointed in any proceeding or action to which ARTS COUNCIL is a party, with authority to take possession or control of the Leased Land or the business conducted by ARTS COUNCIL, and such receiver is not discharged within a period of forty-five (45) calendar days after appointment, any such event or any involuntary assignment prohibited by the provisions of the preceding paragraph will be deemed to constitute a breach of this Lease by ARTS COUNCIL.

SECTION 14.2 PAYMENT OF DEFERRED RENT:

In the event of either a voluntary or involuntary assignment as specified herein, all deferred rentals shall become immediately due and owing and all rental deferral shall terminate. Any assignee shall pay the rental specified in Section 1.3 of this Lease. Additionally, all rents that have been deferred under Section 1.3 of this Lease shall be paid to CITY before any such assignment is approved.

SECTION 14.3 RELEASE OF ARTS COUNCIL's LIABILITY.

If an assignment is made by ARTS COUNCIL or any successor of ARTS COUNCIL after complying with the conditions set forth in Section 14.1 and full payment of all outstanding indebtedness owed to CITY is made, the assignee will be subject to the same terms and conditions as to future assignments, and to all the covenants, agreements, provisions and conditions contained in this Lease, and ARTS COUNCIL or any successor so assigning and conveying will thereafter be forever released and discharged from this Lease and from the agreements and covenants contained in this Lease.

SECTION 14.4 SUBLEASE.

ARTS COUNCIL may not sublease space in the Building and the other improvements upon the Land.

ARTICLE XV.
WAIVER

SECTION 15.1 LIMITATIONS OF WAIVER.

No waiver by a party of any default or breach of any covenant, condition, or term of this Lease will be treated as a waiver of any subsequent or continuing default or breach under the Lease. None of the covenants, terms or conditions of the Lease can be waived except by written consent of CITY.

ARTICLE XVI.
INSPECTION OF LAND

SECTION 16.1 RIGHT OF CITY TO INSPECT.

CITY is entitled at all reasonable times to go on the Leased Land for the purposes of inspecting the Land and the Building. Such inspections will be conducted by or under the direction of the Director of Finance with due regard for the rights of tenants in possession. Inspections will address performance by ARTS COUNCIL of the terms and conditions of this Lease, including the Covenants and Restrictions.

ARTICLE XVII.
CITY'S DEFENSE OF ACTIONS

SECTION 17.1 RIGHT TO DEFEND.

If ARTS COUNCIL is required to defend any action or proceeding to which CITY is made a party, CITY is entitled, at its election and at its cost and expense, to appear, defend or otherwise take part in the matter involved through counsel of its own choosing, provided such action by CITY does not limit or void the liability of any insurer of ARTS COUNCIL or CITY with respect to the claim or matter in question.

ARTICLE XVIII.
NO GENERAL OBLIGATION,
AND IMMUNITIES

SECTION 18.1 LIMITATIONS ON CITY'S OBLIGATION.

It is understood and agreed no term or condition of this Lease will be construed to create or establish any general financial obligation for a deficiency judgment against the CITY.

SECTION 18.2. PRIVILEGES AND IMMUNITIES.

Nothing in this agreement waives or relinquishes **CITY's** right to claim such exemptions, privileges, and immunities or limitations as to damages which by law it is entitled as a political subdivision of the State of Texas.

ARTICLE XIX.
DEFAULT PROVISIONS.

SECTION 19.1 EVENTS OF DEFAULT.

The following events are expressly established as "Events of Default":

- (a) The failure of ARTS COUNCIL to pay any installment of the Base Land Rental, Taxes, materialmen's lien's, or any other payments or deposits of money when due or otherwise and the continuance of such failure for a period of time fifteen (15) calendar days after notice in writing;
- (b) The failure of ARTS COUNCIL to perform any of the other covenants, conditions, and agreements of this Lease to be performed by ARTS COUNCIL, and the continuance of such failure for a period of sixty (60) calendar days after notice in writing from CITY to ARTS COUNCIL. Such notice will specify in detail ARTS COUNCIL's failure to perform any of the covenants, conditions and agreements. With respect to any default which cannot be cured within sixty (60) calendar days, if ARTS COUNCIL, or any person holding by, through or under ARTS COUNCIL, in good faith, after receipt for such written notice promptly commences and thereafter continues to diligently prosecute all actions necessary to cure such default, such delay will not be a default. (c) (i) The filing of an application by ARTS COUNCIL for a consent to the appointment of a receiver, trustee or liquidator of his business or of all of his assets, (ii) the filing by ARTS COUNCIL

