

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
EAGLEWOOD TOWNHOMES OWNERS ASSOCIATION**

RESOLUTION TRUST CORPORATION AS RECEIVER FOR VICTORIA SAVINGS ASSOCIATION, duly chartered under and by virtue of the Laws of the State of Texas, is the Owner of all that certain property located in the County of Smith, State of Texas, being all of EAGLEWOOD TOWNHOMES (herein called "EAGLEWOOD TOWNHOMES"), an Addition to the City of Tyler, on the following described real property:

Lots 1 -8, 45 - 48, 51 - 80, and 81, N.C.B. 1474 B, Eagles Nest Addition, City of Tyler, Smith County, Texas, as recorded in Slide 211 - A, Cabinet B, of the Plat Record of Smith County, Texas.

WITNESSETH:

RESOLUTION TRUST CORPORATION AS RECEIVER FOR VICTORIA SAVINGS ASSOCIATION hereinafter sometimes called "Declarant" is desirous of establishing reasonable restrictions, covenants and conditions pertaining to the use of such property in order to enhance the value thereof for all purchasers from the Declarant of the townhomes set out and described hereinbefore.

NOW THEREFORE, for and in consideration of mutual benefit and advantages inuring to each and all the future Owners of said townhomes, the following restrictions, covenants and conditions are hereby placed on each and every townhome located therein and are hereby made a part of each and every deed hereafter executed and delivered the same as if they were set out and contained therein.

ARTICLE I
DEFINITIONS

As used in this Declaration, the terms set forth below shall have the meanings indicated:

1. Association shall mean EAGLEWOOD TOWNHOMES OWNERS' ASSOCIATION, a Texas non-profit corporation to be created after the date hereof, the members of which shall be the Owners of the townhomes described herein within Eaglewood Townhomes, its successors and assigns.
2. Act shall mean the Texas Non-Profit Corporation Act as set forth in Article 1896 of the Texas Revised Civil Statutes, as amended from time to time.
3. Board shall mean the Board of Directors of the Association.
4. Buildings shall mean the structures erected on each lot.
5. Townhome shall mean a single family residence unit joined together by a common wall, or walls, and/or roof and/or foundation.
6. Bylaws shall mean the bylaws adopted by the Association and the amendments thereto.
7. Common Area or Common Elements shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area and/or Common Elements to be owned by the Association at the time of the conveyance of the first townhome is as follows: All of the property covered by the recorded subdivision plat of Eaglewood Townhomes, and shall include for example, but not by way of limitation, all recreational facilities, community facilities, the swimming pool, trees, landscaping, fencing,

pipes, wires, conduits, private streets, street lighting, and other public utility lines situated thereon, but does not include any portion of the 42 townhomes as shown on said recorded subdivision plat.

8. Lot shall mean and refer to any of the 42 lots shown upon the recorded subdivision plat of Eaglewood Townhomes.

9. Land shall mean all of the property covered by the recorded subdivision plat of Eaglewood Townhomes.

10. Annual Maintenance Expense Charge shall mean the assessment levied for maintenance, upkeep, management and operation of the Common area and Common Elements as determined by the Board of Directors.

11. Maintenance Fund shall mean common area and any accumulation of maintenance expense charges collected by the Association for the continued maintenance, repair and operation of the Common Area and/or Common Elements, as described in Section 7 above.

12. Member shall mean and refer to those persons entitled to membership as provided in the Declaration.

13. Owner shall mean and refer to the record Owner (including Decedent), whether one or more persons or entities, of a fee simple title to any townhome which is a part of the Eaglewood Townhomes, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

14. Rules and Regulations shall mean the rules adopted from time to time by the Board of Directors of the Association concerning the management and administration of the Common Area and/or Common Elements for the use and enjoyment of the Owners.

15. Person shall mean and refer to a natural person, corporation, partnership, trustee or other legal entity.

16. Common Area Fence shall mean and refer to those fences surrounding or alongside the outside perimeter of the townhomes or common areas.

17. Unit shall mean and refer to a structure or townhome erected on each lot.

18. Eligible Voter shall mean and refer to a member that is not in arrears on any regular or special assessments or in violation of any rules, regulation, by-laws, or declarations as adopted and amended from time to time by the Association.

19. First Lien Indebtedness shall mean any indebtedness secured by a first and prior lien or encumbrance upon a lot or townhome.

20. First Mortgagee shall mean the holder of a First Lien Indebtedness on any townhome who has requested the Association to notify them of any proposed action that requires the consent of a specified percentage of First Mortgagees.

21. Project shall mean and refer to the land and all improvements located thereon, including without limitation, the Common Areas, Common Elements, the townhomes, the buildings and townhomes.

ARTICLE II MANAGEMENT AND OPERATION

SECTION 1. Membership in the Association. Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separate from Ownership of any townhome which is subject to assessment by the Association. Ownership of such townhome

shall be the sole qualification for membership. A contract purchaser shall not be entitled to vote as a member of the Association unless written approval is provided by the contract seller to the Board of Directors.

SECTION 2. Management by Association. The Association shall have the rights, powers, and duties as set out herein to provide for the maintenance, repair, replacement, administration, insurance and operation required to maintain and repair the common elements as provided for in the Bylaws and in the rules and regulations. To facilitate management of the Project and the administration of the Association and the Project, the Board of Directors may delegate to a manager responsibility for matters of a routine nature, provided only that an agreement evidencing such relationship shall in no event exceed a period of three (3) years, renewable by agreement of the parties thereto for successive one year periods only, and shall be subject to termination by either party without cause and without payment of a termination fee upon not more than ninety (90) days' prior written notice and for cause upon not more than thirty (30) days' prior written notice. In addition to the foregoing, no decision by the Association to establish self-management of the Project after a Manager has been appointed shall be effective unless and until approved by not less than sixty-seven percent (67%) of the total voting membership in the Association and fifty one percent (51%) of the First Mortgagees.

SECTION 3. Initial Board of Directors, Election of First Board. The initial Board of Directors of the Association shall be Peter Bayler Drais, William Payson Hoyt, and Allison Hunter, IV, or others appointed by Declarant concurrently with the recording of this Declaration. Such Board shall serve until the "first Board of Directors" (sometimes hereinafter referred to) is elected by the members. Elections of the first Board of Directors shall be held not later than the earlier to occur of (i) 120 days after 51% of the townhomes have been conveyed by the Declarant or (ii) three (3) years after the first townhome is conveyed by the Declarant.

SECTION 4. Meetings of the Board Directors. The Board of Directors shall meet as set forth in the Bylaws.

SECTION 5. Voting of the Members. Each member, including Declarant, shall have a vote or votes in the Association on the basis of one (1) vote for each townhome owned by such member within the Eaglewood Townhome Association.

(a) **Joint and Multiple Owner Disputes.** In the event that more than one person at any time be the Owner of any townhome, all such persons shall be members and the vote for such townhome shall be exercised by such persons among themselves shall determine. The vote or votes for each townhome shall be cast as a single vote, and fractional votes shall not be allowed. In the event that joint or multiple Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain townhome, it will thereafter be conclusively presumed for all purposes that he was or they were acting with the authority and consent of all the Owners of the same townhome. In the event more than one vote is cast for a particular townhome, none of said votes shall be counted and said votes shall be deemed void.

(b) **Lienholders and Mortgagees.** Persons or entities holding an interest in a townhome merely as security for performance of an obligation shall not be considered members or have a right to vote.

SECTION 6. Declarant as a Member. The Declarant of Eaglewood Townhomes shall be a member of the Association with regard to each townhome owned by such Declarant.

SECTION 7. Records. The Board of Directors shall keep or cause to be kept records with detailed accounts of the receipts and expenditures of the Association. All books, records and financial statements of the Association shall be available for inspection by the Owners and the First Mortgagees, their respective agents and representatives, and the insurers and guarantors of any First Lien Indebtedness, during normal business hours or under other reasonable

circumstances. All books and records of the Association shall be kept in accordance with generally accepted accounting principles, consistently applied, and shall be audited at least once a year by an auditor outside of the organization. The Association shall furnish each Owner, and to each First Mortgagee requesting same in writing, copies of financial statements of the Association within ninety (90) days following the end of each fiscal year of the Association. The Board of Directors shall further make available, during normal business hours or under reasonable circumstances, for the inspection by Owners and the First Mortgagees, their respective agents and representatives, and the insurers and guarantors of any First Lien Indebtedness, the current version of the Declaration, the Bylaws, the Articles of Incorporation of the Association, the minutes of the meetings of the Association, the rules and regulations of the Association and all other documents affecting the Association, the Owners or the Project, as well as all amendments thereto and revisions thereof.

ARTICLE III PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

SECTION 1. Access Easement. Every member shall have a nonexclusive easement for ingress to and egress from such member's townhome which shall be appurtenant to and pass with the title to every townhome.

SECTION 2. Member's Easements of Enjoyment. Every member shall have a nonexclusive easement and right of use and enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every townhome, subject to the following provisions:

- (a) The right of the Association to limit the number of guests of members or tenants.
- (b) The rights of the Association to charge those residents who use the swimming pool, a reasonable fee for use of this facility. The amount of such fee shall be set by the Board of Directors.
- (c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and, in aid thereof, to mortgage said Common Area property. The rights of such mortgagees in said properties shall be subordinate to the rights of the Owners hereunder.
- (d) The right of the Association to deny any member who is thirty (30) or more days in arrears in payment of monthly or special assessments on his/her property or who owes a debt of any kind to the Association, the privilege of voting in any regular or special meeting of the Association, or on any amendment or changes in the Documents of this Association. Such restrictions shall continue in effect until such assessment in arrears, plus penalties, is paid in full.
- (e) The right of the Association to deny the right to use the recreational facilities of the Association to any member, his/her family, guests or tenants while any such member is thirty (30) or more days in arrears in payment of monthly or special assessments on his/her property and such restriction shall continue in effect until such assessment in arrears, plus penalties is paid in full; also, the Association shall have the right to deny the right of use of the recreational facilities to any member, his/her family, guests, or tenants, for any infraction of published rules and regulations pertaining to use of such recreational facilities for a period of not more than thirty (30) days for each such infraction.
- (f) Except as provided in Article XII hereof, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be valid unless an instrument signed and agreed to by two-thirds (2/3) of the members eligible to vote, agreeing to such dedication or transfer has been recorded, and unless written notice of the proposed action is sent to each member of the Association not less than thirty (30) days nor more than fifty (50) days in advance of such proposed action.

SECTION 3. Delegation of Use. Any member may delegate his right of enjoyment to the Common Area and facilitates to the members of his family, his tenants or contract purchasers who reside on the property in accordance with provisions of the Bylaws of the Association. Tenants may not use Common Area facilities unless written authorization from the Owner delegating his rights of these uses to the tenants is on file in the office of the Association. Any lease or rental agreement must be in writing and must be subject to the requirements hereof, the bylaws and the rules and regulations of the Association. No lease may be for a term of less than thirty (30) days.

SECTION 4. Mortgage of Townhomes. An Owner shall be entitled from time to time to mortgage or encumber his townhome by deed of trust or other instrument, but any lien created thereby shall be subject to the terms and provisions of this Declaration, and any mortgagee or other lienholder who acquires a townhome through judicial foreclosure, public sale or other means shall be subject to the terms and provisions of this Declaration, except as specifically provided to the contrary herein. An Owner who mortgages his townhome shall notify the Association giving the name and address of his mortgagee. The Association shall maintain such information in a book entitled "Mortgages of Townhomes", and if the holder, insurer or guarantor of any mortgagee on any townhome has requested such notice by written request to the Association, stating both its name and address and the townhome number and address of the townhome to which such mortgage relates, the Association shall timely notify such holder, insurer and/or guarantor in writing, of the following:

- a) any casualty loss or condemnation that affects either a material portion of the Project or the townhome securing its mortgage;
- b) any sixty (60) day delinquency in the payment of assessments or charges owned by the Owner of any townhome on which it holds the mortgage;
- c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- d) any proposed action that requires the consent of a specified percentage of First Mortgagees as provided herein.

ARTICLE IV
COVENANTS FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each townhome owned within the Properties, hereby covenants, and each Owner of any townhome by acceptance of a Deed therefor, whether or not it shall be so expressed on any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessment or charges, and
- (b) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

Annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the townhome against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such townhome at the time when the assessment fell due. No Owner of a townhome may exempt himself from liability for his contribution toward the common expenses by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his townhome.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the

residents in the Properties and in particular, for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, for the common good of the Project. Such uses shall include, but are not limited to, the cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area as authorized by the Board of Directors, and other facilities and activities including, but not limited to, mowing grass, caring for the grounds, landscaping, swimming pool(s), cabana, and equipment, of the Project, including the common area fences, garbage pickup, water and sewer service furnished to these townhomes by the Association, and other charges required by this Declaration of Covenants and Restrictions or that the Board of Directors of the Association shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for replacement, repair, maintenance, taxes, and other charges as specified herein. The Association will not be responsible for any structural defects or failures in any dwelling unit for any reason.

SECTION 3. Basis and Maximum of Assessments. Each year the Board of Directors shall meet and, after considering the current maintenance costs, annual expenses and needs of the Association shall levy an annual assessment. Such assessment shall include an amount sufficient to establish and maintain an adequate reserve for replacement, repair, maintenance, taxes and insurance (including the amount of any property and/or flood insurance deductible). All Owners shall be obligated to pay the assessments imposed by the Board of Directors. The maximum annual assessment may not be increased each year by more than (3) percent above the maximum assessment for the previous year without a two-thirds (2/3) vote approval by the membership.

SECTION 4. Special Assessments for Capital Improvements. In addition to the assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of financing, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of a quorum of eligible voting members at a meeting duly called for this purpose in accordance with the terms of the by-laws.

SECTION 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all townhomes and may be collected on a monthly basis, i.e. one-twelfth (1/12th) of the annual assessment of each townhome each month.

SECTION 6. Time of Commencement of Annual Assessment: Due Dates. The Board of Directors shall set the amount of the annual assessment against each townhome at least thirty (30) days in advance of each annual assessment period; provided, however, that the Board of Directors shall have the right to adjust the annual assessment as long as any such quantitative adjustment does not exceed the maximum permitted hereunder with thirty (30) days written notice given to each Owner. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and, unless otherwise provided, the Association shall collect each month from the Owner of each townhome one-twelfth (1/12th) of the annual assessment for such townhome. The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified townhome have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 7. Commencement of Obligation to Pay Assessment. The obligation to pay assessments with respect to each townhome shall be on the first day of the calendar month following the month in which this Declaration is recorded. Each Owner, including the Declarant, shall be obligated to commence payment of all assessments against his townhome on the date such townhome is conveyed to such Owner. If such date is other than the first day of a month, then such Owner shall be obligated to pay only a prorata share of the assessment against such townhome based on the number of days during such month that such Owner will

hold title to such townhome.

SECTION 8. Effect of Non-Payment of Assessments, Remedies of the Association. Each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Declarant hereby reserves and assigns to the Association, without recourse, a vendor's lien and a contractual lien against each townhome, to secure the payment of all annual or special assessments and in addition, an Owner's share of annual or special assessments shall be and constitute a lien and encumbrance upon such Owner's townhome in favor of the Association. This contractual lien shall be deemed to include the "power of sale" as provided by Section 51.002 of the Texas Property Code, thus granting to the Association the right to conduct a non-judicial foreclosure as one of its express remedies incident to the enforcement of such lien.

The foreclosure by a First Mortgagee of a townhome in order to satisfy First Lien Indebtedness will extinguish the subordinate lien for any assessments which became payable prior to the date of such foreclosure sale, but will not relieve any subsequent Owner from paying further assessments. Each Owner, by acceptance of a deed to a townhome, hereby expressly vests in the Association a vendor's lien against each townhome to secure the payment of any annual or special assessments which may be levied pursuant to the terms hereof, and the expenses incurred in connection with the enforcement thereof, including without limitation interest at a rate of twelve percent (12%) per annum from the date such assessments are due until said assessments are paid plus costs and reasonable attorney's fees. Each Owner, by acceptance of a deed to a townhome hereby expressly vests in the Association, or its agent, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid continuing lien by all methods available for the enforcement of such lien. Both such liens established herein shall be prior and superior to all other liens and encumbrances upon such townhome, regardless of when created, evidenced or perfected, other than the liens securing the payment of First Lien Indebtedness (if such lien was recorded before the delinquent assessment was due), and the liens for unpaid taxes, assessments and other governmental impositions. Any assessment if not paid within ten (10) days after the due date, a penalty of up to TWENTY FIVE AND NO/100 DOLLARS (\$25.00) per month (but in no event in excess of the maximum amount permitted by applicable law) for each month any annual or special assessment remains unpaid shall be added thereto. The Association may also temporarily suspend the membership rights of any Owner who is in default of payment of any assessment in accordance with the Bylaws. The Association may pursue any other remedies provided by law in addition or in lieu of any and all the above, against any Owner who is in default of the payment of an annual or special assessment. Each assessment against a townhome shall be the personal obligation of the person who owned the townhome at the time the assessment became due, and shall inure to successors in title unless such successor shall agree to assume the obligation.

SECTION 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessment created herein:

- (a) All properties dedicated to and accepted by a local public authority;
- (b) The Common Area;
- (c) All properties owned by a charitable or non-profit organization exempt from taxation under the laws of the State of Texas. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

SECTION 10. Working Capital Contributions.

- (a) Each Owner shall, at the time he purchases a townhome from Declarant, contribute, an amount to the Association equal to two (2) months assessments for Common Expenses for such townhome (the "Working Capital Contribution"). Such amount shall be a contribution of working capital to the Association and shall not be considered as an advance of assessments for Common Expenses.

(b) Notwithstanding the foregoing, Declarant shall, on or before sixty (60) days following the conveyance of the first townhome make the Working Capital Contribution on behalf of each townhome which is then still owned by Declarant.

(c) The Working Capital Contribution shall be made only once with respect to each townhome, and any one who purchases a townhome from Declarant after Declarant has made the Working Capital Contribution with respect to such townhome, shall at the time of such purchase, in lieu of the obligation set forth in subparagraph (a) hereof, reimburse Declarant for the Working Capital Contribution which it made on behalf of such townhome.

ARTICLE VI INSURANCE

SECTION 1. Insurance. (a) The Association shall obtain and maintain, as a common expense, the following described insurance coverage:

(1) A policy of property insurance covering all Common Areas (excluding the Land, foundation and other items normally excluded from coverage) including the buildings and buildings service equipment which constitute a part of the Common Areas and/or Common Elements as well as the personal property and supplies, if any, which belong to the Association. Such policy shall insure, for 100% of the full replacement value of the items covered, against loss or damage by fire or other perils normally covered by the standard extended coverage endorsement available in the State of Texas and against all other perils customarily covered with respect to townhome projects which are similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, if such endorsement is available, and by a steamboiler and machinery coverage endorsement, providing at least the lesser of \$2,000,000.00 or the insurable value of the building(s) having the boiler or machinery coverage for each accident at each location. In addition, such policy shall include typical construction code endorsements if there is a construction code provision that requires changes to undamaged portions of the buildings even when only part of the project is destroyed by an insured hazard. The maximum deductible (unless a higher amount shall be required by state law) shall be the lesser of \$10,000.00 or 1% of the policy face amount. If an "agreed amount and inflation guard endorsement" is available for such portion of insurance, it shall be added to such policy.

