

USE AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF HARRIS §

This Use Agreement by and between WILCHESTER CLUB, WILCHESTER OWNERS COMMITTEE and WILCHESTER WEST FUND, INC., all Texas non-profit corporations.

1. DEFINITIONS

1.1 "Amenities" -shall mean and refer to the real property and all improvements located thereon owned by the Club as set forth in Exhibit "A" attached to this Agreement and incorporated herein for all purposes.

1.2 "Annual Member Fee" -shall mean and refer to the annual fee paid by the Committee and the Fund to the Club, as further defined in Section 3.2 of this Agreement.

1.3 "Club" -shall mean and refer to Wilchester Club, a Texas non-profit corporation.

1.4 "Committee" -shall mean and refer to Wilchester Owners Committee, a Texas non-profit corporation, whose members are the owners of lots in Wilchester.

1.5 "Fund" -shall mean and refer to Wilchester West Fund, Inc., a Texas non-profit corporation, whose members are the owners of lots in Wilchester West.

1.6 "Wilchester" -shall mean and refer to Wilchester, Sections One, Two, Three and Four, all Harris County Subdivisions according to the map or plat thereof respectively recorded in Volume 75, Page 43; Volume 95, Page 45; Volume 126, Page 1; and Volume 142, Page 13 of the Map Records of Harris County, Texas.

1.7 "Wilchester West" -shall mean and refer to Wilchester West, Sections One and Two, both Harris County Subdivisions according to the map or plat thereof respectively recorded in Volume 132, Page 40 and Volume 144, Page 74 of the Map Records of Ran-is County, Texas.

2. RECITALS

2.1 The Club owns the Amenities.

2.2 The Committee and the Fund desire their respective members to have membership in the

Club and thereby full access to the Amenities, which membership shall be conveyed upon the sale of lots in Wilchester and Wilchester West along with title and ownership of lots to the purchasers of the lots.

2.3 The Committee and the Fund are willing to compensate the Club for the membership of their respective members in the Club.

2.4 The Club is agreeable to granting the respective members of the Committee and the Fund membership in the Club, provided the Committee and the Fund execute this Agreement thereby compensating the Club for this right as further set forth in Section 3.2 of this Agreement.

2.5 The members of the Committee have approved an amendment to Article VII, Section 7.03 of that certain instrument entitled "Restated and Amended Declarations of Restrictions and Covenants Governing Property and Lots in Wilchester, Sections One, Two, Three and Four, an addition in Harris County, Texas" filed of record in the Official Public Records of Real Property of Harris County, Texas under County Clerk's File No. P744204, which amendment approved a \$160.00 special assessment for the year 2000 and increased the Committee's annual maintenance assessment charge per lot for the year 2000 to \$520.00 per lot (this \$520.00 includes the \$160.00 special assessment). The \$160.00 increase in the annual maintenance assessment has been designated for payment to the Club for the Annual Member Fee for the year 2000 and subsequent years, unless the Annual Member Fee is increased or decreased according to Section 3.2 of this Agreement.

2.6 The members of the Fund have approved an amendment to Article VI, Section 6.01 of that certain instrument entitled "Petition Modifying Restated and Amended Declaration of Restrictions and Covenants Governing Property and Lots in Wilchester West and Wilchester West, Section Two (2) Additions Within the City of Houston, Harris County, Texas", which amendment approved a \$160.00 special assessment for the year 2000 and increased the Fund's 2001 annual maintenance charge to \$470.00 per lot. The \$160.00 special assessment for the year 2000 and \$160.00 of the 2001 annual maintenance charge and the annual maintenance charge for every year thereafter has been designated for payment to the Club for the Annual Member Fee, unless the Annual Member Fee is increased or decreased according to Section 3.2 of this Agreement.

2.7 The members of the Club have voted to amend Article Eight of the Club's Articles of Incorporation to read as set forth in Exhibit "B" attached to this Agreement and incorporated herein for all purposes.

3. AGREEMENT

3.1 Consideration. The consideration for this Agreement is the Club's amendment of its Articles of Incorporation as set forth in Exhibit "B" in return for the agreement of the Committee and Fund to pay to the Club the Annual Member Fee. The Club further agrees to amend its Bylaws to be consistent with this Use Agreement and its Articles of Incorporation, as amended. The Club specifically agrees to amend its Bylaws to provide that the election of the directors of the Club will be voted on at large by all the members of the Club, as opposed to, the members of the Club that own lots in Wilchester electing the directors from Wilchester and the members of the Club that own lots in Wilchester West electing the directors from Wilchester West.

3.2 Annual Member Fee. The Annual Member Fee shall be calculated as follows. The Annual Member Fee for the Committee, commencing with the year 2000, shall be \$160.00 times 605 (the number of lots in Wilchester that pay the Committee an annual

maintenance assessment charge). The Annual Member Fee for the Fund, commencing with the year 2000, shall be \$160.00 times 519 (the number of lots in Wilchester West that pay the Fund an annual maintenance assessment charge). It is understood that the total number of lots listed in Wilchester and Wilchester West as stated above, consists of several lots in each of Wilchester and Wilchester West that have been consolidated thereby combining two platted lots or portions thereof into one building site (the "Consolidated Lots"). Consolidated Lots pay one annual maintenance charge to the Committee or the Fund, as applicable, and are only entitled to one (1) vote in the Committee or the Fund, as applicable. Consolidated Lots shall be considered one lot for the purpose of this Agreement thereby entitling the Owner(s) of Consolidated Lots to one (1) vote in the affairs of the Club per Consolidated Lot. It is further understood that the Consolidated Lots may be de-consolidated by the Committee (in the case of Consolidated Lots in Wilchester) and the Fund (in the case of Consolidated Lots in Wilchester West) by the Committee or the Fund, as applicable, giving notice to the Club of any such de-consolidation. The board of directors of the Club shall set the Annual Member Fee for every year after 2000 based upon the needs of the Club. Such needs shall be determined in the sole judgment of the board of directors of the Club. Provided, however, the board of directors of the Club may not increase the Annual Member Fee in excess of \$160.00 per lot in Wilchester and Wilchester West without the prior written approval of the board of trustees of both the Committee and the Fund. The Annual Member Fee shall be due February 1 of each year (the "Due Date") unless otherwise agreed to in writing by the Club, Committee and Fund. Notwithstanding the foregoing, the Due Date for the Annual Member Fee for the year 2000 is May 15,2000. In the event either the Committee or the Fund does not pay the Annual Member Fee by the Due Date of any given year, the Annual Member Fee shall be considered delinquent and shall be subject to the following:

(a) interest at the rate of eighteen percent (18%) per annum from the Due Date until paid and all costs of collection, including attorney's fees; and

(b) all rights of the members (including voting rights and use of the Amenities) of the entity in default in payment of the Annual Member Fee to the Club (including voting rights and use of the Amenities) shall be automatically suspended until the Annual Member Fee, interest, any collection costs and attorney's fees have been paid in full.

3.3 Suspension of Rights. In addition to the power of the Club to suspend voting and use rights of members discussed in Section 3 .2(b) above, the Club shall suspend a member's voting and use rights in the Club upon notification from the Committee or the Fund that the member in question has not paid his or her annual maintenance charge to the Committee or the Fund, as applicable.

3.4 Amendment. Except for the provisions of Sections 3.1, 3.2, 3.3, 3.4 and 3.5 of this Agreement, the provisions of this Agreement may be amended by an instrument in writing setting forth the terms of the amendment, which amendment has been approved by each of the boards of the Committee, the Fund and the Club, as evidenced by the signatures of the respective president and secretary of the Committee, the Fund and the

Club. The provisions of Section 3.1, 3.2 ,3.3 ,3.4 and 3.5 of this Agreement may only be amended with the written approval of at least two-thirds (2/3rds) of the respective members of the Committee, the Fund and the Club.

3.5 Term. This Agreement shall remain in effect for a period of twenty (20) years from its effective date, after which it shall be automatically renewed for successive terms of five (5) years each. This Agreement may only be terminated with the written approval of at least two-thirds (2/3rds) of the respective members of the Committee, the Fund and the Club.

3.6 Notice. Any notice or demand which under the terms of this Agreement or under any statute must or may be given or made any party to this Agreement shall be in writing and shall be made by certified mail addressed to the respective parties to the address set forth below.

Wilchester Owners Committee
P.O. Box 19418
Houston, Texas 77224-9418

Wilchester West Fund, Inc
Price & Price
P .O. Box 5945
Kingwood, Texas 77325

Wilchester Club
P.O. Box 19030
Houston Texas 77224

Such notice or demand shall be deemed to have been given or made when deposited, postage prepaid, in the U.S. mail. The above addresses may be changed at any time by giving thirty (30) days prior written notice as provided above.

3.7 Entire Agreement. This Agreement contains the entire agreement between the parties relating to its subject matter. Any oral representations or modifications concerning this Agreement shall be of no force and effect. Any subsequent amendment or modification must be **in** writing and agreed to as set forth in Section 3.4 of this Agreement.

3.8 Dispute Resolution/Attorney's Fees. Any controversy, action, claim, dispute, breach or question of interpretation relating to or arising out of this Agreement must be resolved by nonbinding mediation and if mediation is unsuccessful, by binding Arbitration in accordance with the Commercial Arbitration Rules of the American

Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction. The costs of Arbitration and the prevailing parties' attorney's fees and expenses shall be borne/paid by the losing party or shall be borne/paid in such proportions as the Arbitrator(s) determine.

3.9 No Assignment. This Agreement shall not be assignable.

3.10 Recordation. The parties acknowledge and agree that this Agreement may be recorded in the Official Public Records of Real Property of Harris County, Texas for the purpose of providing notice of its contents.

3.11 Effective Date. This Agreement shall be effective upon the last date set forth below. Executed in triplicate originals on the dates set forth below.

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Before me, the undersigned authority, on this day personally appeared Mark D- Owen, President of Wilchester Club known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the same for the purposes and consideration, and in the capacity therein expressed.

Given under my hand and seal of office on this 18 day of April, 2000

STATE OF TEXAS §
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Before me, the undersigned authority, on this day personally appeared Michael J. Delouche, President of Wilchester Owners Committee, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the same for the purposes and consideration, and in the capacity therein expressed.

Given under my hand and seal of office on this 19 day of April, 2000

STATE OF TEXAS §
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Before me, the undersigned day personally appeared Mark D. Flanagan, President of Wilchester West Fund, Inc. known to me to be the person whose name is subscribed to the foregoing instrument and acknowledges to me that he executed the same for the purposes and consideration, and in the capacity therein expressed.

Given under my hand and seal of office on this 17th day of April, 2000

EXHIBIT "A"

Tract One A.K.A. Pool I: That certain lot, tract or parcel of land, together with all improvements thereon, lying and being situated in the County of Harris, State of Texas, described as follows:

2.0575 acre parcel or tract of land reserved for the Club Site of Wilchester, Section One, in the City of Houston in Harris County, Texas, as shown more fully on the Map of WILCHESTER, SECTION ONE, recorded in Volume 75, Page 43 of the Map Records of Harris County, Texas.

Tract Two A.K.A. Pool II: That certain lot, tract or parcel of land, together with all improvements thereon, lying and being situated in the County of Harris, State of Texas, described as follows:

Being a tract of 1.0000 acres of land out of the Northwest comer of Reserve "E" of WILCHESTER WEST SUBDMSION, City of Houston, Texas, in the C. Williams Survey (A-834) in Harris County, Texas, the official plat of said Wilchester West Subdivision being on file in Volume 132, Page 40 of the Map Records of Harris County, Texas, and the said 1.0000 acre tract being more particularly described with reference to said Wilchester West as follows:

BEGINNING for the most Easterly Northwest comer of the herein described tract, at a point on the South line of St. Mary's Street said point and comer bearing North 89° 17' East 10.00 feet from the East line, produced Northward, of Yorkchester Drive;

THENCE with the South line of St. Mary's Street, North 89° 17' East 238.95 feet to a point for the Northeast comer of the herein described tract;

THENCE South 0° 04' West 176.90 feet to a point for the Southeast comer of the herein described tract;

THENCE North 89° 55' West 248.92 feet to a point on the East line of Yorkchester Drive for the Southwest corner of the herein described tract;

THENCE with the East line of Yorkchester Drive, North 0° 04' East 163.50 feet to a point for the most Westerly Northwest comer of the herein described tract;

THENCE North 44° 41' 01" east 14.23 feet to the POINT OF BEGINNING, containing 1.0000 acres of land, more or less.

ARTICLE EIGHT

The membership of the corporation shall be the record owners of lots in Wilchester, Sections One through Four ("Wilchester") and Wilchester West, Sections One and Two ("Wilchester West"), all subdivisions in Harris County, Texas according to the maps or plats thereof respectively filed of record in the Map Records of Harris County, Texas (the "Subdivision") as the record owners of lots in the Subdivision change from time to time. Upon the conveyance of a lot in the Subdivision owned by a member of the corporation, the membership in the corporation relating to the lot so conveyed shall automatically be transferred with the title and ownership of the lot to the new owner of the lot, regardless of whether the conveyance contains language purporting to conveyor transfer such membership. The bylaws of the corporation may also make provisions for individuals that do not own a lot in the Subdivision to pay a usage fee and be entitled to use the Club's facilities.

The number of directors of the corporation shall be ten (10) who shall be elected from the membership of the corporation, five (5) of which directors must own a lot in Wilchester and five (5) of which directors must own a lot in Wilchester West. The number of directors may be changed by an amendment to the bylaws of the corporation; provided, however, the board of the corporation must always have an equal number of positions on the Board respectively held by owners of lots in Wilchester and Wilchester West.

The affairs of this corporation shall be run by its board of directors, provided, however, no decision to sell real property owned by the corporation shall be effective unless approved by at least two-thirds (2/3rds) of all the members of the corporation. The bylaws of the corporation may be amended by the board of the corporation. The provisions of this Article Eight can only be amended with the approval of at least two-thirds (2/3rds) percent of all the members of the corporation.