of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due, (iii) the making by ARTS COUNCIL of a general assignment for the benefit of creditors, (iv) the filing by ARTS COUNCIL of an answer admitting the material allegations of or his consenting to, or default in answering, a petition filed against it in any bankruptcy proceedings; and (d) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating ARTS COUNCIL a bankrupt, or appointing a receiver, trustee or liquidator of his business or all his assets, and such order, judgment or decree continuing unstayed and in effect for any period of sixty (60) calendar consecutive days.

SECTION 19.2 REMEDIES IN CASE OF DEFAULT.

CITY, at its sole option, may treat any one or more of the Events of Default defined in Section 19.1 as a breach of this Lease. Upon serving written notice by certified mail on ARTS COUNCIL, at ARTS COUNCIL's last known address, (such notice not to be effective unless served on both ARTS COUNCIL and ARTS COUNCIL's mortgagee, if any), CITY will have, subject to the provisions of Article III, in addition to all other remedies provided by law, one or more of the following remedies:

- (a) CITY may terminate this Lease, and in such event CITY may repossess the Leased Land and Building and be entitled to recover as damages a sum of money equal to the present Base Land Rental as if it had not been reduced under Section 1.3, and other sums of money and damages due from ARTS COUNCIL for the balance of the stated term of this Lease less the fair market rental value of the Leased Land and the fair market value of the Building.

- (b) CITY may terminate ARTS COUNCIL's right of possession and may repossess the Leased Land and Building by forcible entry and detainer suit or otherwise, without demand or notice of any kind to ARTS COUNCIL except as expressly provided in this Lease and without terminating this Lease. In such event **CITY** may, but is not obligated to, relet all or any part of the un-rented net rentable area for such rent and upon such terms as are satisfactory to CITY (including the right to relet the un-rented net rentable areas for the term greater or less than that remaining under the stated term of this Lease). CITY, has the right to relet the Leased Land and Building as a part of a larger area and the right to change the character or use made of the Land. For the purpose of reletting, CITY may make any repairs, changes, alterations or additions as may be necessary or convenient.
- (c) CITY will take possession of the Land, including all improvements subject to the tenant leases, and continue to pay or fully discharge any mortgages, outstanding loans or obligations. In such event CITY will be the sole possessor and owner of the real property and all improvements free of any encumbrances of this Lease, save and except the mortgage, if any.

Upon termination of this Lease, or upon the termination of ARTS COUNCIL's right of possession, whether by lapse of time or as a result of default, ARTS COUNCIL will surrender possession of the Land and Building to CITY and remove all of ARTS COUNCIL's and of ARTS COUNCIL's affiliate companies personal effects, and if such possession is not immediately surrendered, CITY may re-enter the Land and Building and remove ARTS COUNCIL and its affiliate companies, using such force as may be necessary without being deemed guilty of trespass or forcible entry or detainer.

All rents that have been deferred under Section 1.3 of this Lease upon the assignment shall become immediately due and owing.

ARTICLE XX.
QUIET ENJOYMENT

SECTION 20.1 QUIET ENJOYMENT.

CITY agrees ARTS COUNCIL, upon paying the rent and performing all the covenants and conditions of this Lease, may lawfully and quietly occupy the Land during the term of this Lease without hindrance or molestation by CITY or any persons claiming under CITY. CITY represents it has the right to execute this Lease for the full term granted.

ARTICLE XXI.
FIXTURES.

SECTION 21.1 RIGHT TO REMOVE.

ARTS COUNCIL may at any time when ARTS COUNCIL is not in default, and upon termination of this Lease by the running of time, remove from the Leased Land any of ARTS COUNCIL's fixtures or equipment whether or not such fixtures are fastened to the Building or other improvements located upon the Leased Land. A "fixture" for these purposes is defined as personal property and business equipment used in ARTS COUNCIL's business, but not so attached or integrated into the Land and Building as to become a part of such Land or Building. Regardless of the manner in which such fixtures are fastened, under no circumstances can any fixture be removed without CITY's written consent, if (a) such fixtures or equipment are used in the operation of the Building or improvements upon the Leased Land, or (b) the removal would result in impairing the structural strength of the Building or improvements upon the Leased Land. ARTS COUNCIL must fully repair any damage occasioned by the removal of such fixtures and leave the Building and improvements in good, clean and neat condition subject only to ordinary wear and tear, and damage by fire or other casualty excepted.

