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ALTA VISTA P.U.D. IN THE GREAT HILLS

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS: ~~1-76-4598~~ 6226 \* 2100

That NUTTER HOMES, INC., a Texas corporation, being the owner of the following described real property situated in Travis County, Texas, to-wit:

All of the lots and tracts in Alta Vista P.U.D. in the Great Hills, a Planned Unit Development, according to the map or plat thereof recorded in Book 76 Page 309 Plat Records of Travis County, Texas (commonly known and marketed as ALTA VISTA),

and desiring to establish the nature of the use and enjoyment thereof, hereby declares that the following express covenants, restrictions, reservations and conditions shall attach to the said real property and every lot or tract thereof and shall constitute covenants running with the land.

ARTICLE I

Definitions

Section 1.1 "Association" shall mean and refer to Alta Vista, Inc., a/k/a Alta Vista Homeowner's Association, a Texas Corporation, its successors and assigns.

Section 1.2 "Premises" and/or "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 1.3 "Common Area" shall mean all real property, and improvements thereto, identified as Lot 24 of said subdivision map and such other area as may be acquired by the Association and set aside for the use, convenience or enjoyment of the Owners of the Lots, and shall include all park and playground and recreational areas, landscaped areas, walkways, streets and parking areas.

Section 1.4 "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of Alta Vista P.U.D. in the Great Hills according to the map or plat thereof, recorded in Book , Page , Plat Records of Travis County, Texas, and all improvements thereon situated, expressly excluding Lot 24.

Section 1.5 "Owner" shall mean and refer to the Owner of record, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the aforesaid recorded subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.6 "Declarant" shall mean and refer to Nutter Homes, Inc., its successors and assigns, however, the term shall carry no meaning and the inherent authorities granted herein shall cease subsequent to the time of transfer of the Common Area to the Association as required in Section 3.1 hereof.

ARTICLE II

General Restrictions

Section 2.1 Said premises are hereby restricted to single family dwellings for residential use and no business activities of any kind whatsoever shall be conducted upon said premises.

Section 2.2 All buildings or structures erected on said premises shall be of new construction and no buildings or structures shall be moved from other locations on to said premises.

Section 2.3 No livestock, poultry, or other animals shall be kept on the premises other than household pets, PROVIDED HOWEVER, that such pets shall be kept within the confines of the Owner's Lot, or on a leash in restraint when elsewhere on the premises, and shall not be kept or used for commercial purposes.

Section 2.4 No store, office or other place of business of any kind and no hospital, sanitarium or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theatre, saloon or other place of entertainment shall ever be erected or permitted upon the premises, or any part thereof.

Section 2.5 No advertising signs, billboards, overhead wiring, unsightly objects or nuisance shall be erected, placed or permitted to remain on any of said lots, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the holder of any lot in the subdivision. Provided, however, the Declarant may maintain advertising signs (of any size) on the premises until such time as the Declarant has transferred the Common Area to the Association as set out in Section 3.1 hereof.

Section 2.6 All clothes lines, equipment, garbage cans, incinerators, service yards, woodpiles or storage piles shall have permanent locations only within the walls of the respective owner's lot. All rubbish, trash, or garbage shall be removed from the premises and shall not be allowed to accumulate thereon.

Section 2.7 No fences, hedges, or walls shall be erected or maintained upon said premises, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association in the manner hereinafter set forth.

Section 2.8 Trailers, Boats, and Motor Vehicles. No mobile home, trailer of any kind, truck camper, motorized recreational vehicle, permanent tent or similar structure, boat or inoperable motor vehicle of any type shall be kept, placed, maintained, constructed, reconstructed or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property or a public street except in private garages; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs, and provided further that the Association and the Declarant shall have the authority to control the parking and handling of all vehicles and equipment and the usage of the Common Area for such purposes, including, inter-alia, speed limits.

Section 2.9 Antennas and Signals. No outside antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any lot, whether attached to a building or structure or otherwise, without approval of the Association, except that the Declarant or the Association may erect a common television antenna. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any lot which may unreasonably interfere with the reception of television or radio signals on any other lot.

