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REAL PROPERTY RECORDS
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AMENDMENT AND RESTATEMENT
of
RESTRICTIONS AND COVENANTS

Applicable to the REPLAT of
POINT AQUARIUS SUBDIVISION,
SECTION 5, being 74.5558
acres in the Timothy Cude
Survey, A-12, Montgomery
County, Texas.

STATE OF TEXAS

COUNTY OF MONTGOMERY

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WHEREAS, DEBLYCO, INC., a Texas corporation of Montgomery County, Texas, hereinafter referred to from time to time as "Developer", together with those individuals who have executed the consent and authority to amend the original Restrictive Covenants of Section 5 of Point Aquarius (as partially replatted) recorded in Volume 768, Page 59, Volume 775, Page 260, Volume 775, Page 267, Volume 877, Page 675 of the Deed Records of Montgomery County, Texas, and in Cabinet A, Sheet 46 of the Map Records of Montgomery County, Texas, are the owners in fee simple in the hereinafter, described premises in Montgomery County, Texas, to-wit:

Being POINT AQUARIUS SUBDIVISION, SECTION FIVE, and being 74.5558 acres of land out of and a part of the Timothy Cude Survey A-12, Montgomery County, Texas according to the map or plat thereof recorded in Cabinet A, Sheet 46, of the Map Records of Montgomery County, Texas.

WHEREAS, it is the desire of said owner of said subdivision for the purpose of insuring harmonious, pleasant and satisfactory living conditions in a residential subdivision, and to insure means for mutually safe-guarding and enhancing the value of investments in said subdivision by each property owner therein, to amend and restate the original restrictions and covenants as set forth hereinafter, which said amended restrictions, covenants, and provisions shall supersede the prior restrictions and covenants and shall henceforth govern the development and use of said Section 5, and shall be binding upon the undersigned, its successors and assigns and all other record owners who have consented in writing on exhibits - three - attached hereto for the term stipulated herein.

These amended restrictions, covenants, and provisions are specifically set forth to cover SECTION FIVE of POINT AQUARIUS SUBDIVISION as replatted.

Anything contained herein to the contrary notwithstanding all references hereunto "The Association" shall refer only to the Point Aquarius Property Owners Association as it presently exists and all references to "the Committee" or "the Architectural Control Committee" shall refer to the Architectural Control Committee as duly created by said Point Aquarius Property Owners Association.

PART I

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

1. **RECORDED SUBDIVISION MAP OF THE PROPERTY:** The replat ("Replat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the private roads and streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the property. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of the subdivision recorded or hereafter recorded shall be incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being included in each contract, deed or conveyance executed by or on behalf of Developer, conveying said property or any part thereof whether specifically referred to therein or not.

2. **EASEMENTS:** Developer reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Montgomery County, Texas for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction drainage swells in order to provide for improved surface drainage of the Reserves, Common Area and/or Lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or the Utility District shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities.

3. **TITLE SUBJECT TO EASEMENTS:** It is expressly agreed and understood that the title conveyed by Developer to any of the Lots by contract deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, storm sewer, electric lighting, electric power, telegraph or telephone purposes and any other easement hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use maintenance and enjoyment of his Lot.

4. **UTILITY EASEMENTS:**

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents.

(b) No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot

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shall have the right to construct, keep and maintain concrete drives and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

5. ROAD AND STREET EASEMENTS: The roads and streets in this Subdivision are not dedicated to the public, except as provided in the plat, but shall be conveyed to the Association by the Developer, and operated as private streets by the Association, with each Owner having an easement for the use and benefit of such Owner of a Lot fronting thereon or adjacent thereto, which easements shall include rights of ingress, egress, and passage over and along said streets in favor of the Developer, the Association, lot owners in all other Sections of Point Aquarius Subdivision, except as limited by security gate application, the Owners and their respective legal representatives, successors and assigns, guests, invitees, licensees, designees, and the successors-in-title to each Lot Owner and in favor of the invitees and designees of each successor-in-title to each Lot Owner, but not in favor of the general public except as noted above.

Subject to the terms and conditions of this Part I, Number 1, the private roads and streets in this Subdivision, as shown on the Plat, are hereby dedicated as utility easements strictly for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utilities that the Developer sees fit to install (or permit to be installed) in, across and/or under the Property. The dedication of the private roads and streets as utility easements shall not affect the Association's operation of the roads and streets in this Subdivision as private roads and streets, as set forth above in this Part I.