ARTICLE XXII.
RECORDATION OF LEASE

SECTION 22.1 RECORDING.

This Lease must be recorded in the official records of Brazos County, Texas, in order for constructive notice to be given to any third party entering into any contract with ARTS COUNCIL, or ARTS COUNCIL's assigns for financing or construction of improvements to be located on the Leased Land, and to any other party claiming under a third party, that CITY has no liability for the satisfaction of any claims of any nature arising out of a contract with ARTS COUNCIL. Recordation will be at the sole cost of ARTS COUNCIL.

ARTICLE XXIII.
TIME OF THE ESSENCE

SECTION 23.1 TIME OF THE ESSENCE.

Time is of the essence in each and every covenant, term, condition and provision of this Lease.

ARTICLE XXIV.
NOTICE

SECTION 24.1 METHOD OF GIVING NOTICE

Any notice given under this Lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom notice is to be given as designated by such party in writing. Notice is deemed to have been given upon the third (3rd) day after such mailing.

If to CITY:	Finance Director 1101 Texas Avenue College Station, Texas 77842
with copies to:	City Manager 1101 Texas Avenue College Station, Texas 77842

City Attorney
1101 Texas Avenue
College Station, Texas 77842

If to ARTS COUNCIL: Executive Director
2501 Texas Avenue S. 105-C
College Station, TX 77840

**ARTICLE XXV.
REMEDIES CUMULATIVE.**

SECTION 25.1 REMEDIES CUMULATIVE.

All remedies conferred upon either party are cumulative and not exclusive of any other.

**ARTICLE XXVI.
LEASE CONSTRUCTION, APPLICABLE LAW, AND VENUE**

SECTION 26.1 CONSTRUCTION OF LEASE.

The language in all parts of this Lease will be construed as a whole according to its fair meaning and neither strictly for nor against either CITY or ARTS COUNCIL.

SECTION 26.2 APPLICABLE LAW.

This Lease is construed in accordance with the laws of the State of Texas.

SECTION 26.3 VENUE.

Any dispute arising with regard to interpretation of this Lease is subject to the jurisdiction of the courts in Brazos County, Texas, and this agreement is deemed fully performable in Brazos County, Texas.

**ARTICLE XXVII.
MEANING OF TERMS.**

SECTION 27.1 GENDER AND NUMBER.

Whenever the context requires, the neuter gender includes the masculine and feminine, and the singular number includes the plural.

ARTICLE XXVIII.
BENEFIT

SECTION 28.1 BENEFIT.

This Agreement is binding upon and inures to the benefit of the parties and their successors, assigns and legal representatives.

ARTICLE XXX.
CONDEMNATION

SECTION 30.1 CONDEMNATION.

- (a) If, at any time during the term of this Lease, all or substantially all of the Leased Land is taken in condemnation proceedings or by any right of eminent domain, this Lease will terminate on the date of such taking and the Base Land Rental will be apportioned and paid to the date of such taking. For purposes of this Section "substantially all of the Leased Land" means, in the reasonable judgment of ARTS COUNCIL and the holder of any leasehold mortgage, the untaken portion cannot be practically and economically used or converted for use by ARTS COUNCIL for the purposes for which the Leased Land was being used immediately prior to such taking. In the event of any such taking and the termination of this Lease, any condemnation award will be distributed first to discharge any balance owing to the holder of any leasehold mortgage if any, and second, to CITY and ARTS COUNCIL as follows:
- (i) CITY is entitled to receive such portion of any award or awards which present compensation for the value of the Land, or the part taken, exclusive of the value of the then existing buildings and other improvements, and such portion of any award or awards with interest, if any, paid by the

condemning authority representing consequential damages, if any, to the portion of the Land not taken. If such condemnation occurs during the last five (5) years of the primary term of this Lease, CITY will also be entitled to an amount based upon CITY's reversionary interest in the Building and other improvements taken. Provided however, compensation for such reversionary interest will not diminish the award payable to ARTS COUNCIL.