(2) A comprehensive general liability insurance policy covering all common area and public ways on or about the Project. Such coverage shall not be for less than \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of law suits related to employment contracts of the Association. Such policy shall include "severability of interest" in its terms.

(3) Blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, bonds (providing the same coverage as provided herein for the Association) will be obtained and maintained for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Fidelity bonds will be maintained on such terms and with such surety or sureties, conditions, penalties or securities as shall be deemed proper by the Board of Directors; provided, however, (i) that no such bond shall be written in a penal amount which is less than the estimated maximum of funds including reserve funds, in the custody of the Association or Manager at any given time, during the term of each, or less than a sum equal to three months' aggregate assessments on all townhomes plus reserve funds, (ii) such bonds shall name the Association as the obligee (and as additional obligee on any bonds maintained by the Manager for its officers, employees and agents), (iii) the premiums for such bonds (except with respect to bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association, (iv) such bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving

without compensation from the definition of "employees", or similar terms or expression, (v) all such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least fifteen (15) days' prior written notice to the Association, or to any insurance trustee with whom the Association has entered into a written insurance trust agreement and to any First Mortgagee (or service for a holder of First Lien Indebtedness). In addition to the foregoing notice, in the event of cancellation or substantial modification, a similar notice to the same recipients shall be provided for in such bonds to be given at least fifteen (15) days prior to the lapse of any such bonds.

(4) If any part of the Project is in a special flood hazard area, a "master" or "blanket" policy of flood insurance covering any buildings or other property constituting a portion of the Common Area. Such coverage shall not be for less than the lesser of 100% of the insurable value of the facilities covered or the maximum coverage available under the appropriate National Flood Insurance program. The maximum deductible (unless a higher amount shall be required by state law) shall be the lesser of \$5,000.00 or 1% of the policy face amount.

(b) The name of the insured under the foregoing described policies shall be set forth substantially as follows:

"Eaglewood Townhomes" for the use and benefit of the individual Owners (which Owners may be designated by name if required by Law)."

Notwithstanding the foregoing, the policies may be issued in the name of an authorized representative of the Association, including any insurance trustee (or any successor to such trustee) with whom the Association has entered into an insurance trust agreement for the use and benefit of the Owners. Loss payable provisions shall be in favor of the Association (or such insurance trustee) as a trustee for each Owner and each such Owner's mortgagee. Each Owner and such Owner's mortgagee, if any, shall be beneficiaries of such policies to the extent of their voting interest in the Association.

(c) Insurance policies shall contain the standard mortgage clause, must name as mortgagee either FNMA or its servicer (and if such a service is so named as mortgagee, its name must be followed by the phrase "its successors and assigns"), and such other mortgagee protection clauses as may be required by the First Mortgagees. No such policies nor the constituent documents of the company issuing them shall contain any provisions for requiring contributions or making assessments against the Association, the Owners, or any First Mortgagee (or any successor or assign of any First Mortgagee) nor may such policies or such constituent documents provide that loss payments are contingent upon any action by such company's board of directors, policy holders or members, nor shall such policies contain any limiting clauses (other than insurance conditions) which could prevent any Owner or First Mortgagee from collecting insurance proceeds.

(d) Upon conveyance by the Declarant, each owner of a Townhome shall maintain general hazard insurance in an amount equal to the replacement cost of the Townhome. All insurance policies must provide that they will not lapse, be cancelled or modified except after fifteen (15) days' prior written notice to the Association and to each First Mortgagee listed as such on such insurance policy.

(e) Insurance policies shall provide:

- (1) that insurance trust agreements will be recognized;
- (2) that any right of subrogation against individual Owners is waived;
- (3) that such policy is primary in the event any Owner has other insurance covering the same loss.

(f) The Board of Directors shall have the express authority, on behalf of the Association, to name as insured an authorized representative, including any trustee (or successor thereto) with whom the Association has entered into any insurance trust agreement, who shall have exclusive authority to negotiate losses under any policy providing the property or liability insurance required to be provided herein.

(g) By acceptance of a deed of a townhome, each Owner shall be deemed to have irrevocably appointed the Association (which appointment shall be deemed a power coupled with an interest), together with any insurance trustee, successor trustee or authorized representative designated by the Association, as such Owner's attorney-in-fact for the purpose of purchasing and maintaining the insurance required hereunder as well as for collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose and the Association or such trustee, successor trustee or authorized representative must receive, hold or otherwise properly dispose of any proceeds of insurance in trust for the Owners and the First Mortgagees as their interests may appear.

(h) The Association shall be entitled to obtain and maintain such additional insurance coverage hereunder as the Board of Directors may deem necessary or appropriate. The premiums for all insurance coverage maintained by the Association pursuant to this section shall constitute a common expense and be payable by the Association.

(i) An Owner shall be responsible for obtaining and maintaining, at his sole cost and expense, insurance covering his townhome, all alterations, additions and improvements to his townhome and all other personal property located thereon or constituting a part thereof. Nothing herein shall be deemed or construed as prohibiting an Owner, at his sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverage as he may deem necessary or appropriate.

(j) The Association and each Owner, by his possession or acceptance of title to a townhome, hereby waives any and every claim which arises or may arise in its or his favor against any other Owner or the Association for any and all loss of, or damage to, its or his property located within or upon, or constituting a part of, the Project, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent such loss or damage is recoverable hereunder. Inasmuch as the foregoing mutual waivers will preclude the assignment of any such claim by way of subrogation or otherwise) to an insurance company (or any other party), the Association and each Owner immediately shall give to each insurance company written notice of the terms of this mutual waiver, and cause such policies to be endorsed, if necessary, to prevent the invalidation of such coverage by reason hereof.

(k) The Board of Directors shall not be liable for any failure to obtain a policy which meets the requirements of this Article, if such requirements are not attainable after the Board has expended its best efforts to obtain a policy which meets such requirements.

ARTICLE VI LOSS AND OBSOLESCENCE

SECTION 1. Loss. In the event of damage to facilities, building, etc., forming property of the Association, which area is covered by insurance on the Common Area carried by the Association, the Board of Directors shall advertise for sealed bids for such construction or repair from any properly licensed contractor(s). The Board of Directors may then negotiate with any contractor who submits a sealed bid. Such contractor shall also furnish proof of worker's compensation and any other necessary insurance coverage as may be deemed necessary by the Board of Directors or as required by state or local statutes.

If proceeds from the insurance are not sufficient to cover repair and/or reconstruction of such buildings, facilities, etc., then the Board of Directors shall levy a special assessment in an amount equal to such deficiency of insurance proceeds in an equal amount against each

townhome in the Eaglewood Townhomes. Such special assessment may be levied without a vote of the members of the Association. Written proof of receipt of proceeds from the insurance coverage, the cost of repair and/or reconstruction and deficiency of an amount necessary to complete such repair and/or reconstruction shall be posted in a readily accessible location in the office of the Association, and each Owner shall be notified in writing that the special assessment will be made and the reasons therefor.

In the event insurance proceeds shall be in an amount in excess of the amount needed to repair and/or reconstruct such damaged facilities, buildings, etc., then such excess amount shall be deposited to the account of the "Eaglewood Townhomes Owners Association, Inc." in the bank used regularly by the Association. Notice of such action, with proper figures, shall be posted in the office of the Association and each Owner shall be furnished with notice in writing of such action by the Board of Directors.

The Board of Directors or its duly authorized agents, shall have no authority to insure individual townhomes or pay premiums for insurance on individual townhomes located in the Eaglewood Townhomes. It is the sole responsibility of each individual Owner to obtain liability, theft, casualty or other insurance covering personal loss or damage to or on his property. Further it shall be the individual Owner's responsibility for maintaining any and all insurance he chooses to obtain on his property. The Owner may, if he wishes, at his own expense provide as he sees fit, homeowner liability insurance, casualty insurance, theft insurance or other insurance covering personal loss or damage.

In the event of damage or destruction by fire or other casualty to any townhome, townhome roof, garage or storage area covered by insurance written in the name of an individual Owner, said Owner, with the concurrence of the mortgagor, if any, shall contract to repair or rebuild such damaged portions of the exterior of the townhome, townhome roof, garage or storage area in a good workmanlike manner in conformance with the original plans and specifications of said property, upon receipt of insurance proceeds.

In the event such Owner refuses or fails to contract to repair and/or rebuild and all such damage to the exterior of the townhome, townhome roof, garage or storage area within ninety (90) days after such damage occurs, the Association, by and through its Board of Directors is hereby irrevocably authorized by such Owner to rebuild and/or repair such exterior damage of the townhome, townhome roof, garage or storage area in accordance with the original plans and specifications of the exterior of such townhome, townhome roof, garage or storage area. The Owner then irrevocably agrees to pay the Association an amount equal to the actual cost of such repair and/or rebuilding and such indebtedness shall be repaid in installments, then the Owner irrevocably agrees to pay to the Association, interest on such indebtedness in an amount equal to interest being charged by banks in the area for home improvement loans. The Association shall have then securing payment of such sum identical to that provided above in the section securing the payment of insurance premiums.

SECTION 2. Matters Relating to Restoration and Repairs. Any restoration and repair work undertaken by the Association pursuant to Section 1 shall be performed in as good and workmanlike manner with a view to restoring the improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Association be responsible for restoring, repairing or replacing any improvements to a townhome made by an Owner, or the contents located in such Owner's townhome. All such restoration and repair work, whether done by the Association or an Owner, shall be effected in a manner so as to observe all vertical and horizontal boundaries existing prior to such damage or destruction.

SECTION 3. Obsolescence of Common Area. In the event not less than seventy-five percent (75%) of the total voting membership in the Association shall determine at a meeting of the Association duly called for purposes of considering same that the Common Area, or any part thereof, are obsolete, the Association promptly shall proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a special assessment payable by the Owners within thirty

(30) days of the date notice of such special assessment is delivered to them by the Association.

SECTION 4. Sale or Termination of Project. In the event not less than one hundred percent (100%) of the total voting membership in the Association shall determine at a meeting of the Association duly called for purposes of considering same that all or any portions of the Project shall be sold or that the Project is obsolete, the Association, after first obtaining the written consent of sixty-seven percent (67%) of the First Mortgagees, promptly shall proceed with the sale thereof or, in the event of the obsolescence of the Project, the sale of the Project in its entirety. Any proceeds from such sale shall be received, held and applied for and on account of the Owners as provided in Section 1 above. Nothing herein contained shall be deemed to limit or affect the sale of any townhome by the Owner thereof.

SECTION 5. Association as Attorney-in-Fact. Each Owner, by acceptance or possession of title to a townhome, hereby irrevocably makes, constitutes and appoints the Association, and each and everyone of its successors in interest hereunder, as his true and lawful attorney-in-fact, for and in his name, place and stead, upon the damage or destruction of the Project, or any part thereof, or upon any determination by the Owners made pursuant to this Article VI, to take any and all actions, and to execute and deliver any and all instruments, as the Board of Directors may, in their sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article VI, hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the Project as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. It is intended by this Section 5 to authorize the Association, in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article VI as aforesaid, including, without limitation, the power and authority to make and settle claims under any insurance policies maintained by the Association, contract for and with respect to restoration and repair work, contract for and with respect to replacements and improvements to the Common Area (to the extent authorized as contemplated by Section 3), to contract for and with respect to a sale of the Project (to the extent authorized as contemplated by Section 4), and to execute and deliver all instruments necessary or incidental to any such actions.

SECTION 6. Substantial Damage. If two-thirds (2/3) or more of the townhomes are damaged or destroyed by such casualty, all damages and awards shall be held for the account of all Owners, and their mortgagees, and their interest shall appear, as provided herein, in proportion to the percentage interest equal to the percentage voting interests previously held by each Owner in the Association and this Declaration shall terminate upon such payment. Upon such termination, the townhomes and Common Areas shall be deemed to be regrouped and merged into a single estate owned jointly, in undivided interest by all Owners as tenants-in-common in the percentage interests equal to the percentage voting interests previously held by each Owner in the Association.

ARTICLE VII CONDEMNATION

SECTION 1. General Provisions. If all or any part of the Project is taken or threatened to be taken by eminent domain or by action in the nature of eminent domain (whether permanent or temporary) the Board of Directors and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Board of Directors shall give such notice, as it is received, of the existence of such proceeding to all Owners and to all First Lien Mortgagees. The expense of participation on such proceedings by the Board of Directors shall be borne as a common expense. The Board of Directors is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board of Directors in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board of Directors, acting as trustee, and such damages or awards shall be applied or paid as hereinafter provided. Any restoration or repair of the Project following a partial condemnation shall be performed in accordance with the provisions of this

Declaration and shall follow, as nearly as possible, the original plans and specifications for the Project, unless otherwise approved by all First Mortgagees.

SECTION 2. Taking of One Townhome. In the event of any taking of a townhome by eminent domain or sale or other transfer in lieu thereof, the Owner and his mortgagee, if any, of such townhome shall be entitled to the award for such taking and after payment thereof, he and his mortgagee shall be divested of all interest in the Project if such Owner shall vacate and abandon his townhome by virtue of such taking. If any repair or rebuilding of the remaining portions of the Project is required as a result of such taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners owning a majority interest in the Association either to rebuild or repair the Project or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, nor shall be undertaken, the remaining portion of the Project shall be reserved and the Declaration shall be amended to reflect such taking.

SECTION 3. Taking of Common Area. In the event an action in eminent domain is brought to condemn a portion of the Common Area together with or apart from any townhomes, the Board of Directors, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking of Common Area only, all damages and awards shall be determined for such taking as a whole. After the damages or awards for such taking are determined, such damages or awards shall be deposited and held as provided in Article VI, Section 1 above with regard to excess insurance proceeds. The Board of Directors may, if it deems advisable, call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore as far as possible the Common Area taken or damaged. In the event it is determined that such Common Area should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Map attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners.

SECTION 4. Taking of Several Townhomes. In the event that such eminent domain proceeding results in the taking of or damage to less than two thirds (2/3) of the townhomes, then the damage and awards for such taking shall be determined for each townhome and the following shall apply:

(a) The Board of Directors shall determine which of the townhomes damaged by such taking may be habitable for the purposes set forth in the Declaration, taking into account the nature of this Project and the reduced size of each townhome or lot incident thereto so damaged.

(b) The Board of Directors shall determine whether it is reasonably practicable to continue the use of the Project including those damaged townhomes which may be habitable, as a townhome project in the manner provided in this Declaration.

(c) In the event the Board of Directors determines, with the consent of fifty-one percent (51%) of the First Mortgagees and not less than sixty-seven percent (67%) of the total voting membership in the Association, that it is not reasonably practical to continue the use of the damaged townhomes and the damaged townhomes which can be made habitable as a townhome project, then the Common Areas shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interest by all Owners, as tenants-in-common, in the percentage interests equal to the percentage voting interests previously held by each Owner in the Association.

(d) In the event the Board of Directors determines that it will reasonably be practicable to continue the use of the undamaged townhomes and the damaged townhomes which can be made habitable as a townhome project, then the damages and awards made with respect to each townhome which has been determined to be capable of being made habitable shall be applied to repair and reconstruct such townhome so that it is made habitable. Any excess shall

be delivered to the Owner of such townhome or his mortgagee as their interest may appear. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of those townhomes which are being repaired or reconstructed so as to be made habitable. With respect to those townhomes which may not be made habitable, the award made with respect to each townhome shall be paid to the Owner of such townhome or his mortgagee or mortgagee, as their interests may appear, and the remaining portion of such townhome, if any, shall become a part of the Common Area and further repair and use of such townhomes shall be determined by the Board of Directors. Upon the payment of such award for the account of such Owner as provided in the preceding sentence, such townhome shall no longer be a part of the Project, and the membership in the Association and easements appurtenant to such townhome shall terminate.

(e) If two-thirds (2/3) or more of the townhomes are taken or damaged by such taking, all damages and awards shall be held for the account of all Owners, and their mortgagees, as their interests shall appear, as provided herein, in proportion to the percentage interests equal to the percentage voting interests previously held by each Owner in the Association and this Declaration shall terminate upon such payment. Upon such termination, the townhomes and Common Areas shall be deemed to be regrouped and merged into a single estate owned jointly, in undivided interest by all Owners as tenants-in-common in the percentage interests equal to the percentage voting interests previously held by each Owner in the Association.

SECTION 5. Payment of Awards and Damages. Any damages or awards provided in this Article to be paid to or for the account of any Owner by the Board of Directors, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that townhome; secondly, to amounts due under any mortgage instruments duly perfected; thirdly, to the payment of any common charges or special assessments charged to or made against the townhome and unpaid; and finally to the Owner.

ARTICLE VIII PARTY WALLS

SECTION 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes, upon the Properties and placed on the dividing line between the townhomes shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Article, the general rules of the law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The Owner of a townhome shall not through or make or commission to be made, any penetration through a party wall for any purpose whatsoever.

SECTION 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared; provided, however, that if any damage or repair is made necessary by act or negligence of one Owner of such party wall, then that Owner who is responsible for such damage shall be liable for the entire cost of repair or replacement of such party wall.

SECTION 3. Destruction by Fire or Other Casualties. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repairs not paid out of the proceeds of the same, an Owner who has used the wall or whose tenant(s) has used the wall, shall restore it, and if the other Owner or his tenant(s) thereafter make use of the wall, such Owner shall contribute to the cost of restoration thereof in equal proportions without prejudice to the right of any such Owner to call for a larger contribution from the others under the rule of law regarding liability for negligence or willful acts or omissions.

SECTION 4. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner, who by his negligent or willful act or whose tenant(s) by his/their negligent 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 5. Right to Contribution Runs With Land.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

ARTICLE IX
ARCHITECTURAL CONTROL

It shall be the responsibility of the Board of Directors to appoint an Architectural Committee of not less than three members to work with the Board of Directors to see that the following restrictions are adhered to:

No building, fence, wall or other structure shall be commenced, erected, placed or maintained upon any lot, nor shall any exterior addition or change or alteration to the exterior of the townhome, garage, storage area, common area fence or wall be made until plans and specifications showing the nature, kind, shape, height, materials, and location of any such proposed alteration and/or building shall have been submitted to the Board of Directors and the Architectural Committee in writing, and such specification have been approved in writing by the Board of Directors and the Architectural Committee or, if no Architectural Committee be in existence, by the Board of Directors, as to harmony of external design and location in relation to surrounding structures and topography. Also included under control of the Board of Directors and the Architectural Committee are changes or alterations proposed in any manner to the landscaping in any yard other than that which comprises each lot. Request for any change, changes, or alterations as outlined in this Section, together with a copy of the written approval or disapproval of such request by the Board of Directors and the Architectural Committee (if there be no Architectural Committee, then the approval or disapproval of the Board of Directors), shall be kept on file in the office of the Association. Also kept on file shall be a copy of the work permit, IF ANY, issued by the City of [unclear].

ARTICLE X
MAINTENANCE

The Association shall at all times be solely responsible for the costs and expense of maintaining, and the maintaining in good order and repair the Common Area and the Common Elements.

The Owner of each townhome is at all times solely responsible for the cost, expense, maintenance and the maintaining in good order and repair of his townhome. Each Owner shall have the right to decorate or change the interior of his townhome; provided, however, that any such decoration, change or alteration does not impair the structural integrity, weaken the support or otherwise adversely affect any of the townhomes.

In the event that the need for maintenance or repair to the exterior of any townhome is caused through the willful or negligent act of the Owner, his family, guests, tenants, or invitee, and is not covered or paid for by insurance on such townhome, the cost of such maintenance or repairs shall be added to and become a part of the assessment too which such townhome is subject and shall be subject to the same remedies of collection as is provided for collection of Owner Assessments.

The Association shall have a right of entry on any townhome and in any townhome to perform emergency repairs or do other work reasonably necessary for the proper maintenance of the Project. Except in an emergency situation the Association shall attempt to give the Owner prior notice of the entry and shall in any event perform such emergency repairs or other work in a good and workmanlike manner and thereafter repair any damage or destruction occasioned upon such townhome as a result thereof.

ARTICLE XI
USE RESTRICTIONS

SECTIONS 1. Each townhome conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions, and provisions hereof.

SECTION 2. Each townhome shall be used only for residential purposes, as a private residence, and no professional, business or commercial use shall be made of the same, or any portion thereof, nor shall an Owner's or tenant's use of a townhome endanger the health or disturb the reasonable enjoyment of any other Owner or tenant.

SECTION 3. No buildings other than townhomes, being single family residences joined together by a common wall or walls, and/or roof and/or foundation, shall be constructed on the lots.

SECTION 4. No building or structure of any kind shall be moved onto said lot.

SECTION 5. No structure of a temporary character, trailer, base tent, rack, garage, barn, or other outbuildings shall be placed on, erected or used on any lot at any time as a residence, storeroom or place of business, either temporarily or permanently (unless otherwise authorized and approved in writing by the Board of Directors).

SECTION 6. No advertising signs except one "For Rent" or "For Sale" sign of not more than five square feet per townhome (including standard), billboards, unsightly objects, or nuisances shall be erected, placed, parked or permitted to remain on said townhomes. Any such "For Rent" or "For Sale" signs shall be placed within the inside boundary of the sidewalk and the lot being advertised (i.e., close to the townhome), until all 42 townhomes are sold.

SECTION 7. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any townhome, except dogs, cats or other common household pets. The number of pets kept shall not exceed a total of two (2) pets. No such pet may be kept, bred or maintained for any commercial purpose or purposes.

All ordinances of the City of Tyler regarding keeping of pets shall be effective in the Association. Each member of the Association, his family, tenants, or guests shall be responsible for removal of defecation of his pet(s) from the common area and his yard.

SECTION 8. All rubbish, trash, and/or garbage shall be kept screened by adequate planting or fencing so as not to be seen from neighboring townhomes and streets, and shall be regularly removed from the property, and shall not be allowed to accumulate thereon.

SECTION 9. Drying of clothes shall be confined to individual garages and must be kept screened by adequate planting or fencing so as not to be seen from neighboring townhomes and streets, garage doors must be kept closed at all times.

SECTION 10. No television, C.D., radio or radio antennas, satellite dishes, solar heating panels or other devices of any kind, shall be erected, placed, allowed or maintained on any lot, or on any portion of the exterior improvements located on that lot or on any structure situated on a lot.

SECTION 11.

(a) No Owner, or any party acting on behalf of any Owner, shall do any work or any act which will impair the structural soundness or integrity of any townhome or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect any townhome or its Owner.

(b) All fixtures and equipment installed within a townhome, storage or utility room shall be the sole responsibility of the townhome Owner and said Owner shall provide for the care and repair of such equipment, including but not limited to, water lines, cutoffs, stopped commodes or sinks or lavatories, unless such stoppage shall be caused by a fault in the main waterline or sewerline located in the common area.

(c) Maintenance and repair of all exterior components of air conditioning units, including any platform on which a component may be located, is the sole responsibility of the Owner of the townhome wherein such air conditioning unit is installed.

(d) Any and all damages caused to roofs by reason of an Owner or his tenant having a hot air exhaust system, carbon exhaust system, or other device installed on the roof of the townhome, is the sole responsibility of the Owner of such townhome and the Association shall not be liable for any damage so incurred.

SECTION 12. No vehicle shall be parked on streets or driveways so as to obstruct the ingress and egress by Owners of townhomes, their families, guests, tenants and invitees except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible. For a period not to exceed forty-eight (48) hours, guests, tenants, and invitee of Owners and Owners of townhomes may park their vehicles in the guest parking areas, if any, provided on the recorded plat of the Project. Guest parking areas shall not be used by the Owner of a townhome, his guests, tenants, or invitees for parking or storing boats, trailers, camping units, or any personal vehicles and the Board of Directors may insure the proper use of said areas in such legal manner as it deems necessary.

SECTION 13. Except in the individual backyard area appurtenant to a townhome, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except as installed in accordance with the initial construction of the building or as approved by the Association's Board of Directors or the designated Architectural Committee. Maintenance, upkeep and repairs of any backyard shall be the sole responsibility of the individual townhome Owner and shall not in any manner be the responsibility of the Association. Each Owner shall be responsible for the yard area of his/her townhome and it shall be maintained in a sanitary and safe manner by the Owner or his/her tenants (which includes regular mowing, removal of weeds and removal of debris from the backyard areas).

SECTION 14. No noxious or offensive activities shall be carried on upon any lot or in any townhome nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No water drilling shall be permitted upon any lot, nor storage of any explosives or other chemicals in violation of the city ordinances of the City of Tyler, will be allowed on any townhome.

SECTION 15. Any deviation or variance from any and all restrictions as set out herein must be approved in writing by the Board of Directors before any variance can be granted to a member of the Association.

ARTICLE XII EASEMENTS

SECTION 1. If construction, reconstruction, repair, shifting, settlement or other movement of any portion of the improvements located on the Land results in either the Common Area, or any portion thereof, encroaching on any lot, or in any improvements encroaching on the Common Area or on any other lot, a valid easement for both the encroachment and its maintenance shall and does exist. The easement shall extend for whatever period the encroachment exist. Such encroachments and easements shall not be considered to be encumbrances either upon a lot or the Common Area.

SECTION 2. There is hereby created a blanket easement upon, across, over and under all of said property for ingress and egress, installation, replacing, repairing, and maintaining

utilities, including, but not limited to, cable TV, water, sewer, telephones, electricity and gas. By virtue of this easement, it shall be expressly permissible for the utility companies to affix and maintain pipes, wires, conduits, or other service lines on, above, across and under the roofs and exterior walls of the townhomes. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, cable TV, company lines or other utilities may be installed or relocated on the property until approved by the Association's Board of Directors. In the event that any utility company furnishing a service covered by the general easement herein provided requests a specific easement by separate recordable instrument, the Association, through its Board of Directors, shall have the right to grant such easement on said property without conflicting with the terms hereof.

SECTION 3. Underground single phase electric service shall be available to all residential townhomes and to the recreation buildings constructed on the Common Area. The metering equipment shall be located on the exterior surfaces of the walls of the buildings at a point to be designated by the utility company. The utility company furnishing the service shall have a two (2) foot wide easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service on the townhome buildings.

SECTION 4. Any utility company using the easements shall not be liable for any damage done by them, their employees, or agents to shrubbery, trees, flowers, or other improvements located on the land covered by said easements.

SECTION 5. The Owners of the respective townhomes shall not be deemed to separately own pipes, wires, conduits, or other service lines running through their property which are utilized for, or service other townhomes, 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 townhome.

SECTION 6. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown by the plat and instruments recorded in the office of the County Clerk of Smith County, Texas and by instruments that shall hereafter be recorded in said office as provided in Section 2 of this Article XII. Copies of these shall be kept on file in the current registered office of the Association. No shrubbery, fence, or other obstruction shall be placed in any easement or alleyway. Right of use of ingress and egress shall be had at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction which may be placed in such easement which would constitute interference with the use, maintenance, operation or installation of such utility.

ARTICLE XIII GENERAL PROVISIONS

SECTION 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceedings at law or equity, against any Owner, the Association or any other party, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by the Association, or the Owner of any townhome subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date the original Declaration is recorded, after which time said covenants shall be automatically extended for

successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended, pursuant to a meeting of the Owners at which the amendment is approved by not less than sixty-seven percent (67%) of the total voting membership in the Association and by fifty-one (51%) of the First Mortgagees. Such Amendment shall be evidenced by a written instrument executed and acknowledged by an Officer of the Association on behalf of the consenting Owners and by the consenting First Mortgagees and filed of record in Smith County, Texas. Any such amendment so effected shall be binding upon all of the Owners, provided, however that no such amendment shall cause the alteration or destruction of a townhome unless such amendment has been consented to by the Owner and the First Mortgagee of the townhome which is to be altered or destroyed. The Association shall give each First Mortgagee written notice of any proposed action or amendment which pursuant to the provisions hereof require the approval of First Mortgagees. In addition to the voting requirements provided for in the Bylaws for amending the Bylaws, amendments thereto shall not become effective unless and until approved by fifty-one (51%) of the First Mortgagees.

SECTION 4. Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

SECTION 5. Revocation of Declaration. This Declaration may be revoked, only by an instrument in writing, duly executed and acknowledged by one hundred percent (100%) of the Owners and sixty-seven percent (67%) of the First Mortgagees, duly filed of record in Smith County, Texas.

EXECUTED this 19th day of April, 1993.

RESOLUTION TRUST CORPORATION
AS RECEIVER FOR VICTORIA SAVINGS
ASSOCIATION

By: National Stonehenge Corporation,
A Texas Corporation, Asset Manager

By: [Signature]
Its: 5th Vice President

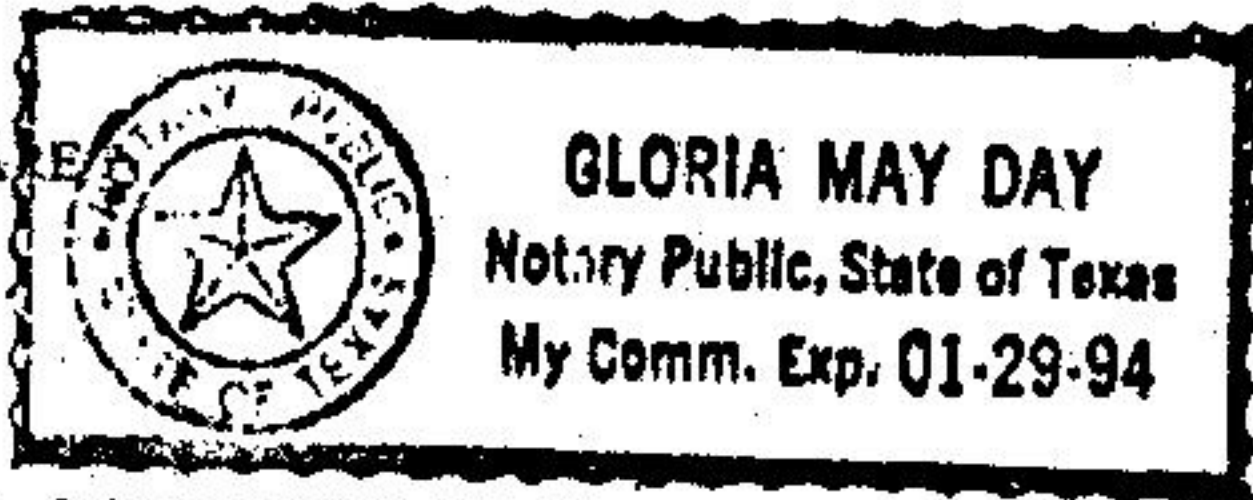
FILED
MARY MORRIS
COUNTY CLERK
93 MAY -3 PM 3:04
SMITH COUNTY, TEXAS
BY [Signature] DEPUTY

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared _____ the _____ of National Stonehenge Corporation, a Texas Corporation, 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 for the purposes and considerations therein expressed, and in the capacity therein stated as the act and deed of said corporation.

_____ UNDER MY HAND AND SEAL OF OFFICE this 19th day of April, 1993.



[Signature]
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was filed on the
date and time stamped herein by me and was duly
recorded in the Land Records of Smith County, Texas.

MAY - 5 1993
MARY MORRIS
COUNTY CLERK, Smith County, Texas
By [Signature] Deputy

XXXXXXXXXX