

W450424
02/24/03 200079414

\$25.00

25 *Foster*

**FOURTH SUPPLEMENTAL DECLARATION OF
PROTECTIVE COVENANTS FOR NORTHBOROUGH,
SECTION TWO AND SECTION THREE, ASSIGNMENT OF
DEVELOPER'S RIGHTS AND NOTICE OF VARIANCE** *see*

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

This Fourth Supplemental Declaration of Protective Covenants for Northborough, Section Two and Section Three, Assignment of Developer's Rights and Notice of Variance ("Fourth Supplement") is made by and between **UNIVERSITY DEVELOPMENT, INC.** ("University") and **GARY B. MADDOX, TRUSTEE** ("Trustee") as follows:

WHEREAS, Gibraltar Savings Association (the "Original Developer") heretofore established certain covenants, conditions, restrictions and easements upon the property known as Northborough, Sections One, Two and Three, as more particularly described in that certain Third Supplemental Declaration of Protective Covenants for Northborough, Section Two and Section Three and Assignment of Developer's Rights heretofore filed under Clerk's File No. S072477, Official Public Records of Real Property of Harris County, Texas (the "Third Supplement"), a true and correct copy of the Third Supplement (excluding Exhibit "A" thereto) being attached hereto as Exhibit "A" and incorporated by reference herein (the said Third Supplement and all of the instruments described therein applicable to Northborough, Sections One, Two and/or Three being collectively herein referred to as the "Governing Documents"); and

WHEREAS, Trustee is the successor and assign of the Original Developer and as such is the current holder of all "Developer Rights" as hereafter defined, including all Developer Rights under that certain Supplemental Declaration of Protective Covenants for Northborough, Section Two and

✓ RETURN TO:

Loe W. Burton

Williams, Birnberg & Andersen, L.L.P.

6671 South West Freeway, Suite 303

Houston, TX 77074-2284

Section Three (the "Supplemental Declaration") heretofore filed under Clerk's File No. G330075, Official Public Records by Real Property of Harris County, Texas; and

WHEREAS, University heretofore purchased from Trustee all of the following real property located in Northborough, Section Three (the "Northborough Village Tract"), to wit:

All of that certain real property situated in Harris County, Texas as more particularly described in Exhibit "B" attached hereto and incorporated by reference herein, which said property includes NORTHBOROUGH VILLAGE, SECTION ONE (1), a subdivision in Harris County, Texas according to the map or plat thereof recorded in Clerk's Film Code No. 519157, Map Records of Harris County, Texas (said plat hereinafter referred to as the "Northborough Village, Section One Plat"); and

WHEREAS, University and Trustee desire hereby to facilitate the orderly development by University of the Northborough Village Tract, including as set forth in the Northborough Village, Section One Plat:

NOW, THEREFORE, in consideration of the promises and covenants herein, the developmental undertakings of University, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all signatories hereto, said signatories make and consent to the following agreements and assignments which shall be covenants running with the land:

1. Assignment. Trustee hereby assigns, transfers, grants, sells and conveys unto University all Developer Rights under the Governing Documents, including the Supplemental Declaration, which pertain to or in any way affect the Northborough Village Tract, together with any and all manner of claims, demands, or causes of action of Trustee, whether now existing or arising in the future, with respect to the Developer Rights or any other covenants, restrictions or provisions as set forth in the Governing Documents that pertain to the Northborough Village Tract, or any use, development, lease or sale thereof. As used herein "Developer Rights" means all rights, authority and options under the Governing Documents of the Original Developer and/or Trustee, including without

limitation (a) all rights and authority of the Original Developer and/or the Architectural Control Committee under the Governing Documents, including without limitation all such rights and authority as set forth in Article IV and any other provisions of the Supplemental Declaration, which said rights and authority are hereby irrevocably assigned unto University, and including without limitation (b) full right and authority to set, determine and modify building set back requirements under Article V, Section 3 and parking requirements under Article V, Section 4 of the Supplemental Declaration.

2. Notice of Variance. University and Trustee hereby declare that the building set back and other provisions of Article V, Section 3 of the Supplemental Declaration shall not apply to the Northborough Village Tract, and that in lieu thereof the following shall apply:

No building or other structure may be located upon any building site (including any lot) except in accordance with building set backs shown on any applicable plat as filed in the Map Records of Harris County, Texas. Subject to the foregoing (a) a single family residence or garage for same may be located on or within one foot of an interior side property line of an adjacent building site, but (b) no part of any residence or garage shall be located nearer than three feet to any other residence or garage. For purposes hereof, permitted eaves, roof overhangs, steps, fireplaces, chimneys, bay windows, unroofed terraces and similar architectural details shall not be considered as part of a residence or garage.