ARTICLE III

Ownership

Section 3.1 Ownership of individual lots, and the residential dwellings constructed thereon, shall be evidenced by a deed to the lot upon which each such residence is situated. The Common Area shall be deeded to the Association by the Declarant upon the sale of 90% of the subdivided lots, or at any time sooner at its option.

Section 3.2 All acts necessary or appropriate to the proper maintenance, upkeep and protection of the Common Area shall be taken through the Association.

ARTICLE IV

Membership

Section 4.1 Acquisition of Membership. Each person acquiring a lot in the

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subdivision shall, on such acquisition, become a member of the Association. A person shall be deemed to have acquired a lot when title thereto has been duly vested in him by an appropriate deed, irrespective of whether or not such lot is subject to a mortgage or other security interest. The word "person" as used herein means both natural and juridical persons, including corporations.

Section 4.2 Plural Ownership of a Single Lot. If two or more persons are simultaneously owners of a single lot, only one shall be entitled to membership in the Association. In this case, they shall designate to the Association in writing the person that shall be entitled to membership in the Association with the power to vote. If a husband and wife share in the ownership, the husband shall be the member with the power to vote unless they expressly agree otherwise in writing delivered to the principal office of the Association. It is the purpose and intent of this Declaration that there shall be one, and only one, membership in the Association, and one right to vote appurtenant to each lot; and this Declaration shall be so interpreted.

Section 4.3 Ownership of More than One Lot by the Same Person. A person who is the owner of more than one lot shall be entitled to one membership and one vote for each lot owned.

Section 4.4 Duration of Membership. Anyone who becomes a member of this Association in the manner described herein shall remain a member as long as he remains the owner of a lot. If the owner of a lot should transfer his title to another person, or if he should cease to be the owner by reason of foreclosure or for any other reason, he shall thereafter cease to be a member; and the new owner shall become a member in his stead.

Section 4.5 Rights to Common Area. The Association shall hold title to, and maintain the landscaping, swimming pool, clubhouse and all other facilities, if any, located on the Common Area. For purposes of maintenance only, the Common Area shall be deemed to include the following:

Lot 24

Section 4.6 Delegation of Use. Any owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on such owner's lot.

#### ARTICLE V

##### Assessments

Section 5.1 Owners are Bound to Contribute. All owners of lots shall contribute toward the expenses of administering the Association; toward the cost of maintaining, improving, and protecting the Common Area; and toward any other expense lawfully agreed upon by members of the Association, including utility services to the premises and legal enforcement of this Declaration. No owner shall be exempt from contributing to such expenses by waiver of the use of the Common Area, by abandonment of the lot belonging to him, or by any other unilateral action.

Section 5.2 Liens To Secure Assessments. The assessments shall be made against the owner of each lot then owning the same and also against the lot itself; and in the event any owner shall fail or refuse to pay any such assessments as the same shall become due and payable, then all such assessments which have become due and payable and which have not been paid shall constitute and be secured by a valid lien on such lot for the benefit of the Association and all other owners. No lien shall exist against any lot for assessments which have not yet become due and payable. Such liens shall be prior to all other liens, except that such assessment liens shall be subordinate and inferior to (1) all liens for taxes or special assessments levied by the county and state governments or any political subdivision or special district thereof, and (2) all liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date payment for such assessments for common expenses become due and payable.

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Such lien herein provided for may be foreclosed, without prejudice and subject to the aforesaid prior and superior liens, by suit by the Association or any authorized officer or member thereof, acting in behalf of all owners in like manner as mortgages on real property. No foreclosure suit or sale thereunder shall affect or impair any of the prior liens above mentioned. The Association or any person authorized by it, acting in behalf of all owners, shall have power to bid in the lot foreclosed on at the foreclosure sale, and to acquire, hold, lease, mortgage or convey the same in behalf of all owners. All funds realized from any foreclosure sale shall be applied first to the cost and expense of filing and prosecuting suit, including all costs of court and a reasonable amount for attorney's fees, and then towards payment of the indebtedness sued on, and the remainder, if any, shall be paid over to the defendant or defendants in the suit as their interest may appear. In the event the proceeds realized from the foreclosure sale, applied as aforesaid, shall be insufficient to pay off and discharge the whole amount of the assessments sued on, then the purchaser acquiring title to such lot at such foreclosure sale, whoever he may be, other than the owner sued, shall be not liable for the deficiency, but such deficiency shall be deemed a common expense, collectible from all owners, including the purchaser at the foreclosure sale, on a pro-rata basis as in the case of other common expenses. The defaulting owner sued shall remain personally liable to the Association and owners paying such deficiency.