(ii) ARTS COUNCIL is entitled to receive the balance of such award or awards (including compensation for, loss of the leasehold estate, any building or other improvements or any portion taken and damages, if any, to the parts of any building and other improvements not taken).

(b) In the event of any taking of less than all or substantially all of the Leased Land, the term of this Lease will not be reduced or affected in any way, and

(i) The award, if required by the holder of any leasehold mortgage, will be deposited with such leasehold mortgagee, and, to the extent required by such leasehold mortgagee, applied to reduce the balance then owing the leasehold mortgagee, and the balance will be disbursed for payment of restoration, repair and refurbishment of the Building in accordance with requirements of the leasehold mortgagee. Otherwise, any award must be paid to ARTS COUNCIL directly to complete any required restoration, repair or refurbishment, and all or any portion of such award not so used will be distributed as set forth in (a)(i) and (ii) of this Section.

- (ii) ARTS COUNCIL must proceed promptly to repair and restore the remaining part of the Building to a functional unit, resembling as closely as possible, the Building prior to the partial taking; and
 - (iii) The Base Land Rental for the balance of this Lease will be reduced, effective as of the date of the partial taking, so that the Base Land Rental thereafter payable by ARTS COUNCIL to CITY will be an amount equal to the result obtained by the multiplication of the Base Land Rental which would otherwise be payable to CITY under the terms of this Lease times a fraction, the numerator of which is the number of square feet of Land covered by this Lease remaining after the taking, and the denominator of which is the number of square feet of Land covered by this Lease immediately prior to such taking.
- (c) ARTS COUNCIL, CITY, and the holder of any leasehold mortgage, if any, each has the right, at its own expense, to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals.

ARTICLE XXXI.
NON-MERGER

SECTION 31.1. NON-MERGER.

Fee title in the tract of Land described in Section 1. I of this Lease and the leasehold estate created by this Lease may, at some point in time, be held by the same party. However, it is expressly agreed there will be no merger of the leasehold estate with the fee estate unless the common owner of the fee and the leasehold estate, and the leasehold mortgagee, if any, execute and file for record in the Official Records of Brazos County, Texas, a document expressly

providing for the merger of such estates. Except as amended, this Lease will remain in full force and effect

ARTICLE XXXII.
ENVIRONMENTAL ASSURANCES

SECTION 32.1. ENVIRONMENTAL ASSURANCES.

CITY represents neither CITY nor, to CITY's actual knowledge, any third party has ever released, stored or disposed of on-site any hazardous, toxic and/or nuclear material, waste or other substances considered hazardous, toxic or nuclear by any governmental or quasi-governmental agency ("Hazardous Substances") on or about the Leased Land, and to CITY's actual knowledge, the Land has never been used for or in connection with the generation, manufacture, management, sending off-site, release or disposal onsite, storage or other production of any hazardous, toxic and/or nuclear material, waste or hazardous substances. To CITY's actual knowledge, the Land is not the subject of any actual or any contingent environmental liabilities and/or litigation and the Leased Land is not threatened by, nor is CITY aware of any pending environmental litigation, including response actions by the government or private parties and there are no environmental liens or super fund liens affecting the Land or any portion of it.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate to be effective as of the date first written above.

CITY OF COLLEGE STATION

ARTS COUNCIL OF BRAZOS VALLEY

BY: _____
Ron Silvia, Mayor

BY:  _____
Printed Name: P. David Romei
Title: Executive Director

ATTEST:

Connie Hooks, City Secretary

APPROVED:

Thomas E. Brymer, City Manager

Charles Cryan, Director of Fiscal Services

City Attorney

After Recordation return to:

Office of the City Attorney
City of College Station
1101 Texas Avenue
College Station, TX 77842

STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public, for the State of Texas, on this day personally appeared RON SILVIA, Mayor, City of College Station, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for purposes and consideration therein expressed, and in the capacity stated, in such instrument.

Notary Public in and for the
State of Texas

STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public, for the State of Texas, on this day personally appeared _____ as _____ of the ARTS COUNCIL OF BRAZOS VALLEY known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for purposes and consideration therein expressed, and in the capacity stated, in such instrument.