3. Further Assurances. University and Trustee agree to hereafter do such acts and execute such documents as may be reasonably necessary to carry out the purposes and intent hereof, including with respect to any amendment, restatement or extension of the Governing Documents.

UNIVERSITY DEVELOPMENT, INC.,
a Texas corporation
"Declarant"

GARY B. MADDOX, Trustee
GARY B. MADDOX, TRUSTEE

By:

AMAD AL-BANNA, President

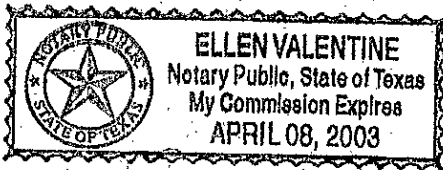
ACKNOWLEDGEMENTS

STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared GARY B. MADDOX, TRUSTEE, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 20th day of February, 2003.



Ellen Valentine

Notary Public in and for the
State of Texas

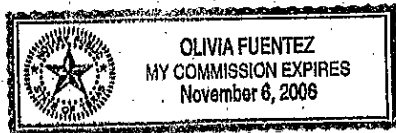
Name: ELLEN VALENTINE

My Commission Expires: 4/8/03

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 20th day of February, 2003, by AMAD AL-BANNA, President of UNIVERSITY DEVELOPMENT, INC., a Texas corporation. on behalf of the corporation.



Olivia Fuentez

Notary Public in and for the
State of Texas

Name: Olivia Fuentez

My Commission Expires: 11-6-06

NO. 10 FOR TEXAS AMERICAN TITLE COMPANY
150 96 1173

08/16/96 200244677 S072477 151.00

S072477

**THIRD SUPPLEMENTAL DECLARATION OF PROTECTIVE COVENANTS FOR
NORTHBOROUGH, SECTION TWO AND SECTION THREE
AND ASSIGNMENT OF DEVELOPER'S RIGHTS**

THE STATE OF TEXAS

§

COUNTY OF TEXAS

§

509-64-3906

This THIRD SUPPLEMENTAL DECLARATION OF PROTECTIVE COVENANTS FOR NORTHBOROUGH, SECTION TWO AND SECTION THREE AND ASSIGNMENT OF DEVELOPER'S RIGHTS (hereinafter designated "Assignment") is made this 14 day of August, 1996, by GARY B. MADDOX, TRUSTEE (hereinafter designated "Assignor"), for the benefit of I-45 NORTHBOROUGH 88.3, L.P. (hereinafter designated "Assignee"), a Texas limited partnership, whose mailing address is c/o JMGP Investments, Inc., 2323 S. Shepherd Drive, Suite 900, Houston, Texas 77019, upon the following facts:

Recitals

WHEREAS, Gibraltar Savings Association (hereinafter designated "Original Developer"), has heretofore executed that certain Declaration of Protective Covenants for Northborough, Section One (hereinafter designated "Declaration"), filed for record under Harris County Clerk's File No. F599038, recorded under No. 195-04-0514 in the Official Public records of Real Property of Harris County, Texas, imposing on Northborough, Section One, a subdivision in Harris County, Texas, according to the plat thereof recorded in Volume 265, Page 47 of the Map Records of Harris County, Texas, all those certain covenants, restrictions, charges, easements, and liens therein set forth for the benefit of said property and each owner thereof; and

WHEREAS, such Declaration has been amended by "First Amendment to Protective Covenants for Northborough, Section One", dated July 20, 1978, filed for record under Harris County Clerk's File No. F700145 and recorded under No. 101-96-0103 in the Official Public Records of Real Property of Harris County, Texas, by "Second Amendment to Protective Covenants for Northborough, Section One" dated October 18, 1978, filed for record under Harris County Clerk's File No. F823386 and recorded under No. 110-85-2238 in the Official Public Records of Real Property of Harris County, Texas, and by "Third Amendment to Protective Covenants for Northborough, Section One," dated November 20, 1978, and filed for record under Harris County Clerk's File No. F864512 and recorded under No. 113-82-0214 in the Official Public Records of Real Property of Harris County, Texas; and

WHEREAS, the Original Developer has heretofore executed that certain Supplemental Declaration of Protective Covenants for Northborough, Section Two and Section Three ("Original Supplemental Declaration"), dated November 20, 1979, filed for record under Harris County Clerk's File No. G330075 and recorded under No. 144-93-2105 in the Official Public Records of Real Property of Harris County, Texas, said Original Supplemental Declaration having been amended by that certain First Amendment To Supplemental Declaration of Protective Covenants

EXHIBIT "A"

T:\HFC\42079\026\ASSIGN.DEV

1

509-64-3907

For Northborough, Section Two and Section Three, dated September 23, 1982, filed for record under Harris County Clerk's File No. H635869, and recorded under No. 026-90-2329 in the Official Public Records of Real Property, Harris County, Texas and by that certain Second Amendment To Supplemental Declaration of Protective Covenants For Northborough, Section Two and Section Three, filed for record under Harris County Clerk's File No. H635869 in the Official Public Records of Real Property, Harris County, Texas, and said Original Supplemental Declaration having been supplemented by that certain Second Supplemental Declaration of Protective Covenants For Northborough, Section Two, dated August 7, 1984, filed for record under Harris County Clerk's File No. J651133, and recorded under No. 091-90-2526 in the Official Public Records of Real Property, Harris County, Texas (such Declaration and Original Supplemental Declaration, as so amended and supplemented, being hereinafter designated the "Supplemental Declaration"); and

WHEREAS, (i) Assignor is the owner of certain real property located within the Northborough Subdivision, located in Harris County, Texas (hereinafter designated the "Assignor's Property"), which Assignor's Property is subject to the Supplemental Declaration, (ii) Assignor is the current owner, assignee and successor-in-interest for all purposes of any and all rights, duties and obligations of the Original Developer under the Supplemental Declaration (hereinafter designated "Developer Rights"), (iii) on this date, Assignor will convey eight (8) certain tracts or parcels of land containing a total of approximately 87.84 acres lying and being located in the State of Texas, County of Harris, more fully described in Exhibit "A" attached hereto and included herein for all purposes (hereinafter designated the "Assignee's Property") to Assignee (which Assignee's Property consists of a portion of Assignor's Property), (iv) Assignor desires to grant, sell, convey, transfer, and assign all of the Developer Rights pertaining to Assignee's Property to Assignee, and (v) Assignee is unwilling to purchase Assignee's Property unless Assignor assigns to Assignee all of the Developer Rights pertaining to the Assignee's Property, and Assignor and Assignee both believe it is necessary to assign such rights in order to provide for the orderly development of Assignee's Property;

NOW, THEREFORE, in consideration of the premises hereof and covenants and promises contained herein, together with the consideration set forth herein, Assignor hereby imposes upon Assignee's Property the following covenants and restrictions, which shall be covenants running with the land and shall be binding upon any purchaser, grantee, owner or lessee of Assignee's Property and upon the respective heirs, executors, devisees, successors and assigns of such purchaser, grantee, owner or lessee, and makes this Assignment as follows:

1. For and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid to Assignor by Assignee, the receipt and sufficiency of which are hereby acknowledged, stipulated and confessed by Assignor, Assignor by these presents does hereby **ASSIGN, TRANSFER, GRANT, SELL, and CONVEY** unto Assignee all of the Developer Rights under the Supplemental Declaration which pertain to or in any way affect Assignee's Property, together with any and all manner of claims, demands, or causes of action of Assignor against the Assignee, whether now existing or arising in the future, with respect to such Developer

T:\HF\CM2079\26\ASSIGN.DEV

2

500-64-3908

Rights or any other restrictions or provisions set forth in the Supplemental Declaration, to the extent such claims relate to Assignee's use or development of Assignee's Property.

2. Assignor hereby represents and warrants (i) that Assignor is the current owner, holder, assignee and successor of, in and to all of the Original Developer's rights, duties and obligations under the Supplemental Declaration, and (ii) that Assignor has the complete and unrestricted right, power and authority to transfer the Developer Rights pertaining to Assignee's Property to Assignee, (iii) that the execution and delivery of this Assignment does not and will not violate any of the provisions of any agreements to which Assignor is a party or by which Assignor or said Developer Rights are otherwise bound, (iv) that Assignor has not made any prior assignment, hypothecation, pledge or transfer of all or any portion of the Developer Rights conveyed hereby; and (v) that, upon its execution, this Assignment will for all purposes be a valid and binding obligation of Assignor enforceable in accordance with the terms hereof. Assignor hereby agrees to warrant and forever defend the title of the Developer Rights assigned hereunder unto Assignee, and Assignee's successors or assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

3. Assignor hereby expressly acknowledges and agrees (i) that the Developer Rights conveyed hereby include (but are not limited to) all of the Original Developer's rights and duties under Article IV of the Original Supplemental Declaration, (ii) that Assignee shall have the sole right and authority to act as and for the Original Developer and the Architectural Control Committee (as defined in the Original Supplemental Declaration) with respect to any construction, architectural or development matters related in any way to any and all tracts or portions of Assignee's Property and (iii) that neither Assignor nor any assignee, successor or representative of Assignor or any other person or owner of property in Northborough, Section One, Section Two, or Section Three shall have any further authority under said Article IV with respect to matters related in any way to Assignee's Property (Assignor having herein irrevocably assigned all of Assignor's rights to serve as Developer or Architectural Control Committee with respect to Assignee's Property).

4. Assignor hereby acknowledges and agrees that Assignee would not be proceeding with the purchase of the Assignee's Property from Assignor were it not for the assignments, provisions, representations and warranties contained in this Assignment. The provisions of this Assignment shall extend to and be binding upon the respective successors and assigns of Assignor and Assignee and shall survive the closing of the sale of the Assignee's Property from Assignor to Assignee.

5. Invalidity of any one or more of the covenants, restrictions, conditions, or provisions contained in this Assignment, or any part thereof, shall not in any way affect any other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and any grammatical changes necessary to make the provisions hereof applicable to any type of person, entity or individuals, male or female, shall be assumed.

509-64-3909

6. Assignor, in his capacity as successor to the Original Developer, hereby declares that the provisions of this assignment are hereby made a part of the Original Supplemental Declaration for all purposes, to be applicable only to those tracts or portions of tracts which (i) are currently subject to the Supplemental Declaration, and (ii) are a part of Assignee's Property. Assignee hereby agrees to assume the rights, duties and obligations of the Original Developer set forth in the Original Supplemental Declaration, but only with respect to those tracts or portions of tracts which (i) are currently subject to the Supplemental Declaration, and (ii) are a part of Assignee's Property, as of and from the date of this Assignment. Neither the declaration made in the first sentence of this Paragraph 6 nor any other provision of this Assignment shall be construed in any way so as to make any tract or portion of Assignee's Property subject to the Supplemental Declaration which is not currently (prior to this Assignment) subject to the Supplemental Declaration.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date first written above.

ASSIGNOR:

G. B. Maddox, Trustee
GARY B. MADDOX, TRUSTEE

THE STATE OF TEXAS

§
§
§

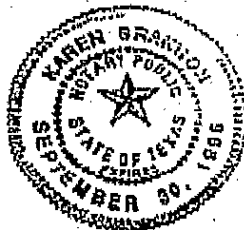
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Gary B. Maddox, Trustee, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 14 day of August, 1996.

STAMP NAME AND DATE OF
EXPIRATION OF COMMISSION
BELOW:

Karen Brannon
NOTARY PUBLIC, STATE OF TEXAS



T:\HFC\2079001\ASSIGN.DEN

4

509-64-3910

ASSIGNEE:

I-45 NORTHBOROUGH 88.3, L.P., a
Texas limited partnershipBy: JMGP INVESTMENTS, INC., a Texas
corporation, General PartnerBy: James A. McAlister, President

RECORDERS MEMORANDUM
ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

THE STATE OF TEXAS

COUNTY OF HARRIS

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared James A. McAlister, acting in his capacity as President of JMGP INVESTMENTS, INC., General Partner of I-45 NORTHBOROUGH 88.3, L.P., known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 14 day of August, 1996.

STAMP NAME AND DATE OF
EXPIRATION OF COMMISSION
BELOW:

Karen Brennan
NOTARY PUBLIC, STATE OF TEXAS



ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
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 Harris County, Texas on

FEB 24 2003

AFTER RECORDING RETURN TO:

Howard F. Cordray, Jr.
Cordray & Goodrich
5847 San Felipe, 22nd Floor
Houston, Texas 77057



Dorothy B. Layman
COUNTY CLERK
HARRIS COUNTY, TEXAS

T:\HFCM207\026\ASSIGN.DSV

5

FILED
2003 FEB 24 PM 2:13
COUNTY CLERK
HARRIS COUNTY, TEXAS