Section 5.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the pleasure, recreation, and other non-profitable purposes of the members of the Association, including without limitation the improvement, maintenance, and protection of the Common Area.

Section 5.4 Basis of Assessments. All regular and special assessments must be fixed at a uniform rate for all lots. There being 23 residential lots numbered 1 through 23, designated for building sites in the subdivision, each owner of such a lot shall contribute an equal 1/23 part of the assessments made, including the Declarant. If more than one person owns a lot, they shall be bound, jointly and severally, to pay the assessments made against the lot which they own together. If a person should own more than one lot, he shall be bound to pay the assessments made against each lot which he owns.

Section 5.5 Annual Assessments.

- (A) Annual assessments are payable on a monthly basis, on the first day of each month.
- (B) Upon purchase, the lot owner shall pay \$90.00 or an amount set by the Association not to exceed one-fourth (1/4) of the annual assessment at the time of purchase, in advance and will commence immediately the monthly payments. Upon sale and conveyance of his unit, the lot owner shall be reimbursed by the Association his advance toward monthly assessments paid upon purchase, less any delinquent assessments owed by the lot owner.
- (C) The annual assessment fee for all lots may be changed from time to time by the Association and shall be due thereafter on the first day of the month following thirty (30) days after delivery of written notice of such change. The Association shall advise owners the basis for the monthly fee and shall furnish owners with reasonable justification for increases or decreases in such fees.
- (D) Out of such annual assessment the Association may create a reasonable reserve for replacement, repair or the maintenance of the facilities and improvements of the Common Area.

Section 5.6 Special Assessments. In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, any deficit created or projected by an excess of expenditures of the Association over its receipts, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of three-fourths (3/4ths) of the votes of

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members present and voting in person or by proxy at a meeting duly called for this purpose at which the necessary quorum is attained. Written notice of Special Assessments shall be sent to all owners at least 30 days prior to the due date hereof.

Section 5.7 Notice and Quorum for Any Action Authorized Under Section 5.6. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.6 of this Article shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. Members having not less than 51% of the votes entitled to be cast, whether present in person or by proxy, shall constitute a quorum. A number less than a quorum may adjourn or recess until a quorum is obtained.

Section 5.8 Delinquency in Payment of Assessments. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may either (1) bring an action at law against the owner personally obligated to pay the same or (2) foreclose the lien against the property, or (3) both (1) and (2); and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot, or by any other unilateral action.

Section 5.9 Loss of Right to Hold Office and to Vote. Any owner of a lot who is delinquent by more than ten (10) days in the payment of any assessment lawfully made by the Association shall be automatically suspended from any Association office which he may hold; and, in addition, he shall lose his right to vote and to hold office notwithstanding any other provisions in this Declaration or related By-Laws to the contrary.

#### ARTICLE VI

##### Maintenance

Section 6.1 Exterior Maintenance. In addition to maintaining the Common Area as specified in Section 4.5 ARTICLE IV of this Declaration, the Association shall maintain certain exterior improvements on all lots. Such maintenance shall be exclusively for painting, staining or treating exterior wooden and metal surfaces visible from the Common Area or any other lot; repair, replacement, or other necessary care of (1) roofs, gutters and downspouts, and (2) lawns, shrubs, trees and other growing plants installed by the Declarant or the Association. Such maintenance obligations shall not include garage door opening equipment, air conditioning equipment, glass surfaces, masonry walls, window, gate and door fixtures and hardware, growing plants installed by an owner, light fixtures not installed by the Declarant or the Association, utility meters, circuit breakers, switch panels, and any water, sewerage, or cable television systems lines within a lot. However, the Association shall maintain any common sprinkler system.

Section 6.2 Easement. The Association is hereby granted an easement of use and right-of-way on all lots in order to comply with the terms of this Article and entry on a lot for such purpose shall not be deemed trespass.