Notary Public in and for the
State of Texas

EXHIBIT "A"

LAND

EXHIBIT A

Memorandum of Understanding
Between WPC Team & City of
College Station

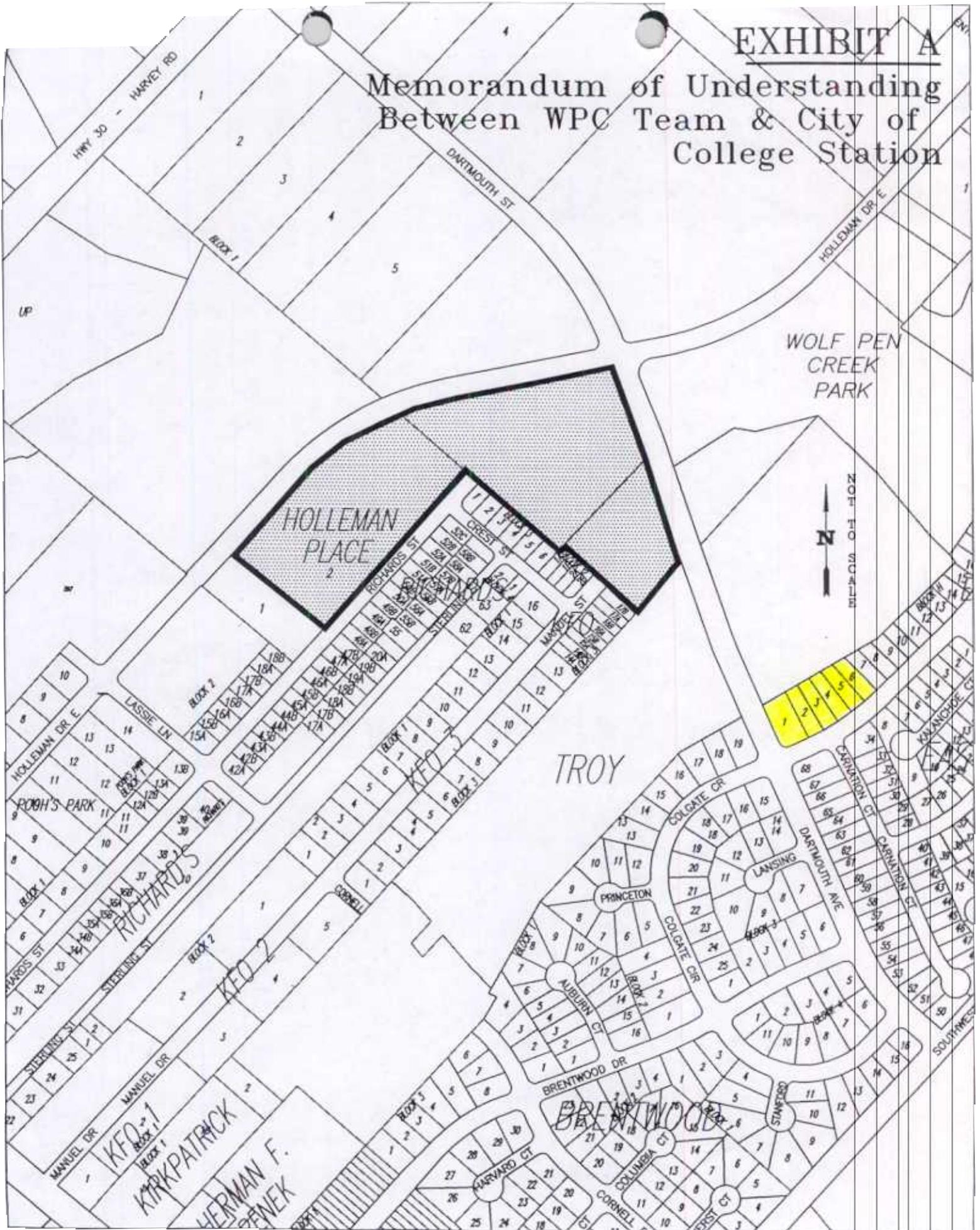


EXHIBIT “B”
COVENANTS AND RESTRICTIONS

5-8269 JWW/jh

Date Recorded 6-29-83 238295

4 FILED P
At 7:20 O'clock
JUN 28 1983
FRANK DORRIS
COUNTY CLERK, BRAZOS COUNTY, TEXAS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 20th day of June, 1983, by ROBERT D. MARTELL and J W WOOD, both of whom are residents of Brazos County, Texas, hereinafter called Developer;

W I T N E S S E T H:

WHEREAS, Developer is the owner of real property described as: Being Lots One (1) through Sixty-eight (68) in Block "F", One (1) through Thirty-four (34) in Block "G" and One (1) through Eighteen (18) in Block "H" on the final plat of Eastmark Subdivision, Phase II, a subdivision in College Station, Brazos County, Texas, said plat being duly recorded in Volume 553, page 645, Deed Records of Brazos County, Texas; and

WHEREAS, Developer desires to provide for the preservation of the value and amenities in said residential community and for the maintenance of any open spaces and common facilities, and to this end, desires to subject the real property described hereinabove together with such additions as may hereafter be made thereto (as provided in this Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the value and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Texas, as a non-profit corporation, THE EASTMARK SUBDIVISION IMPROVEMENT ASSOCIATION, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, The Developer declares that the real property described hereinabove, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and

~~VOL 55~~ PAGE 424

shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration shall mean:

- (a) "ASSOCIATION" shall mean and refer to The Eastmark Subdivision Improvement Association.
- (b) "THE PROPERTIES" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration.
- (c) "COMMON PROPERTIES" shall mean any tract of land described as such and intended to be devoted to the common use and enjoyment of the owners of the Properties.
- (d) "LOT" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of any Common Properties as heretofore defined.
- (e) "LIVING UNIT" shall mean and refer to any portion of a building situated upon the Properties designated and intended for use and occupancy as a residence by a single family.
- (f) "OWNER" shall mean and refer to the record owner, whether one (1) or more entities, of the fee simple title to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of mortgage, shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (h) "MEMBERS" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the State of Texas, County of Brazos, and is particularly described above.

~~VOL 25~~ PAGE 425

Section 2. Addition to Existing Property. The Developer, its successors and assigns, shall have the right to bring within the scope of this Declaration additional properties thereby subjecting such additional lands to this Declaration, by filing of record a Supplementary Declaration of covenants and restrictions with respect to the additional property which shall extend the scope of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scope of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity being a record owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity which holds such interest merely as security for the performance of any obligation shall not be a Member.

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

Class A. Class A Members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot or Living Unit in which they hold the interests required for membership by Section 1. When more than one (1) person holds such interest or interests in any Lot or Living Unit all such persons shall be Members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot or Living Unit.

10/5/85 PAGE 426

Class B. The Class B member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 1 and for every Living Unit owned by it until such Unit is first sold or leased, provided that the Class B Membership shall cease and become converted to Class A membership on the happening of any 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) June 30, 1986.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

For purposes of determining the votes allowed under this Section when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

Section 3. Members Meeting.

(a) There shall be an annual meeting of the members of the Association. The first annual meeting will be held on the first Tuesday in July, 1984, and Developer will notify all Members at least one (1) week in advance of the exact time and place. Subsequent annual meetings will be determined by the Board of Directors and provided for in the Bylaws.

(b) The initial Board of Directors shall serve until said annual meeting, at which time a new Board will be elected by majority vote of Members voting. The Board of Directors shall consist of at least three (3) persons, and not more than nine (9), as will be determined by Members voting at the first annual meeting, and subsequently, as will be provided in the Bylaws.

(c) The Board of Directors shall be responsible for the affairs of the Association and shall adopt such Bylaws and regulations as necessary to carry out its functions, but cannot adopt Bylaws or regulations which are contrary to provisions as set out herein.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Properties, hereby designated as Lots One (1) and Two (2), in Block "G", and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey the Common Properties to the Association not later than December 31, 1988.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender shall have a right, after taking possession of any such properties, to charge admission and other fees as a condition to continued enjoyment of such properties until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereundershall be fully restored; and

(b) The right of the Association to take such steps, as are reasonably necessary to protect the above described properties against foreclosure; and

(c) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, or determination as to the purposes or as

to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot and Living Unit owned by it within the Properties hereby covenants and each Owner of any Lot or Living Unit by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association; (1) monthly assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereafter provided. The monthly 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 such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

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 in the Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties together with maintenance of the front entrance, subdivision sign and attendant landscaping.

Section 3. Basis and Maximum of Monthly Assessments. Until the year beginning January 1, 1985, the monthly assessments on each Lot belonging to a Member other than Developer, shall be Seven and No/100 (\$7.00) Dollars, beginning on the first day of the month following the date of purchase. From and after January 1, 1985

the monthly assessment may be increased by vote of the Members, as hereinafter provided for the next succeeding three (3) years and at the end of each such period of three (3) years for each succeeding period of three (3) years.

The Board of Directors of the Association may, after consideration of current maintenance costs and further needs of the Association, fix the actual assessment for any period at a lesser amount.

For the purpose of figuring the amount of assessment, where a single family residential unit is constructed on more than one lot (as lot is shown by recorded plat), then and in that event, such unit shall be, for the purpose of assessment, considered as one lot, and the Owner of such unit shall not be entitled to more than one vote.

Section 4. Special Assessments for Capital Improvements.
In addition to the monthly assessments authorized by Section 3 hereof, 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 Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Monthly Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof (prospectively) for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum for any Action Authorized under Section 4 and 5. The quorum required for any action authorized by Section 4 and 5 hereof, shall be as follows:

At the first meeting called, as provided in Section 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of 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 Section 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Special Assessment.
The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of the Association. If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the

complaint in such action, and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

Section 10. 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 now or hereinafter placed upon the Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and lien created herein;

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) Any Common Properties as defined herein;

(c) All properties exempted from taxation by the laws of the State of Texas upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, 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 by the Architectural Control Committee as to harmony of exterior design and location in relation to surrounding structures and topography. The Architectural Control Committee shall be composed of three (3) members whose names and addresses are as follows:

Robert D. Martell

3833 Texas Avenue
Bryan, Texas 77802

J W Wood

511 University Drive
College Station, Texas 77840

John Schmid

3833 Texas Avenue
Bryan, Texas 77802

Any two (2) members will constitute a quorum and the vote of any two (2) will control the action of the committee. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. If the Committee, or a designated representative, fails to give written approval or disapproval within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion of the improvements, approval will not be required and the provisions of this Article will be deemed to have been fully complied with.

The above named Committee members or their appointed successors shall continue in office for a period of ten (10) years from date of recording of this instrument in the Public Records of Brazos County, Texas. Thereafter, the Board of Directors of the Association shall appoint a committee of at least three (3) individuals who are members of the Association to act as and carry on the functions and duties of said Architectural Control Committee for such term or terms and in such manner as the Board of Directors shall direct. Until such appointment of successors by the Board, the above named members and the successors they appoint shall continue to serve.

ARTICLE VI-A

ADDITIONAL COVENANTS AND RESTRICTIONS

Section 1. Covenants and Restrictions on Lots.

(a) Land Use. All lots save and except Lots One (1) and Two (2), Block "G" (Common Area) shall be used for residential purposes only, and no building shall be erected, altered or placed or permitted to remain on any lot other than one (1) single family one-story dwelling and a private garage for not more than two (2) automobiles.

(b) Minimum Floor Area and Exterior Walls. Any residence constructed on said lots must have a heated/cooled area of not fewer than 1,000 square feet, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages. The front exterior walls of any residence shall consist of not less than fifty (50%) percent masonry construction.

(c) Set Backs. Minimum building set back lines shall be those shown on the recorded plat of said addition appearing of Record in Volume 553, page 645, Deed Records of Brazos County, Texas. No building shall be located nearer than fifteen (15') feet to the front lot line nor nearer than fifteen (15') feet to any side street lot line and the subject property shall at all times be subject to any legally adopted side yard requirements of the municipality or other governmental authorities which have jurisdiction over the subject property.

(d) Fences. All fences shall be subject in all respects to Architectural Control Committee approval, and chain link fences shall not be allowed on any lot with the rear yard area visible from any side street. No front yard fences shall be allowed in any event.

(e) Animals. No animals, livestock, or poultry of any kind shall be bred, raised, or kept on any Lot or Common Properties, except dogs, cats, or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose and do not constitute a nuisance.

(f) No Lot or any part thereof shall be used for illegal or immoral purposes or any purpose, within the discretion of the Architectural Control Committee, which constitutes a nuisance.

(g) Other Buildings. No structures of a temporary character, mobile home, house trailer, truck body, basement, tent, shack, garage, barn, or other outbuilding shall at any time be used as a residence, nor shall any residence of any temporary character be permitted.

(h) Old Buildings. No structure shall be moved onto any residential lot.

(i) Rentals. Renting to roomers or to a second family occupying the Lot is prohibited.

(j) Antennae. No television or radio antennae shall be erected or maintained on any lot.

(k) Yards. All yards of a dwelling shall be maintained so as to be an aesthetic asset to the dwelling:

(1) Yard Appearance. All lots shall be kept at all times in a sanitary, healthful and attractive condition, and the owner or occupant of any lot shall keep all weeds and grass thereon cut and shall in no event use any lot for the storage of material and equipment except for normal residential requirements, and shall not burn any garbage, trash or rubbish. All clothes lines, yard equipment, woodpiles or storage piles shall be kept screened so as to conceal them from view of neighboring lots, streets or other property.

(m) Easements. The use of easements as shown on the plat is granted to the City of College Station and the various companies in the City of College Station for the purposes of drainage; the location of sanitary and storm sewer lines; the location of gas, water, television, electrical and telephone lines and conduits, landscaping, signs, and the maintenance thereof.

(n) Mining. No quarrying or mining operations or mineral extractions of any kind shall be permitted upon or in any lot, nor shall any type of wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any lot. No derrick or other structure designed for drilling shall be erected, maintained or permitted upon any lot.

(o) Garbage Cans. No garbage cans or refuse containers shall be placed or permitted to remain at the front of a dwelling either within the street or upon the Lot or Common Area, except upon those days scheduled for garbage and refuse collection by the City of College Station or a privately contracted collector. Except on days for collections as set out above, said cans or containers will be kept in a place that is not subject to public view.

(p) No truck, boat, bus, house or travel trailer may be kept upon a lot unless it is concealed from public view nor shall they be kept upon the Common Property, or any dedicated Street within the Properties.

(q) All lots shall have entrance driveways from the rear private access ways except lots One (1) through Fourteen (14) and Lots Forty-seven (47) through Fifty-three (53) in Block "F" which shall have permitted front driveway access.

(r) Slope Control Areas. Slope control areas are reserved and shown as utility and drainage easements. Within these slope control areas no structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of lots and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

(s) Sight Distance at Intersections. No structure, hedge, or shrub planting which obstructs sight lines at elevation between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property and a line connecting them at points twenty-five (25') feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10') feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(t) Firearms. The use or discharge of pistols, rifles, shot guns, air guns, or other firearms or fireworks is expressly prohibited on any part of the subdivision and hunting is prohibited.

ARTICLE VII

Section 1. Duration. 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, or the Owner of any land 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 unless an instrument

signed by the then-owners of two-thirds (2/3) of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. For purpose of meeting the two-thirds (2/3) requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

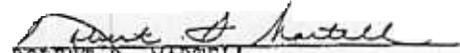
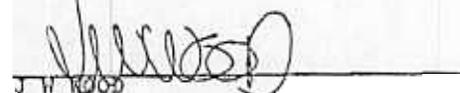
Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

ARTICLE X

Any provision contained herein may be changed by a vote of one hundred (100%) percent of the Members of the Association.


ROBERT D. MARTELL

J. W. REED

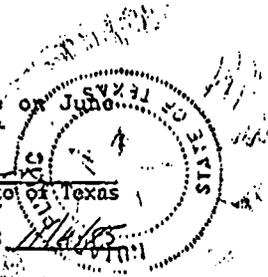
THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on June
21st, 1983, by ROBERT D. MARTELL.

Vickie L. Simon
Notary Public for the State of Texas

My commission expires: 11/18/85

VICKIE L. SIMON
(Typed or printed name of Notary)



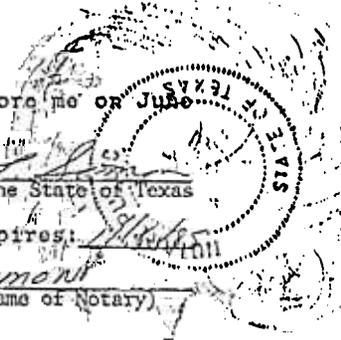
THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on June
21st, 1983, by J W WOOD.

Vickie L. Simon
Notary Public for the State of Texas

My commission expires: 11/18/85

VICKIE L. SIMON
printed name of Notary)



~~438~~ PAGE 438