Notwithstanding the Association's operation of the roads and streets in the Subdivision as private streets, Developer hereby grants to law enforcement agencies and officers of Montgomery County and the State of Texas, other governmental law enforcement bodies, fire department officials and fire protection personnel, vehicles and equipment, ambulance, school buses, Montgomery County officials and personnel and other governmental officials and personnel, rights of ingress and egress and passage over and along said private roads and streets of the Subdivision in connection with the performance of their official functions.

6. GREENBELT AREA: As depicted on the replat of this Section 5 recorded in the Real Property Records of Montgomery County, Texas, there is a twenty-five foot (25') greenbelt area affecting certain lots which shall at all times remain in such natural state as the developer shall from time to time determine in

its absolute discretion. At such time when the developer has sold 75% of all developer lots such determination shall pass to the property owners association.

PART II

TERM

1. These covenants, restrictions and/or provisions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of Thirty-Five (35) years from date, after which time said covenants, restrictions and provisions shall be automatically extended for successive ten (10) year periods, unless an instrument signed and acknowledged by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or part at the expiration of any such ten year period, except as specifically stated herein otherwise.

2. ENFORCEMENT: Enforcement of restrictive covenants shall be by proceedings at law or in equity against any person or parties violating or attempting to violate any of these restrictions, covenants or terms, and legal remedy shall lie in restraint of violation or recovery of said damages, and as may be otherwise provided herein. The right of legal action in enforcement shall accrue to any owner of property in this subdivision or any claimant thereunder and to any political unit or government having jurisdiction in this matter in question, and to the Association.

3. LIENS: Liens upon any lot, building site or tract of land in the partial replat of Section 5 of Point Aquarius given to secure payment of notes for purchase money advanced, or for improvements made or to be made, or for the extension or renewal of such indebtedness or notes, or any part thereof, shall not be invalidated or affected in any way by any violation of these covenants on the part of any person or party acquiring any such lot, building site or tract of land. Such liens shall remain in full force and priority in the case of any court judgement against the owner of such lot, building site or tract of land; said premises shall remain subject to such liens; and no release of any restrictive covenants, or any part thereof, shall be construed as against the original purchaser, his heirs, executors, administrators, assigns or successors, as the case may be and sale under a foreclosure of such liens as hereinabove recited shall pass title to such premises subject to the restrictive covenants then in effect.

PART III

ARCHITECTURAL CONTROL

1. BASIC CONTROL:

a) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction or demolition or destruction by voluntary

action made thereto after original constructed, on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of Point Aquarius Subdivision of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality and color of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography and finished grade elevation.

b) Each application made to the Committee shall be accompanied by three sets of plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the foundation plan and the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Association.

2. EFFECT of INACTION: Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the Committee fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within thirty (30) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

3. EFFECT of APPROVAL: The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan or in the event that such building and/or improvements are constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercised thereof.

4. MINIMUM CONSTRUCTION STANDARDS: The Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and such Developer or the Committee shall not be bound thereby.

5. VARIANCE: The Committee, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or

regulations and requirements as promulgated from time to time by the Committee, when circumstances such as topography, natural obstructions, lot configuration, lot size, hardship, aesthetic or environmental considerations may require a variance. The Committee reserve the right to grant variances as to building set-back lines, minimum square footage of the residence and other items. Such variances must be evidenced in writing and shall become effective when signed by a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance effect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

PART IV

PROPERTY OWNERS ASSOCIATION MEMBERSHIP

Every person or entity who is a record owner of any Lot which is subject to the Maintenance charge as hereinafter set forth (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Property Owners Association of Point Aquarius. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.), there shall be but one membership for each Lot. Additionally, the Directors of the Association shall also be Members of the Association (as more particularly described in the Bylaws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association.

PART V

ASSESSMENTS AND COMMON AREAS

1. NOTICE OF AUTHORITY FOR ASSESSMENTS: Each interested party or purchaser of a lot, tract, or parcel of ground, hereinafter called lots, as platted in this Section 5, is hereby made aware of the fact that all streets herein are dedicated or will be dedicated to the use of the Property Owners herein and are not dedicated to the county of Montgomery, any municipal body or public authority except as provided herein in the Plat. The maintenance of such streets and other designated areas and facilities, called common areas, and the payment for Security Guards, Patrols, and other conveniences deemed necessary and requisite to the pleasure, comfort, security and enjoyment of the property owners of POINT AQUARIUS SUBDIVISION, Section 5, will be provided for through an assessment, or assessments, as the case may be, to be levied against each and every lot as is platted or to be platted in POINT AQUARIUS SUBDIVISION, Section 5 and any

other tract or parcel of land sold therein that will benefit from the use of the common areas and common facilities to be maintained by assessments. Such determination to be made by the Association.

2. CATEGORIES OF COMMONS: There will be two categories of common areas designated upon the replat or replats filed of record showing Section 5 of the subdivision of POINT AQUARIUS. Said designated common areas may be in the form of land to which title is held in fee by the existing Developer and/or the Association, or may be shown as easements upon and across homesite's or other property as shown on the replat or replats of said Section 5 or such commons may be set forth and dedicated in a separate written instrument.

(a) General Common Areas: These areas will be so designated on the replats of Section 5 of said subdivision as general common areas, as areas to be used in common by all the property owners in all sections of the Subdivision of all of POINT AQUARIUS. These commons may include, but not necessarily be limited to areas and facilities such as designated through or thorough-fare streets and boulevards, and any and all areas of facilities as may be so constructed and developed and/or designated as General Common areas by the developers, DEBLYCO, INC., its successors and assigns.

(b) Specific Common Areas: These areas will be so designated on the replat or replats of said Subdivision as Specific Common Areas and will be common only to those owners of lots in said Section 5 of Point Aquarius as so designated upon the replat and will not be used in common with all the owners in all of the Subdivision POINT AQUARIUS, but will be used in Common only with owners in such specific Section 5.

These commons will include but not necessarily be limited to such areas and facilities as: Limited access ways to homesite's, decorative and planting areas, pools, ponds, lakes, marina and marina improvements and piers, recreation areas, walkways, guest or owner parking, and facilities within the specific common area as may be so constructed and developed, and/or designated as Specific Common areas by the developer, DEBLYCO, INC., its successors and assigns.

It is herein stipulated that designated common areas, whether Specific or General, may be used for any purpose required or deemed by the authority, necessary to the welfare of the property owners in POINT AQUARIUS, such purpose to be limited to the installation of any or all utilities, and dedication of such easements and right-of-way as deemed necessary by said authority, such dedications may be made upon the plat thereof or by separate instrument in writing and such dedication may be made at the discretion of the Authority at any time, present or future, or the Authority may allow the installation of any main or service extensions in said commons by letter to the utility company or may allow installation of service lines from main dwellings or outlets by oral approval. Any such installation made will be considered approved if the Association has not ordered such installation halted prior to completion thereof. Provided, however, the specific common areas shall never be converted to general common areas.

(c) Combination: It is understood that Developer shall at all times provide the Section 5 Security Gate Combination to the Entrance Guard for use by authorized property owners and other authorized persons.

3. GENERAL COMMONS ASSESSMENTS: All lots in this subdivision are subject to a monthly levy and the owners will pay into a fund a prescribed fee assessment for the purpose of paying the cost to accomplish those things necessary to the maintenance of those areas designated as General Common areas in all sections of Point Aquarius subdivision. Such levy will also include funds necessary to pay for Security Guard and Patrol service as deemed necessary by the Association, common lighting and all other services and incidentals deemed necessary by the Association to assure the protection, enjoyment and pleasure and benefit of each property owner and resident within POINT AQUARIUS SUBDIVISION. Said assessment will be levied against each and every single family dwelling site as a separate unit.

4. SPECIFIC COMMONS ASSESSMENTS: All lots, tracts, or parcels of ground as platted in this section lying within a section, sections or area having reserved unto said Section 5, as Specific Common area or Specific Common areas, facilities or services specifically common to that section, sections, or areas and such commons being designated upon the replat as Specific Common areas for the exclusive use of the owners or residents therein will be levied upon and required to pay into a special and separate fund additional funds for the maintenance of said Specific Commons or services performed specifically for such areas including but not limited to the maintenance, repair, and replacement of the water fall and surrounding flagstone and all equipment related thereto.

All such assessments will be levied in the same manner and upon the same basis as set forth hereinabove for General Common Areas and subject to the procedures and limitations as hereinafter set forth.

5. MARINA SLIPS ASSESSMENT: All interior lots 24-68, (except lots 4, 31, 46, 47, 49, 53, and 54) shall have marina rights under written license agreement subject to a quarterly levy and the owners will pay into a fund a prescribed fee assessment for the purpose of paying the cost to accomplish those things necessary to the maintenance of the marina area including but not limited to water and electricity to each applicable slip. The initial additional maintenance fee for marina lots will be thirty dollars (\$30.00) per quarter.

6. EFFECTIVE DATE OF ASSESSMENTS: Any or all levies for any or all purposes as herein set forth, may be made and begun at an appropriate time as will be determined by the Association hereinafter is sometimes referred to as the Authority. Said action may be made to affect, at different times, any sections and levies for maintenance of general, specific, or marina areas may be made or begun at different dates, and are not required to be made simultaneously.

When such determination is made by the Association, notice will be given to the owners of such properties as affected and all said owners will then be required to pay said assessments to the Association.

7. HANDLING OF ASSESSED FUNDS: It is specified herein that all funds collected by the Association for maintenance and services of General Commons will be kept in a special bank account called POINT AQUARIUS GENERAL COMMONS ACCOUNT, to be used only for the purpose as herein stated, and an itemized account of all receipts and disbursements will be mailed quarterly to all property owners in said Subdivision.

It is specified herein that all funds collected by the Authority for maintenance and service of Specific Commons will also be kept in the aforementioned POINT AQUARIUS GENERAL COMMONS ACCOUNT; however, said funds will be used for the purpose as herein stated as regards that specific section or areas. An itemized account of all receipts and disbursement concerning said funds will be mailed quarterly to all property owners in such areas or section.

If at any time the owners of 51% or more of the lots affected by an assessment desire that the fund so established and the books and records pertaining thereto be audited, then said owners may, by affixing their signatures to a petition cause such audit to be made. Such petition will site the account by its proper identification and shall stipulate the name of a Certified Public Accountant who shall make such audit and the date that such records will be made available to said Accountant. The Association will then be compelled to make such records available to the Named Certified Public Accountant, in the office of the Association, and will be authorized to pay to such accountant reasonable accounting fees for said audit from the funds of the account so audited.

8. ESTABLISHMENT OF AMOUNT OF ASSESSMENTS: The Association in initially setting the periodic levy or assessment for any purpose stated herein, will do so on an estimated basis determined by an in depth study of the requirements of said purposes. Said amount so levied may be changed from time to time, as necessary, to pay the allowed expenses as herein set forth or should said assessment prove to be more than needed for such purposes, then the Association will reduce said levy accordingly. The initial assessment of Lots 32-50 in Section 5 shall be Seventy-Two Dollars and Fifty Cents (\$72.50) per quarter. The initial assessments on Lots 1-31 and 51-68 in Section 5 shall be Eighty Dollars (\$80.00) per quarter. The initial marina maintenance fee on Lots 24 - 68 shall be Thirty Dollars (\$30.00) per quarter. Provided, however, there is expressly excluded from said lots, lots 46, 47, 49, 53, 54, and 31, which shall not be subjected to the Thirty Dollar per quarter assessment.

9. SPECIAL ASSESSMENTS: The Association will have the right, privilege and powers to levy special assessments as may become necessary for purposes as required and authorized herein, such special assessments would be made on the same pro-rata basis as hereinabove set forth and paid to Association as prescribed by said Association. Upon the approval of the owners of 51% of the lots subject to any special assessment, such special assessments could be made for the purpose of the construction or re-construction of improvements for the use and benefit of such owners in the Common areas, either General or Specific.

10. COLLECTION OF ASSESSMENTS: The Association will have the sole responsibility and authority to collect all assessments. Such assessments will be levied on a periodic basis and Association will have the power to allow certain reasonable discounts to owners paying said assessments semi-annually or annually in advance. Association will have the power to add to such assessments appropriate and reasonable penalties against said owners for delinquency in payment of assessments as well as the other remedies set forth herein.

11. ENFORCEMENT OF LIENS: Each lien established by the provisions of this instrument shall be followed by recording with the County Clerk of Montgomery County of a notice of delinquency and lien upon the subject property and may be judicially foreclosed in the same manner as is provided for the foreclosure of a mortgage upon real property under the laws of the State of Texas. In any action to foreclose any such lien, the Association shall be entitled to cost, including reasonable attorney's fees and other allowed cost and penalties.

12. RESERVATION OF LIENS: There is hereby reserved, established, and imposed, a lien, upon all lots within this Section 5 thereby securing each assessment imposed or to be imposed, or in any way provided for herein, together with any cost, interest or penalties against all property covered in this instrument subject only to any limitations and/or provisions in this instrument.

13. SUBORDINATION TO MORTGAGE: Each and every assessment and lien, together with any cost, penalties or interest, established, reserved or imposed under this instrument and authority shall be subordinate to any purchase money or improvement bona fide lien or trust deed (and the lien and/or title thereof) which has been or may hereafter be given in good faith for value. Any subsequent owner of any property so covered purchased at foreclosure shall be bound by the restrictions, conditions, covenants, reservations, assessments and liens set out in this instrument, not including however, any assessment or lien arising prior to the foreclosure sale of a purchase money or improvement lien.

14. RULES AND REGULATIONS GOVERNING USE OF COMMONS, MARINA, AND FACILITIES THEREIN: Rules and regulations governing the use of all commons, and facilities both General and Specific, including marina slips and facilities, will be made by and enforced by the Authority, to insure the best and mutual enjoyment thereof of all the qualified property owners and their guests. Any owner who fails to pay assessments levied or fails to comply with any requirements or rules and regulations governing the use of said commons and facilities will be denied the use thereof. Such rules and regulations to be made and enforced by the Association will include, but not be limited to; rules concerning guest privileges to commons, hours of use of pools, tennis courts, etc., speed limits on the streets, type of vehicles on streets and other commons, control of noise, etc.

15. DELEGATION OF USE OF FACILITIES: Any owner may delegate his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

16. MAINTENANCE OF LOTS: The owner of a lot or lots in this subdivision will be required to keep said property free of underbrush, weeds, tall grass or any other unsightly or offensive growth or accumulation of trash, garbage, or unsightly deposits of any nature or kind from the date of purchase of said lot. This requirement is effective on occupied and unoccupied lots. Ten (10) days after notice to owner of such situation existing, the Authority hereinabove created, or its employees will have the right and authority to enter upon said premises and correct the existing violation of the requirements so stated. Such authority

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will charge said owner a reasonable fee for such work accomplished and bill said owner for said fee for each instance until owner pays this special assessment against the property of owner.

17. EXTERIOR MAINTENANCE OF BUILDINGS: In the event the owner of any building in the Subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Association as herein established will give such owner written notice of such conditions. Fifteen (15) days after notice of such condition to owner, and failure of owner to begin and continue at a reasonable rate of progress to correct such condition, the Authority may enter upon said premises, do or cause to be done any work necessary to correct said situation. The owner thereof shall be billed for cost plus ten (10%) percent. All monies so owed the Authority will become a special assessment against the property of owner.

18. STREET LIGHTING COST: The Association herein created is empowered to contract with a utility company for the owner of each dwelling in this Subdivision to pay the initial amount of fifty cents (\$.50) per month, said fee to be added to such occupants electric bill each month as a contribution toward payment for the operation and maintenance of street lighting in this Subdivision. This fee may be adjusted up or down, within reason in accord with the rates of the utility company.

19. NOTICE: In all instances herein where notice is required, notice will have been given upon placing in the United States mail, said notice to the last known address of such person or party to whom notice is to be given.

20. It is specifically agreed by each purchaser, and stipulated herein that the developer, DEBLYCO, INC., its successors and assigns will have the right of use of all commons whether Specific or General in Section 5. Such use will be allowed for the purposes of promotion and sale of property by said developer and will include the right of developer to issue passes and permits to guest or prospective purchasers of property and developers employees to use and enjoy for limited periods, such commons, marina slips facilities and services just as does an owner of a lot or lots in said Subdivision. This right is reserved unto DEBLYCO, INC., its successors and assigns, so long as said developer owns land in the Subdivision and is marketing same.

PART VI

USE RESTRICTIONS

1. SINGLE FAMILY RESIDENTIAL CONSTRUCTION: No building shall be erected, altered, or permitted to remain on any Lot other than one single family dwelling used for residential purposes only and not to exceed three (3) stories in height and a private garage, bathing, toilet or dressing rooms for private pools, and other bona fide servant's quarters; provided, however, that the servant's quarter and garage will not exceed the main dwelling in height or number of stories all such structures shall be attached to the main dwelling. Carports are expressly prohibited. As used herein, the term "residential purposes" shall

be construed to prohibit mobile homes or trailers being placed on said Lots, or the use of said Lots for duplex houses, condominiums, town-houses, garage apartments, or apartment houses; and no Lot shall be used for business, educational, religious or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes.

All homes shall be upon a concrete foundation and no home shall be less than 50% masonry construction and subject to the Committee approval.

2. DESIGNATION OF LOT TYPES:

- (a) Lake Waterfront Lots: Lots 1 through 11.
- (b) Channel and Marina Lots: Lots 12 through 23.
- (c) Interior Lots: All other Lots in the Subdivision not being defined above as Waterfront or Marina Lots.

3. COMPOSITE BUILDING SITE: Subject to the terms hereof, any Owner of one or more adjoining Lots (or portions thereof) may, with the prior written approval of the Architectural Control Committee, consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the Lot lines as indicated to the Plat. Any such composite building site must have a frontage at the building set-back line of not less than the minimum frontage of all Lots in the same block.

A building site shall consist of one lot, or one or more lots or parts of two adjoining lots. Building sites made up of fractional parts of adjacent lots shall be no smaller in area and have no less footage than the larger of the two lots comprising the same as shown on the official plat, if there be any difference between the size of the two lots involved. Under no circumstances shall a residence be built on less than one whole lot as dedicated on the official replat.

4. MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS: The living area of the main residential structure, located on any Lot, exclusive of porches and parking facilities shall be as follows:

- (a) Lake Waterfront Lots - (all): Minimum living area shall be not less than 2,200 square feet.
- (b) Channel and Marina Lots - (all): Minimum living area shall be not less than 2,000 square feet.
- (c) Interior Lots - (all): Minimum living area shall be not less than 2,000 square feet, .

5. LOCATION OF THE IMPROVEMENTS UPON THE LOT: No residential structure or any other improvement shall be located on any Lot nearer to the front and rear property lines than the minimum building set-back lines shown on the Plat. No residential structure or any other improvement shall be located on any Lot nearer to the side property lines than five feet (5') For purposes of this Declaration, air compressors, eaves, steps, and

unroofed terraces shall not be considered as part of a residential structure or other improvement. This covenant shall not be construed to permit any portion of a building foundation on a Lot to encroach upon an easement. The main residential structure on any Lot shall face the front of the Lot unless a deviation is approved in writing by the Committee.

6. SEQUENCE OF BUILDING: No housing for garage, servant's quarters, or other service function of the dwelling establishment shall be erected or placed upon any building site until construction of the dwelling property has been started and is actually under way. Any structure begun must be diligently completed within a reasonable length of time, not to exceed one (1) year.

7. USE OF TEMPORARY STRUCTURES: No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of Section 5 as in it's sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the subdivision.

8. WATER SUPPLY: Water for this Subdivision will be provided by distribution lines connected with a central water system and no water wells shall be made, bored or drilled, nor any type or kind of private system installed or used. Wells may be drilled by the Association for use in watering commons and filling of ponds in commons.

9. SANITARY SEWERS: No outside, open, or pit type toilets will be permitted in this Section 5. All dwellings constructed in this Section 5 prior to occupancy must have a sewage disposal system installed to comply with the requirements of the appropriate governing agency and must immediately tie onto the central sewer system of the Utility District.

10. WALLS AND FENCES: Walls and fences, if any, must be approved by the Architectural Control Committee and shall be no closer to front street property lines than the front of the dwelling located on said lot and no closer than five feet to side street lines. Any erection of any wall, fence or other improvements on any easement is prohibited. Fences and walls will be constructed of ornamental iron, wood or masonry and shall not be in excess of 4' high on any water front lot and 5' high on any interior lots all subject to other restrictions contained herein.

11. PROHIBITION OF OFFENSIVE ACTIVITIES: Without expanding the permitted uses of the Lots, no activity, whether profit or not, shall be conducted on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or may become an annoyance or a nuisance to the Subdivision. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision. No exterior speaker, horn, whistle, bell or any other sound devise,

except security and fire devices used exclusively for security and fire purposes, shall be located, used or placed on a Lot. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

12. GARBAGE AND TRASH DISPOSAL: Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly.

13. PARKING OF VEHICLES OR EQUIPMENT: No motor vehicle or non-motorized vehicle (including without limitation, boats, trucks and recreation vehicles), trailers, campers, motor-cycles, off-road motor bikes, bicycles, golf carts, go-carts, machinery or equipment of any kind may be parked on any street, roadway, or easement, or stored on any lot for longer than forty-eight (48) hours or on a semi-permanent or daily basis on any part of road, street, easement, right-of-way, or Common Area. In addition, no recreational vehicles such as motor homes, boats or campers may be kept visible on any lot more than 48 hours within this section 5 of Point Aquarius.

14. SIGNS, ADVERTISEMENTS, BILLBOARDS: No sign, advertisement, billboard, or advertising structure of any kind may be erected or maintained on any Lot in the Subdivision except for a builder's sign during construction and sales period of improvements, which shall consist of one sign not more than five (5) square feet. Additionally, street signs may be installed within the Subdivision by the Developer or the Association.

The Developer or the Association (and/or any agent designated in writing by Developer or the Association) shall have the right to remove and dispose of any such prohibited sign, advertisement, billboard or advertising structure which is placed on any Lot, and in doing so shall not be subject to any liability to trespass or any other tort in connection therewith or arising from such removal nor in any way be liable for any accounting or other claim by reason of disposition thereof.

15. ANIMAL HUSBANDRY: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept provided that they are not kept, bred or maintained for commercial purposes, further provided that they are at all times leashed or fenced and do not become a nuisance or a threat to other Owners.

16. MINERAL DEVELOPMENT: No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Provided, however, that this provision shall not prevent the leasing of the Subdivision or any portion thereof, for oil, gas and mineral purposes and the development of same, it being contemplated that the portion or portions of the subdivision may be developed from adjacent lands by directional drilling operations.

750-01-1293

Amendment of Restrictive Covenants § 5

17. SIGHT DISTANCE AT INTERSECTIONS: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points ten feet from the intersection of the street lines, or in the case of property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within five feet from the intersection of the street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain with such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

18. STREET OR PASSAGE WAYS: No street or passage way shall be erected on, over or through any lot or block (except driveways to a house located on such lot or block) except as shown on the map or plat of such Subdivision. All driveways must be paved.

19. CUTTING TREES IN R.O.W.: No trees over five inches in diameter shall be removed without the written consent of the Committee.

20. DRAINAGE: Natural established drainage patterns of streets, & lots. The breaking of curbs for drive installations will be accomplished in a good and workmanlike manner and such break will be re-cemented without hinderance to drainage and such work is subject to the inspection and approval of the Architectural Control Committee. No curbs will be broken prior to Architectural Control Committee approval.

23. WATERFRONT LOTS: Construction of Pier, Docks, Boat Slip and Boat House.

(a) No pier, dock, boat slip, boat house or other structure shall be constructed on any lot other than Waterfront Lots and, on said Waterfront Lots, shall not be constructed or project beyond the Lot line or onto the water of Lake Conroe (whether within or outside of the Lot line), unless prior written approval is given by the Committee and such improvement complies with the specifications set forth by the River Authority. Architectural approval shall be granted or withheld based upon (i) architectural design and character of improvements, (ii) engineering design and specifications of planned structures, and (iii) whether or not proposed improvements conform to the Committee's pre-determined plan for such improvements. Provided, however, the Committee shall not fail to approve on the basis of any design or character approved herein.

(b) In addition to being approved by the Committee, all plans for the pier, dock, boat slip, boat house or other structure to be constructed on the Lot or which projects beyond the Lot line or into the water of Lake Conroe, (whether within or outside of the Lot line), must satisfy the requirements of and be approved in the form of a permit by the River Authority prior to beginning construction.

(c) A pier, dock, boat slip or boat house on and from lots 1-9 may not project more than Thirty Feet (30') into the Lake as

measured from the existing shoreline or bulkhead. A pier may not be constructed unless and without constructing at the same time a boat slip or other improvements which may be required by the Committee in its plan for such structures. The bulkhead along the Lake shoreline shall not be cut without submitting a plan to the Committee and approved in writing by the Committee. No improvements or modifications of any kind to any approved pier, dock, boat slip, boat house or other improvement constructed by an Owner shall be made unless prior written approval is given by the Committee and all such improvements must conform to the Committee's pre-determined plan for such improvements. Provided, however, on and from Lots 10-23, there shall be no projection into Lake Conroe of any structure and any boat slip must be cut into such lot.

(d) Lots 1 through 23 shall be allowed to have boat houses. Further, that boat houses on lots 1 through 23 shall have a 5:12 roof pitch and shall be constructed of the same exterior roof covering as the primary residence unless such roof shall also be a functional sundeck in which case the "pitch" and "roof covering" requirements shall not apply.

PART VII

DEVELOPER'S RIGHTS AND RESERVATIONS

RIGHT TO CONSTRUCT ADDITIONAL IMPROVEMENTS IN COMMON AREA:

Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional improvements within the Common Area at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in the increase of such Maintenance Charge. Developer shall, convey or transfer such improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in this Declaration.

PART VIII

LAW ENFORCEMENT AND STREET RIGHTS

1. TRAFFIC LAW: Notwithstanding the fact that all roads and streets in this subdivision are dedicated not unto the public, but only to the property owners in POINT AQUARIUS SUBDIVISION, it is hereby stipulated that the Commissioners Court will have the full authority to establish speed limits or other traffic rules or law, and penalties for violation thereof upon the streets of this development, and the law enforcement officers of the County of Montgomery or of the State of Texas, or any other official body having such authority, may enter upon this subdivision to enforce the speed limits as set by the Montgomery County Commissioners Court, just as though said roadways were public.

2. PUBLIC LAW: Notwithstanding the fact that all commons in this subdivision are private and dedicated unto the property owners within the subdivision of POINT AQUARIUS, it is hereby stipulated that any law enforcement officer, County, State or Federal, is hereby authorized to enter upon the premises of the subdivision POINT AQUARIUS for all purposes just as though the whole subdivision were a subdivision dedicated unto the public, and every law enforcement officer will have the same rights, privileges and duties within the boundaries of this subdivision as he would in any subdivision whereby the streets and other commons and facilities were dedicated to the public.

3. RIGHT OF STREET DEDICATION: Notwithstanding the fact that all streets within this subdivision are dedicated to the property owners and are not public streets and are not dedicated to the county or any other body politic, it is hereby stipulated that after five years from date, should the owners of 75% of the lots in every section of the subdivision POINT AQUARIUS so desire and execute a petition to the County Commissioners Court, petitioning such court to accept said streets as county roadways and should such courts accept said streets and agree to maintain same, then said streets shall become county roadways and open unto the public and shall be maintained by the County of Montgomery and such streets shall cease to be private roadways.

PART IX

GENERAL PROVISIONS

1. AMENDMENTS: This declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of the Owners (including the Developer) entitled to cast not less than two-thirds (2/3) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those owners entitled to cast not less than two-thirds (2/3) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Those members (Owners, including the Developer) entitled to cast not less than two-thirds (2/3) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person or by proxy, at a meeting of the Members (Owners, including the Declarant) duly called for each purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting, notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Montgomery County, Texas, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting

called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination.

2. SEVERABILITY: Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity of un-enforceability or partial invalidity or partial un-enforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

3. LIBERAL INTERPRETATION: The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

4. SUCCESSORS AND ASSIGNS: The provisions hereof shall be binding upon to inure to the benefit of the Owners, the Developer and the Association, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

5. EFFECT OF VIOLATIONS ON MORTGAGES: No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien or deed of trust may, nevertheless, to the provisions herein contained.

6. TERMINOLOGY: All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein", "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto, if any.

EXECUTED THIS 9th DAY OF October, A.D., 1991.

DEBLYCO CORPORATION

BY:

Connie Miller
Connie Miller, President

APPROVED AND AGREED TO

By Point Aquarius Property Owners Association, Inc.:

Henry L. Ryder
Henry L. Ryder, President

750-01-1297

Amendment of Restrictive Covenants § 5

STATE OF TEXAS

COUNTY OF MONTGOMERY

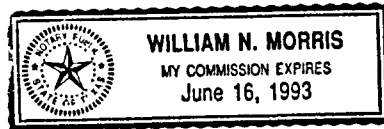
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BEFORE ME, the undersigned authority, on this day personally appeared Connie Miller, President, of DEBLYCO, INC., known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER HAND AND SEAL OF OFFICE this 9th day of October, A.D., 1991.



William N. Morris
Notary Public
Montgomery County, Texas.



FILED FOR RECORD

91 OCT 11 PM 2:37

Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS)
COUNTY OF MONTGOMERY)
I hereby certify that this instrument was filed
in File Number Sequence on the date and at the
time stamped herein by me and was duly RECORDED
in the official Public Records of Real Property of
Montgomery County, Texas.

OCT 11 1991

Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

Return to:

ROBERT L. RICE, P.C.
3421 West Davis Suite 110
Conroe, TX 77304