Section 6.3 Willful or Negligent Acts. In the event that the need for maintenance or repair is caused through the willful or negligent act of any owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such owner is subject.

Section 6.4 Defective Material and/or Workmanship. The Association shall not pay for maintenance, replacement, or repair required on any owner's lot to correct deficiencies in original material, workmanship, or structural defect.

Section 6.5 Damage by Accident or Natural Causes. The Association shall not pay for maintenance, replacement, or repair required on any owner's lot, or personal property therein, due to damage caused by insurable accident or natural causes.

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Section 6.6 The cost of any maintenance, replacement, or repair due to causes outlined in Sections 6.4 and 6.5 above, which the Association may be obliged to undertake for the safety and welfare of any lot owners, shall be added to and become part of the assessment to which the responsible lot owner is subject.

ARTICLE VII

Party Walls

Section 7.1 Party Walls in General. Each common wall which is part of the original construction of the subdivision lots shall constitute a party wall. Each of the adjoining owners shall assume the burdens and be entitled to the benefits of the restrictive covenants contained in this Declaration. General rules of law regarding party walls shall apply to those walls to the extent they are not inconsistent with this Declaration, the Articles of Incorporation of the Association or the related By-Laws.

Section 7.2 Damage by an Adjoining Party. In the event a party wall in the subdivision is damaged or destroyed by an adjoining owner in such a way as to deprive the other adjoining owner of the full use and enjoyment of such wall, by penetration or otherwise, the Association shall proceed forthwith to rebuild or repair the same so that its former condition will be restored. The cost of such rebuilding or repair shall be added to and become a part of the assessment to which such responsible owner is subject.

Section 7.3 Damage by Accident or Natural Causes. If damage or injury is caused by neither of such owners or persons for whom they are responsible, then the restoration and other costs and expenses shall be borne equally by both such owners except to the extent insurance proceeds are available. Further, an owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 7.4 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by both owners who make use of the wall in equal proportions.

Section 7.5 Damage to Common Area by an Owner. In the event a member of the Association, his guests, or members of his family, shall damage or destroy any property on or which is a part of the Common Area, the member responsible shall be bound thereupon to reimburse the Association for any costs incurred in repairing such damage.

Section 7.6 Assessment Against Responsible Owner or Owners. In the event the owner responsible for any damages described in this ARTICLE does not promptly reimburse the Association for its costs, such costs shall be added to and become a part of the assessment to which such responsible owner is subject.

Section 7.7 Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

ARTICLE VIII

Taxes & Insurance

Section 8.1 Initially, the Association shall pay all taxes and property insurance, including liability insurance, on the Common Area, as well as fire and extended coverage insurance on all buildings located thereon. Individual owners of lots shall be responsible for all taxes levied against their own property, and for carrying their own insurance coverage on their property for fire, extended coverage, liability and personal property, and any other coverage desired. The Association may decide to convey to each owner an undivided 1/23rd of the Common Area and to have the taxing authorities bill the individuals for the taxes thereon. In the event the Association conveys an interest in the Common Area to individual owners, each such owner shall be responsible for his pro-rata share of taxes and insurance premiums for the Common Area.

ARTICLE IX

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Architectural Control

Section 9.1 Construction of Improvements. Since the maintenance of environmental and architectural harmony and unity is essential for the preservation and enhancement of the value of the lots and the harmonious functioning of the community affected, no improvements may be erected on any lot by anyone other than the Declarant without the approval of the Association or the Declarant. The term "improvements" shall include, but not by way of limitation, erection of any structure, including but not limited to additions or to alterations of any buildings, detached buildings, storage buildings, tool sheds, kennels, or other buildings for the care of animals, and greenhouses; the erection of any fence; the moving of any structure from another locality to a lot; the grading, scraping, excavation or other re-arranging of the surface of a lot; the construction of any driveway, alleyway, walkway, entryway, patio or other similar item; the alteration or replacement of any exterior surface, including the repainting of any painted surfaces and the painting of formerly unpainted surfaces; and the planting, replanting or re-arrangement of any plant life visible from another lot, the Common Area, or any street.

Section 9.2 Association Approval. The Association shall exercise prudent judgment to see that all improvements, construction, landscaping and alterations on lands within the premises conform to and harmonize with existing surroundings and structures.

- (A) Procedures. The Association shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Association fails to take any action within thirty (30) days after written requests have been submitted, approval will be presumed, and this Article will be deemed to have been fully complied with.
- (B) The Association shall maintain written records of all applications submitted to it and of all actions taken.

ARTICLE X

Duration and Amendment

Section 10.1 These covenants, restrictions, reservations, and conditions shall remain in full force and effect for a period of ten (10) years from date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of five (5) years unless revoked or amended by an instrument in writing executed and acknowledged by the owners of not less than three-fourths (3/4) of the lots in the subdivision. Any such instrument, in order to be valid, must be filed and recorded in the office of the County Clerk of Travis County, Texas, not later than ninety (90) days prior to the expiration of the initial effective period hereof or any five (5) year extension period.

ARTICLE XI

Enforcement and Invalidation

Section 11.1 The covenants, restrictions, reservations and conditions herein shall run with the land and shall be binding upon the described recorded subdivision after the date on which this instrument is recorded. These covenants, restrictions, reservations, and conditions may be enforced in a legal action brought by the Declarant, the Association, the owner of any lot, or any one or more of said individuals, corporation, or Association, which shall seek abatement or enjoinder of the actions or conditions which are deemed to be in violation of them; provided, however, that any breach of said covenants, restrictions, reservations and conditions, or any right of re-entry by reason thereof shall not defeat or affect the lien of any mortgage, or deed of trust made in good faith for value upon said land, but except as hereinafter provided each and all of said covenants, restrictions, reservations, and conditions shall be binding upon and effective against any owner of said premises

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whose title thereto is acquired by foreclosure, trustee's sale or otherwise, and provided, also that the breach of any of said covenants, restrictions, reservations, and conditions may be enjoined, abated, or remedied by appropriate proceedings, notwithstanding the lien or existence of any such deed of trust or mortgage. All instruments of conveyance of any interest in all or any part of said subdivision shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein as fully as though the terms and conditions of this instrument were therein set forth, in full; provided however, that the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

Section 11.2 Invalidation. Invalidation of any one of these covenants, restrictions, reservations or conditions by judgment or court order shall in no wise affect the validity of any of the other provisions and same shall remain in full force and effect.

ARTICLE XII

Declarant's Right to Amend

The Declarant reserves the right to amend these conditions, covenants, reservations and restrictions prior to turning over the administrative control to the Association.

ARTICLE XIII

Section 13.1 During the construction of the project, Declarant shall manage the affairs of the Association and shall be entitled to appoint Directors thereof until such time as ninety percent (90%) of the individual lots are sold. At this time, Declarant's right to manage and govern the affairs of the Association shall immediately cease, and Declarant shall have no other rights except those rights granted individual owners of lots, provided at that time Declarant owns any lots in the development.

Section 13.2 During the time Declarant has authority to administer the affairs of the Association, the Directors of the Association may, notwithstanding any other provisions in this Declaration to the contrary, waive any covenant, condition, reservation or restriction contained in this Declaration, and such waiver shall be binding upon the Association, its successors and assigns; and such waiver may not be revoked or modified by the Association except with the consent of the person or persons to whom the waiver was originally extended by the Directors. After the administration of the affairs of the Association has been turned over and transferred to the members of the Association, the right of the Directors to waive any of the conditions, covenants, reservations and restrictions contained herein shall terminate.

(NO SEAL)

NUTTER HOMES, INC.

BY Robert H. Nutter  
ROBERT H. NUTTER, President



STATE OF TEXAS  
COUNTY OF TRAVIS

1-75-4706

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 8 day of May 1978.

*Lee S. Gilbert*  
Notary Public in and for  
Travis County, Texas

NOTARY SEAT

STATE OF TEXAS COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on the  
date and at the time stamped hereon by me; and was duly  
RECORDED, in the Volume and Page of the named RECORDS  
of Travis County, Texas, as Stamped hereon by me, on

MAY 16 1978



*Doris Shogalinski*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

FILED

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*Doris Shogalinski*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS