

TABLE OF CONTENTS
 FOR
 MASTER DECLARATION
 FOR
 FAIRWAY FOREST TOWNHOMES

<u>Description</u>	<u>Page No.</u>
INTRODUCTION	1
ARTICLE I DEFINITIONS	2
ARTICLE II THE TOWNHOME BUILDING PLOTS	9
ARTICLE III COMMON AREA	13
ARTICLE IV OTHER EASEMENTS	16
ARTICLE V MAINTENANCE AND REPAIRS	19
ARTICLE VI PARTY WALLS	23
ARTICLE VII UTILITY BILLS, TAXES AND INSURANCE	24
ARTICLE VIII ASSESSMENTS FOR COMMON EXPENSES	26
ARTICLE IX ARCHITECTURAL CONTROL BY FAIRWAY FOREST TOWNHOME ASSOCIATION	38
ARTICLE X USE RESTRICTIONS	38
ARTICLE XI INSURANCE	42
ARTICLE XII DESTRUCTION OF IMPROVEMENTS	47
ARTICLE XIII EMINENT DOMAIN	50
ARTICLE XIV RIGHTS OF MORTGAGEES	55
ARTICLE XV THE ASSOCIATION	58
ARTICLE XVI LEGAL DESCRIPTION	59
ARTICLE XVII GENERAL PROVISIONS	60
EXHIBITS "A" LEGAL DESCRIPTION OF MAJOR TRACT OF LAND	
"B" ARTICLES OF INCORPORATION OF COMMUNITY ASSOCIATION	
"C" BYLAWS OF THE ASSOCIATION	
"D" INDIVIDUAL LOT DESCRIPTIONS	
"E" RESTRICTED PARKING AREA PARKING MAP	

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MASTER DECLARATION
FOR
FAIRWAY FOREST
TOWNHOMES
(A RESIDENTIAL DEVELOPMENT)

THE STATE OF TEXAS 1
COUNTY OF BARRIS 1 KNOW ALL MEN BY THESE PRESENTS,

THIS MASTER DECLARATION (herein called the "Declaration")
made on this the 15th day of MARCH, 1983, by ANTHONY J.
VACCIO, hereinafter called and referred to as "Declarant",

W I T N E S S E T H :

WHEREAS, Declarant is the fee simple owner of that
certain tract of land containing 4.738 acres, more or less,
situated in the Mary Owens Survey, Abstract 611, Harris
County, Texas, more particularly being described by metes
and bounds in Exhibit "A" attached hereto and made a part
hereof for all purposes and is hereinafter called and
referred to as "the Property", and

WHEREAS, Declarant desires to develop the property
into a residential development and area to be commonly known
as FAIRWAY FOREST TOWNHOMES, which shall consist of fifty-five
(55) individual townhomes, hereinafter more particularly
described, and the "Common Area" of the property which includes
streets, driveways, easements for various uses and purposes,
and green areas all of which shall be apportioned to the
townhomes;

NOW THEREFORE, in furtherance of and to carry out his
plan of development of the property as FAIRWAY FOREST TOWNHOMES,
Declarant hereby declares that all of the property described
above (and more particularly in Exhibit "A" attached hereto)
shall be developed, held, used, sold and conveyed in accordance
with and subject to the following plan of development, sub-
division easements, restrictions, covenants, stipulations
and conditions, which are for the purpose of protecting

the value and desirability of and which shall run with, the Property and be binding on all parties now or at any time hereafter having any right, title or interest in the described properties, or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each owner, to-wit:

ARTICLE I
DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Master Declaration shall have the meanings hereinafter specified.

Section 1: "Association" shall mean and refer to FAIRWAY FOREST TOWNHOMES ASSOCIATION, a non-profit corporation, formed under the laws of the state of Texas, its successors and assigns.

Section 2: "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities, of a fee simple title to any building plot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: "Property" shall mean and refer to that certain 4.738 acre tract of land hereinabove described.

Section 4: "Common Area" shall mean all of the Property save and except the fifty-five ⁹⁸ individual townhomes below described. Title to the common area shall be held by the Association subject to the use easements of all Owners and for the common use and enjoyment of the Owners and Guests. The common area to be owned by the Association at the time of the conveyance of the first building plot is generally described as follows:

(A) All areas of the 4.738 acres, more or less, situated in Mary Owens Survey, Abstract 611, Harris County, Texas, more particularly described by metes and bounds in Exhibit "A", except that area described in Section 5 as Townhome Building Plot and more particularly described in Article II.

* (B) All areas on the Project, except the Units and the land they are situated on, and shall further include, without limitation, (for maintenance purposes) of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the structures wherever located (except the outlets thereof when located within the Units), the airspace above the structures, private streets or driveways, walkways, pools, and other recreation facilities or equipment, common stairways, parking areas and landscaping on those areas which are not defined as a part of the Units.

(C) The various utility easements mentioned and described in Article IV below.

(D) All other portions of the Property, save and except the fifty-five (55) individual building plots hereinafter described.

Section 5: "Townhome Building Plot" shall mean and refer to each of the individual tracts of land into which the Property, except the common areas, has been divided for the construction of residence houses thereon for individual use and ownership. The fifty-five (55) townhomes building plots within the Property comprising FAIRWAY FOREST TOWNHOMES are as mentioned and described in Article II, below, and the Exhibits therein referred to. The terms "townhome building plot", "residential building plot" and "building plot" as used herein or in the Articles of Incorporation of the Association all have the same meaning.

Section 6: "Architectural Committee" shall mean the Architectural Review committee created pursuant to Article IX hereof.

Section 7: "Architectural Committee Rules" shall mean the rules adopted by the Board and Architectural Committee pursuant to Article IX.

Section 8: "Articles" shall mean the Articles of Incorporation of the Association, filed or to be filed in the Office of the Secretary of State of the State of Texas, a true copy of which is attached hereto, marked Exhibit "B", as such Articles may be amended from time to time.

Section 9: "Annual Assessment" shall mean a charge against a particular Owner and his Townhome, representing a portion of the costs of maintaining, improving, repairing and managing the Property and all other common expenses, including operation costs for the common property, which are to be paid equally by each Owner to the Association for common expenses as provided herein.

Section 10: "Capital Improvement Assessment" shall mean a charge against each Owner and his townhome, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the common property which the association may from time to time authorize. Such charge shall be levied among all of the townhomes in the project in the same proportions as are annual assessments.

Section 11: "Reconstruction Assessment" shall mean a charge against a particular Owner and his townhome, representing a portion of the cost to the Association for reconstruction of any capital improvements on any of the common property which the Association may from time to time authorize. Reconstruction assessments shall be levied among all of the townhomes in the project in the same proportions as the relative interior square foot floor areas of the residential elements of the units (as such areas are shown on the Declaration), expressed as percentages, and computed by dividing the interior square foot floor area of the residential element of each unit by the total interior square foot areas of the residential elements of all units in the project.

Section 12: "Special Assessment" shall mean a charge against a particular Owner and his townhome, directly attributable to, or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, plus interest and other charges thereon as provided for in this Declaration.

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(B) All areas on the Project, except the Units and the land they are situated on, and shall further include, without limitation, (for maintenance purposes) of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the structures wherever located (except the outlets thereof when located within the Units), the airspace above the structures, private streets or driveways, walkways, pools, and other recreation facilities or equipment, common stairways, parking areas and landscaping on those areas which are not defined as a part of the Units.

(C) The various utility easements mentioned and described in Article IV below.

(D) All other portions of the Property, save and except the fifty-five (55) individual building plots hereinafter described.

Section 5: "Townhome Building Plot" shall mean and refer to each of the individual tracts of land into which the Property, except the common areas, has been divided for the construction of residence houses thereon for individual use and ownership. The fifty-five (55) townhomes building plots within the Property comprising FAIRWAY FOREST TOWNHOMES are as mentioned and described in Article II, below, and the Exhibits therein referred to. The terms "townhome building plot", "residential building plot" and "building plot" as used herein or in the Articles of Incorporation of the Association all have the same meaning.

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Section 10: "Capital Improvement Assessment" shall mean a charge against each Owner and his townhome, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the common property which the association may from time to time authorize. Such charge shall be levied among all of the townhomes in the project in the same proportions as are annual assessments.

Section 11: "Reconstruction Assessment" shall mean a charge against a particular Owner and his townhome, representing a portion of the cost to the Association for reconstruction of any capital improvements on any of the common property which the Association may from time to time authorize. Reconstruction assessments shall be levied among all of the townhomes in the project in the same proportions as the relative interior square foot floor areas of the residential elements of the units (as such areas are shown on the Declaration), expressed as percentages, and computed by dividing the interior square foot floor area of the residential element of each unit by the total interior square foot areas of the residential elements of all units in the project.

Section 12: "Special Assessment" shall mean a charge against a particular Owner and his townhome, directly attributable to, or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, plus interest and other charges thereon as provided for in this Declaration.

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Section 13: "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

Section 14: "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 15: "Bylaws" shall mean the bylaws of the Association as adopted by the Board initially in the form of Exhibit "C" attached hereto, as such bylaws may be amended by the membership of the Association from time to time.

Section 16: "Close of Escrow" shall mean the date on which a deed is recorded conveying a townhome.

✓ Section 17: "Restricted Common Areas" shall mean those portions of the common areas over which exclusive easements are reserved for the benefit of certain Owners, for patio, balcony or parking purposes. The restricted common areas in the project for patio or balcony purposes are shown and assigned in the townhome plan. The restricted common areas in the project for parking purposes are shown and described on Exhibit "E" which is attached hereto and incorporated herein by this reference.

Section 18: "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the common property (including unpaid special assessments, reconstruction assessments and capital improvement assessments); the costs of any and all utilities metered to more than one unit and other commonly metered charges for the Property; the costs of trash collection and removal, and maintenance of clustered mailboxes; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening, security, clustered mailboxes and other services benefiting the common property; the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director,

officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; the costs of bonding of the members of the Board; taxes paid by the Association, including any blanket tax for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association, for any reason whatsoever in connection with the Property, for the common benefit of the Owners.

Section 19: "Declaration" shall mean the within Declaration of covenants, conditions and restrictions and reservation of easements, as it may be amended from time to time as provided herein.

Section 20: "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.

Section 21: "Family" shall mean one or more natural persons each related to the other by blood, marriage or adoption, or a group of not more than three (3) natural persons not all so related, inclusive of their domestic servants, who maintain a common household in a residence.

Section 22: "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, walkways, sprinkler pipes, carports, swimming pools, roads, driveways, parking areas, fences, screening walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, the exterior surfaces of any visible structure, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

Section 23: "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article VIII, Section 2 hereof.

Section 24: "Manager" shall mean the person, employed by the Association, and delegated the duties, power or functions of the Association as limited by said section.

Section 25: "Member" shall mean every person holding a membership in the Association, pursuant to Article XV, Section 2 hereof. "Membership" shall mean the Property, voting and other rights and privileges of members as provided herein, together with the correlative duties and obligations contained in the Declaration, the Articles and Bylaws of the Association.

Section 26: "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a townhome or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage".

Section 27: "Mortgagee" shall mean a person to whom a mortgage is made and shall include the beneficiary of a deed of trust; "Mortgagor" shall mean a person who mortgages his or its Property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. the term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 28: "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws.

Section 29: "Record", "File", "Recordation" or "Recorded" shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder of the county in which the Property is located.

Section 30: "Residence" shall mean a unit, intended for use by a single family, together with any restricted common areas reserved for the benefit of such unit.

Section 31: "Restrictions" shall mean this Declaration, the Articles, Bylaws and the rules and regulations of the Association from time to time in effect.

Section 32: "Rules and Regulations" shall mean the rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as such rules and regulations may be amended from time to time.

Section 33: "Unit" shall mean the elements of a townhome not owned in common with the Owners of other townhomes in the project. Each of the units in the multi-family structure shall be a separate freehold estate, as separately shown, numbered and designated in the townhome plan. Each such unit consists of a living area space or spaces ("residential element") bounded by and including the interior surfaces of the perimeter walls of each residential element, as shown and defined in the townhome plan. A unit shall consist of the land and foundation directly under the residential living area space. In interpreting deeds, declarations and plans, the existing physical boundaries of the unit or a unit constructed or reconstructed in substantial accordance with the townhome plan and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, townhome plan or declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the townhome plan or defined in the deed and Declaration, and the boundaries of a building as constructed or reconstructed.

Section 34: "FHA" shall mean the Federal Housing Administration of the United States department of Housing and Urban development, including such department or agency of the United States government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate.

Section 35: "FHLMC" shall mean the Federal Home Loan Mortgage corporation or The Mortgage corporation created by Title III of the Emergency Home Finance Act of 1970, including any successors thereto.

Section 36: "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto.

Section 37: "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successor thereto.

Section 38: "Government Mortgage Agencies" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase mortgage loans.

ARTICLE II

THE TOWNHOME BUILDING PLOTS

Section 1: The fifty-five (55) townhome building plots for individual development, use and ownership are known and designated as Tracts one (1) through fifty-five (55), and they are particularly described as follows:

Tract One (1) contains 1,626.88 square feet of land, more or less, and is more particularly described by metes and bounds on page 1 of Exhibit "p".

Tract Two (2) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 2 of Exhibit "p".

Tract Three (3) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 3 of Exhibit "p".

Tract Four (4) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 4 of Exhibit "p".

Tract Five (5) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 5 of Exhibit "D".

Tract Six (6) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 6 of Exhibit "D".

Tract Seven (7) contains 1,395.61 square feet of land, more or less, and is more particularly described by metes and bounds on page 7 of Exhibit "D".

Tract Eight (8) contains 1,626.88 square feet of land, more or less, and is more particularly described by metes and bounds on page 8 of Exhibit "D".

Tract Nine (9) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 9 of Exhibit "D".

Tract Ten (10) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 10 of Exhibit "D".

Tract Eleven (11) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 11 of Exhibit "D".

Tract Twelve (12) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 12 of Exhibit "D".

Tract Thirteen (13) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 13 of Exhibit "D".

Tract Fourteen (14) contains 1,395.61 square feet of land, more or less, and is more particularly described by metes and bounds on page 14 of Exhibit "D".

Tract Fifteen (15) contains 1,626.88 square feet of land, more or less, and is more particularly described by metes and bounds on page 15 of Exhibit "D".

Tract Sixteen (16) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 16 of Exhibit "D".

Tract Seventeen (17) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 17 of Exhibit "D".

Tract Eighteen (18) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 18 of Exhibit "D".

Tract Nineteen (19) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 19 of Exhibit "D".

Tract Twenty (20) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 20 of Exhibit "D".

Tract Twenty-one (21) contains 1,395.61 square feet of land, more or less, and is more particularly described by metes and bounds on page 21 of Exhibit "D".

Tract Twenty-two (22) contains 1,626.88 square feet of land, more or less, and is more particularly described by metes and bounds on page 22 of Exhibit "D".

Tract Twenty-three (23) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 23 of Exhibit "D".

Tract Twenty-four (24) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 24 of Exhibit "D".

Tract Twenty-five (25) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 25 of Exhibit "D".

Tract Twenty-six (26) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 26 of Exhibit "D".

Tract Twenty-seven (27) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 27 of Exhibit "D".

Tract Twenty-eight (28) contains 1,395.61 square feet of land, more or less, and is more particularly described by metes and bounds on page 28 of Exhibit "D".

Tract Twenty-nine (29) contains 1,626.88 square feet of land, more or less, and is more particularly described by metes and bounds on page 29 of Exhibit "D".

Tract Thirty (30) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 30 of Exhibit "D".

Tract Thirty-one (31) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 31 of Exhibit "D".

Tract Thirty-two (32) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 32 of Exhibit "D".

Tract Thirty-three (33) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 33 of Exhibit "D".

Tract Thirty-four (34) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 34 of Exhibit "D".

Tract Thirty-five (35) contains 1,395.61 square feet of land, more or less, and is more particularly described by metes and bounds on page 35 of Exhibit "D".

Tract Thirty-six (36) contains 1,626.88 square feet of land, more or less, and is more particularly described by metes and bounds on page 36 of Exhibit "D".

Tract Thirty-seven (37) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 37 of Exhibit "D".

Tract Thirty-eight (38) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 38 of Exhibit "D".

Tract Thirty-nine (39) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 39 of Exhibit "D".

Tract Forty (40) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 40 of Exhibit "D".

Tract Forty-one (41) contains 1,395.61 square feet of land, more or less, and is more particularly described by metes and bounds on page 41 of Exhibit "D".

Tract Forty-two (42) contains 1,626.88 square feet of land, more or less, and is more particularly described by metes and bounds on page 42 of Exhibit "D".

Tract Forty-three (43) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 43 of Exhibit "D".

Tract Forty-four (44) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 44 of Exhibit "D".

Tract Forty-five (45) contains 1,373.50 square feet of land, more or less, and is more particularly described by metes and bounds on page 45 of Exhibit "D".

Tract Forty-six (46) contains 1,603.91 square feet of land, more or less, and is more particularly described by metes and bounds on page 46 of Exhibit "D".

Tract Forty-seven (47) contains 1,499.76 square feet of land, more or less, and is more particularly described by metes and bounds on page 47 of Exhibit "D".

Tract Forty-eight (48) contains 1,476.00 square feet of land, more or less, and is more particularly described by metes and bounds on page 48 of Exhibit "D".

Tract Forty-nine (49) contains 1,476.00 square feet of land, more or less, and is more particularly described by metes and bounds on page 49 of Exhibit "D".

Tract Fifty (50) contains 1,476.00 square feet of land, more or less, and is more particularly described by metes and bounds on page 50 of Exhibit "D".

Tract Fifty-one (51) contains 1,476.00 square feet of land, more or less, and is more particularly described by metes and bounds on page 51 of Exhibit "D".

Tract Fifty-two (52) contains 1,476.00 square feet of land, more or less, and is more particularly described by metes and bounds on page 52 of Exhibit "D".

Tract Fifty-three (53) contains 1,476.00 square feet of land, more or less, and is more particularly described by metes and bounds on page 53 of Exhibit "D".

Tract Fifty-four (54) contains 1,476.00 square feet of land, more or less, and is more particularly described by metes and bounds on page 54 of Exhibit "D".

Tract Fifty-five (55) contains 1,470.24 square feet of land, more or less, and is more particularly described by metes and bounds on page 55 of Exhibit "D".

Section 2: Each of the Townhome Building Plots described in Section 1 of this Article has an easement of ingress and egress over the land, more particularly described in Exhibit "A" which is attached hereto and incorporated herein for all purposes.

ARTICLE III

COMMON AREA

Section 1: The Common Area of the Property consists of all of the Property SAVE and EXCEPT the area contained in the fifty-five ²⁴ individual Townhome Building Plots hereinabove described in Section 1 of Article II, above.

Section 2: Every Owner shall have a right and easement of enjoyment for purposes intended in and to the common area which

shall be appurtenant to and shall pass with the title to every Townhome Building Plot, subject to the following provisions:

A. The right of certain Owners to use, to the exclusion of certain other Owners certain driveway easements for access, ingress and egress from the street.

B. The Association shall have an easement over the common areas for purposes described in this Declaration. Upon the first close of escrow for the sale of a townhome in the project, the Association shall immediately become responsible for all maintenance, operation, control and expenses associated with the common Property.

C. Except as provided in this Declaration, there shall be no judicial partition of the common areas, or any part thereof, for the term of the project, nor shall Grantor, or Owner or any other person acquiring any interest in any townhome in the project seek any such judicial partition.

D. The right of the declarant or the Association to grant or dedicate easements in, on, under, over or above any part of the Property to any public or governmental authority or agency or to any utility company for any service to the Property or any part thereof.

E. The right of the declarant or the Association to transfer title to any water line, storm sewer line, sanitary sewer line, or any other utility facilities or equipment situated in any part of the Property to any public or political authority or agency or to any utility company rendering service to the Property, or any part thereof.

F. The right of the Association to designate as a parking area any portion of the common area which is not reserved or designated for any other use and to make, publish and enforce reasonable rules and regulations for the use of any parking area so designated.

Section 3: Any Owner may delegate his right of enjoyment of the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on

the Property. The term "Owner" as used in this instrument or Declaration is further defined to include and refer to the heirs, executors, personal representatives, administrators, devisees and assigns of any Owner, and all other persons firms or corporations acquiring or succeeding to the interest of any Owner by contract, sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

Section 4: No member may exempt himself from personal liability for assessments duly levied by the Association, or effect the release of his townhome from the liens and charges thereof, by waiver of the use and enjoyment of the common Property or by abandonment of his townhome.

Section 5: Each member shall be liable to the Association for any damage to the common Property not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any improvement by the member, his guests, tenants or invitees, or any other persons deriving their right and easement of use and enjoyment of the common Property from the member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association further reserves the right, after notice and hearing as provided in the Bylaws, to levy a special assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the member or the person for whom the member may be liable as described above. In the case of joint ownership of a townhome, the liability of the owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint owners to the contrary. After notice and hearing as provided in the Bylaws, the cost of correcting the damage to the extent

not reimbursed to the Association by insurance shall be a special assessment against the townhome, and may be enforced as provided herein for the enforcement of other Assessments.

9/15/82
Limpicakul that
protrude into
common area

ARTICLE IV
OTHER EASEMENTS

Section 1: Construction. Each townhome building plot and the common area shall be subject to a perpetual easement for encroachments caused or created by construction, settling, protrusions and overhangs, as designed or constructed by the declarant or other builder. A valid and perpetual easement for said encroachments and for the maintenance and reconstruction of the same shall and does exist.

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Section 2: Utility, Emergency and Association. There is hereby created a blanket and perpetual easement upon, across, over, under and above all of the common area, including, but not limited to the street, together with an aerial easement above each townhome building plot from a plane above each residence house as constructed upward, for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, storm sewers, sanitary sewers, gas, telephone, electricity and a master television antenna system. By virtue of this easement it shall be expressly permissible for the electrical and/or telephone companies furnishing service to the Property to erect and maintain the necessary poles, cross-arms and other necessary facilities and equipment on the Property and to affix and maintain electrical and/or telephone wires, circuits, conduits and other facilities and equipment on, above, across, and under the roofs and exterior walls of said residences; it is agreed, however, that chimneys may extend into the aerial easement hereby created shall not cover or include any space which is actually occupied by any portion of any residence house as constructed. An easement is further granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collector pick-up vehicles

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and all similar persons to enter upon the common area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any other management company selected by the Association to enter into or to cross over the common area to render any service, effect emergency repairs, or to improve, replace or maintain things deemed necessary. Notwithstanding anything contained in this paragraph to the contrary, no sewer lines, water lines, electrical lines, telephone lines or other utilities may be installed or relocated on the Property except as initially programmed and approved by the declarant, or thereafter approved by declarant or the Association's Board of Directors. In the event any utility company furnishing a service covered by the general easement herein provided shall request a specific easement by separate recordable document, then declarant or the Association shall have the right to grant such easement. The easements provided for in this Article shall in no way affect any other recorded easement affecting the Property.

Section 3: Underground Utility Services.

A. Underground Electric Service. An underground electric distribution system will be installed to serve each of the townhouse building plots. The Owner of (all in accordance with the requirements of local governing authorities and the national electric code) the underground service cable and appurtenances from the point of the electric company's metering to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachments to be made available by the electric company at a point designated by such company for each townhouse building plot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each townhouse building plot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then

current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's townhouse building plot. For so long as underground service is maintained, the electric service to each townhouse building plot shall be uniform in character and exclusively of the type known as single phase, 120/240 volt, three-wire, sixty cycle, alternating current.

B. Telephone Service. Telephone service shall be available to each townhome building plot. Service between the telephone company's main lines and an individual residence shall be wholly or partly by way of underground conduit. Such conduit system shall be owned and maintained by the Owner, but all service wires therein shall be installed, owned and maintained by the telephone company.

C. Water Service. Water service shall be provided to each townhome building plot by way of water lines connected to water mains of Forest Cove Municipal Utility District. The cost of water service to and water consumed by the owners of all townhouse building plots and in the common area and court site shall be paid by the Association. The distribution system between the point of connection to the Forest Cove Utility District water mains and the point of penetration of the exterior wall of each residence shall be operated, repaired and maintained by the Association.

D. Sanitary Sewer Service. Sanitary sewer service shall be provided to each townhouse building plot by means of sanitary sewer lines which shall be connected to the sanitary sewer lines of Forest Cove Utility district for final treatment. That part of the sanitary sewer service line from the point of connection to the collection system within the Property, to and through the residence shall be owned and maintained by the owner.

E. Use Of Easements. Easements for underground utility services may be crossed by paved streets, driveways

and walkways. Neither the declarant nor any utility company using the easements shall be liable to any owner for any damage done by either of them or their assigns, agents, employees or servants, to the shrubbery, trees, lawns, flowers, or other improvements of the owner located on the land covered by said easements.

ARTICLE V

MAINTENANCE AND REPAIRS


Section 1: Repair and Maintenance Rights and Duties of Association. Subject to Article XIII pertaining to eminent domain and subject to Article XII pertaining to destruction of improvements, the Association shall paint, maintain, repair and replace the common Property and improvements thereon or shall contract for such maintenance, repair and replacement to assure maintenance of the common Property and improvements thereon, reasonably consistent with the level of maintenance reflected in the initial budget for the Property. However, the Association shall not be responsible for or obligated to perform those items of maintenance, repair or improvement of the units (or restricted common areas) the maintenance of which is the responsibility of the owners as provided in Section 3. Association maintenance, repairs and improvements shall include, without limitation, the right, without obligation, to perform all corrective janitorial, landscaping and repair work within any residence, if the owner fails to repair it; the repair and payment for all centrally metered utilities, water charges, and mechanical and electrical equipment in the common Property; payment of all charges for all utilities which serve individual units but which are subject to a common meter; payment of all common expenses and charges for water and utilities serving recreational amenities; repair and maintenance of all walks, private driveways and other means of ingress and egress within the Property, and if determined by the Board to be economically feasible a monthly inspection

Water & Driveway by Pth

and preventative program for the prevention and eradication of infestation by wood-destroying and other pests and organisms in the Property. All such costs of maintenance, repairs and replacements for the Property shall be paid for as common expenses out of the Association maintenance funds as provided in this Declaration. All work performed for and on behalf of an owner which is not the responsibility of the owner shall be charged to the owner as a special assessment, as provided in this Declaration. It shall further be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Declaration and to cause the Property to be inspected by the architectural committee for any violation thereof.

Section 2: Unsegregated Real Property Taxes. To the extent not assessed to or paid by the owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if all of the units in a phase of development are taxed under a blanket tax bill covering all of such phase, each owner shall pay his proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency. Blanket taxes shall be allocated equally among the owners in such phase, based upon the total number of units in such phase. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each owner in such phase a copy of the tax bill, along with a written notice setting forth the owner's obligation to pay his proportionate share of the tax installment and the potential additional charges to the owner for failure to comply. The Association shall pay the taxes on behalf of any owner who does not pay his proportionate share, and shall use any available sums in the operating fund or borrow any sums as may be required

to make the payments on behalf of delinquent owners. The Association shall levy a special assessment against any delinquent owner in the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and may, in addition, include as part of the special assessment an amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill for a phase of development which late charge results from the failure of the delinquent owner(s) to make timely payment of his proportionate share of the taxes. Until the close of escrow for the sale of ninety percent (90%) of the townhomes in the project the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the project may not be amended without the express written consent of Grantor.

 Section 3: Repair and Maintenance by Owners. Each owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of this unit, including the windows, walls, ceilings, floors, doors and permanent fixtures, in a clean, sanitary and attractive condition, in accordance with the townhome plan and the original construction design of the improvements in the project. However, no bearing walls or other structural or utility bearing portions of the buildings housing the units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the architectural committee. It shall further be the duty of each owner, at his sole expense, to keep free from debris and in a reasonably good state of repair subject to the approval of the architectural committee, the restricted common areas over which an exclusive easement has been reserved for the benefit of

such owner. However, no owner shall be responsible for the periodic structural repair, resurfacing, replacement or painting of his assigned restricted common areas, so long as the painting, repair or replacement is not caused by the willful or negligent acts of the owner or his family or guests. It shall further be the duty of each owner to pay when due any and all charges for all utility services which services are not centrally metered but are separately metered to his unit. Subject to any required approval of the architectural committee, each owner shall be responsible for maintaining those portions of any heating and cooling equipment and other utilities which are located within or which exclusively serve his unit.

Section 4: Use of Agent. The Board of Directors, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of such contract, or any contract with Grantor for the furnishing of services to the Association, shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods, and such contract shall be terminable by the Association, acting through the Board, at any time (a) for cause upon thirty (30) days' written notice thereof, and (b) without cause or the payment of a termination fee upon ninety (90) days' written notice.

Section 5: By the Association. The Association as a common expense of all owners shall care for, maintain and keep in good repair the common area and all areas within each townhouse building site which are outside the enclosed fences thereof, including driveways, fences and landscape areas, and only the Association shall have the right to alter or relocate fences and landscape areas. The Association shall have the duty and exclusive right to paint the exterior

of each residence and the fences appurtenant thereto, when, in the exclusive judgment of the Association, such painting is required.

Section 6: Prior Contracts. Prior to passing control of common area to the Owners Association, it is unacceptable to bind, either directly or indirectly to contracts or leases, the Owners Association unless they are provided the rights of termination as in Section 4 above.

ARTICLE VI

PARTY WALLS

Section 1: General Rules of Law to Apply. Each wall which is built as a part of the original construction or re-construction of the homes upon the Property and placed on the dividing line between the townhome building plots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. If a wall which is intended as a party wall is situated entirely on one townhome building plot instead of on the dividing line between townhome building plots, due to error in construction, such wall shall nevertheless be deemed to be on the dividing line and shall constitute a party wall for the purpose of this Article. Reciprocal easements shall exist upon and in favor of the adjoining townhome building plots for the maintenance, repair and reconstruction of party walls.

Section 2: Sharing of Repair and Maintenance. The cost of reasonable repairs and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3: Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it,

and if the adjoining owner thereafter shall make use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner restoring such party wall to call for a larger contribution from the adjoining owner under the rules of law regarding liability for negligent or willful acts or omissions.

Section 4: Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protections against such elements.

Section 5: Right to Contribution Runs with Land. The right of any owner to contribution from any adjoining owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6: Arbitration. In the event any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators. Should any party refuse to choose an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.

ARTICLE VII

UTILITY BILLS, TAXES AND INSURANCE

Section 1: Obligations of Owners.

A. Each owner shall have his separate electric meter and shall pay directly at his own cost and expense for all electricity used or consumed by him.

B. Each owner shall directly render for taxation his own townhome building plot and his improvements and property thereon, and shall at his own cost and expense

directly pay all taxes, levied or assessed against or upon his townhome building plot, and his improvements thereon.

C. Each owner shall be responsible at his own cost and expense for his own property insurance on the building and contents of his own residence, carport or garage, and his additions and improvements thereto, including decorations, furnishings and personal property therein, and his personal property stored elsewhere on the Property; and also for his personal liability not covered by liability insurance for all owners obtained as a part of the common expense in connection with the common area.

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Section 2: Obligation of the Association.

A. Utility meters of all kinds serving the common area shall be in the name of the Association and the Association shall pay, as a common expense of all owners, for all water, electricity and other utilities used in connection with the enjoyment and operation of the common area or any part thereof. In addition, the Association shall pay all charges for consumption of water and for sewer service furnished to the entire Property including each and every townhome building plot.

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B. The Association shall render for taxation and as part of the common expenses of all owners, shall pay for all taxes levied or assessed against or upon the common area and the improvements and property appertaining thereto.

C. The Association shall be obligated to obtain and continue in effect as a common expense of all owners, blanket property insurance to insure one hundred percent (100%) of current replacement cost the buildings and structures in the common area and the contents thereof, including but not limited to, any fixtures, equipment, or other property within the units, and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, and said insurance

COMMON AREA NONE

shall include coverage against vandalism and may include such other coverage as the Association shall deem desirable. The above policy may not be cancelled without at least a ten (10) day prior written notice to the Association and to each holder of a first lien mortgage. The Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each owner from and against liability in connection with the common area.

D. All costs, charges and premiums for all utility bills, taxes and insurance to be paid by the Association as herein provided shall be a common expense of all owners and shall be a part of the maintenance assessment.

ARTICLE VIII

ASSESSMENTS FOR COMMON EXPENSES

Section 1: Covenant for Assessment. The declarant, for each townhome building plot owned by him within the property upon which a residence house has been constructed to completion, hereby expressly covenants and agrees, and each and every one of the other owners of a townhome building plot within the Property by their claim or assertion of ownership thereto or by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is conclusively deemed to covenant and agree to pay to the Association as the same become due and payable, and without demand: (1) regular monthly or annual assessments or charges which shall be uniform and in the same and equal prorata amount for each townhome building plot subject to assessment, regardless of the size, value or purchase price thereof, and (2) special assessments for capital improvements to the common area or any part thereof, all of which assessments herein provided for shall be established and collected as hereinafter provided.

* The regular monthly or annual assessments and the special

assessments shall be a charge and a continuing lien upon each townhome building plot, together with the improvements thereon, against which each such assessment is made, as hereinafter more particularly provided, each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such townhome building plot at the time payment of the assessment fell due. the personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No owner of any townhome building plot subject to assessment shall be exempt or excused from paying any assessment by waiver of the use or enjoyment of the common area or any part thereof or by abandonment of his townhome building plot or his interest therein; however, no owner of any townhome building plot shall be liable for the payment of any assessment made after his ownership ceases. Notwithstanding the foregoing, any first mortgagee or other purchaser for value who obtains title to a townhome pursuant to the remedies provided in the first mortgage or foreclosure of the first mortgage, shall not be liable for unpaid assessments or charges against the mortgaged townhome which accrue prior to the time such mortgagee or purchaser acquires title to that townhome.

Section 2: Maintenance Funds of Association. The Board of Directors shall establish no fewer than two (2) separate accounts (the "maintenance funds"), into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. The maintenance⁵ funds shall be established as separate trust savings or trust checking accounts at a banking or savings institution. the maintenance funds shall include: (1) an operating fund for current common expenses of the Association, (2) a reserve fund for capital improvements, replacements, painting and repairs of the

common Property (which cannot normally be expected to occur on an annual basis), and (3) any other funds which the Board of Directors may establish to the extent necessary under the provisions of this Declaration. The Board of Directors shall not commingle any amounts deposited into any of the maintenance funds with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional maintenance funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such fund are earmarked for specified purposes authorized by this Declaration.

Section 3: Purpose of Assessments. The assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the townhomes and for the operation, replacement, improvement and maintenance of the Property. All amounts deposited into the maintenance funds must be used solely for the common benefit of all of the owners for purposes authorized by this Declaration. Disbursements from the operating fund shall be made by the Board of Directors for such purposes as may be necessary for the discharge of its responsibilities herein for the common benefit of all of the owners, other than those purposes for which disbursements from the reserve fund are to be used. Disbursements from the reserve fund shall be made by the Board of Directors for the respective purposes specified in this Article VIII. Nothing in this Declaration shall be construed in such a way as to permit the Association from using any assessments to abate any annoyance or nuisance emanating from outside the boundaries of the Property. Annual assessments shall include, and the Association shall acquire and pay for out of the applicable funds derived from such annual assessments, the following:

(1) A. Water, electrical, lighting and other necessary utility services for the common Property.

(2) B. Maintenance and repair of private driveways, walkways, and parking areas lying within the common Property.

(3) C. Landscape planting and maintenance by the Association of all slopes, landscaping and planted areas within the common Property, including irrigation and lighting.

(4) D. Fire and casualty insurance with extended coverage as provided herein, covering the full insurable replacement cost of the common Property improvements.

* * *
(5) E. Liability insurance, as provided herein, insuring the Association against any liability to the public or to any owner, their invitees or tenants incident to their occupation and use of the common Property, with limits of liability to be set by the Board of Directors of the Association, such limits and coverage to be reviewed at least annually by the Association and increased or decreased in its discretion.

(6) F. Such errors and omissions and directors and officers liability insurance as the Board deems appropriate pursuant to Article XI.

(7) G. Workers' compensation insurance to the extent necessary to comply with any applicable laws, medical payments insurance, and any other insurance deemed necessary by the Board of Directors of the Association.

(8) H. Standard fidelity bonds covering all members of the Board of Directors of the Association and other employees or agents of the Association as, and in an amount determined by the Board of Directors.

(9) I. Painting, maintenance, repair and replacement of all building, equipment and landscaping in, on and of the common Property, as the Board of Directors of the Association shall determine is necessary and proper.

(10) J. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of this

Declaration or by law or which in the opinion of the Association's Board of Directors shall be necessary or proper for the operation of the common Property or for the enforcement of this Declaration.

* Section 4: Basis of Maximum Annual Assessment. Except as provided below, until the first day of the Association's fiscal year next following the first close of escrow for the sale of a townhome, the maximum annual assessment under this Article VIII shall be determined in accordance with the budget of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the initial fiscal year.

If the Board of Directors determines that the initial annual assessment is insufficient to meet the common expenses of the association during the remainder of the Association's initial fiscal year, the Board of Directors may, by majority vote, increase that annual assessment by not more than ten percent (10%) above the maximum annual assessment for such year reflected in the approved budget for the Association. Prior to the end of the Association's initial fiscal year any proposed annual assessment in excess of ten percent (10%) above the maximum annual assessment shall be subject to approval by a majority vote of the voting power of the Association.

A. Commencing on the first day of the fiscal year next following the first close of escrow for the sale of a townhome, the maximum annual assessment for any fiscal year may be increased by the board above the maximum annual assessment for the previous fiscal year, without a vote of the membership and effective no sooner than the first day of each fiscal year, in an amount no more than the greater of (i) ten percent (10%), or (ii) the percentage (but not more than twenty percent (20%)) by which the U.S. Bureau of Labor Statistics, for the Houston S.M.A.B., consumer price index for all urban consumers (the "index"), has increased

as of the date of the annual assessment increase over the level of the index as of the close of the immediately preceding fiscal year of the Association. Any increase in the maximum annual assessment which exceeds the maximum increase authorized in this subsection A shall require the vote or written consent of members representing a majority of the voting power of the Association.

B. Except as provided in this Section 4 and Section 5, the Board of Directors may not fix an annual assessment for any fiscal year at an amount which exceeds the maximum authorized for such fiscal year.

AUDIT X Section 5: Association Budgets. The Board of Directors shall cause to be prepared an annual report containing (i) a balance sheet and income statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the reserve fund and the operating fund; (ii) a statement of the place where the names and addresses of the current members of the Association may be found; and (iii) a statement of changes of financial position of the Association. Within ninety (90) days after the close of the Association's fiscal year, the Board shall cause to be distributed a copy of each such annual report to each member, and to each first mortgagee who has filed a written request therefor with the Board of Directors. The annual report shall be prepared by an independent accountant.

WHEN? At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association a written, itemized estimate (budget) of the income and expenses of the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the reserve fund, less any expected income and accounting for any surplus from the prior year's respective maintenance fund). Each annual assessment shall constitute an aggregate of separate assessments for each of the maintenance

*RESERVE FUNDS
& OPERATING FUNDS*

funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the reserve fund and the operating fund.

Section 6: Lien to Secure Assessments. Each and every assessment, regular or special, made or levied by the Association against the owner of a townhouse building plot as herein provided, shall constitute and be secured by a separate and valid and subsisting lien hereby erected and fixed and which shall exist upon and against his townhouse building plot and all improvements thereon, which liens shall exist in favor of the Association for the benefit of all owners. Such liens shall be prior and superior to all other liens, except that the same shall be subordinate, secondary and inferior to (a) all liens for taxes or special assessments levied by the City, County and State governments or any political subdivision or special district thereof, (b) all liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date payment of any such assessment became due and payable, and (c) all liens, including but not limited to, vendor's liens and deeds of trust, securing any loan made to a purchaser for any part of the purchase price of any townhouse building plot when the same is purchased from the declarant, or his successors or assigns as the builder. Any foreclosure of any such prior or superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing assessments levied and made prior to such foreclosure date, but no such foreclosure shall free the townhouse building plot from the liens securing assessments thereafter levied.

Section 7: Levy of Regular Assessments, Notice. The adoption of a resolution by the Board of Directors of the Association which fixes and establishes the amount and the time of payment of monthly or annual assessments shall in

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itself effectively constitute, create and establish a valid assessment against each townhome building plot subject to assessment as well as the personal obligation of each owner thereof to pay such assessment as the same becomes due and payable as specified in such resolution, and it shall not be necessary or required that any member of any class assent to any such resolution except as may be required by the provisions of Section 8 below. It shall not be necessary or required that notice of the adoption of any such resolution or assessment be given to any owner in order to fix and establish such assessment or his personal obligation to pay the same as it becomes due and payable, as the mere adoption of such resolution (with the assent provided for in Section 8 below, when required) shall in and of itself effectively create and establish such assessment and obligation; however, no owner shall be penalized or required to pay any interest or attorneys' fees, nor shall the lien created by such assessment be enforced on account of the non-payment of any such assessment as the same becomes due and payable unless notice of such resolution and assessment has been first given to such owner by the personal delivery, or by the mailing of a written statement thereof to his last known address as reflected by the books and records of the Association. In this connection it shall be the duty and obligation of each owner (regardless of how title is acquired) to notify the Association in writing of his ownership of a townhome building plot, including the identifying number of his tract and of his mailing address and whenever the notice of assessment herein provided for is addressed and is personally delivered or mailed to the last known owner at his last known address as shown by the records of the Association, such notice shall be deemed to have been duly given to and received by the true owner at his correct address even though there may have been a change of ownership or address. Notice of the lien shall state (i) the amount of the assessment

or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and recording the notice of lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient description of the townhome against which the same has been assessed (iv) the name and address of the Association and (v) the name of the owner thereof. The notice of lien shall be signed by an authorized representative of the Association. The lien shall relate only to the individual townhome against which the assessment was levied and not to the Property as a whole. Upon payment to the Association of the full amount claimed in the notice of lien, or other satisfaction thereof, the Board of Directors shall cause to be recorded a notices of satisfaction and release of lien ("notice of release") stating the satisfaction and release of the amount claimed. The Board of Directors may demand and receive from the applicable owner a reasonable charge for the preparation and recordation of the notice of release before recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the notice of release as conclusive evidence of the full satisfaction of the sums stated in the notice of lien.

Section 8: Maximum Monthly or Annual Assessments.

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The amount of the monthly or annual assessments shall not exceed Fifty (\$50.00) Dollars per month or Six Hundred (\$600.00) Dollars per year unless the resolution of the Board of Directors fixing the monthly or annual assessment in excess of such respective amounts shall be ratified, within sixty (60) days after the adoption thereof, by:

- A. The written assent of 51% of each class of members or the assent of 51% of the votes of each class of members who are voting in person or by proxy at a meeting of the membership called for this purpose, if such assessment does not exceed \$80.00 per month or \$960.00 per year; or

RATIFIED?
51% OF MEMBERS

B. The written consent of two-thirds (2/3rds) of each class of members or the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting of the membership called for this purpose, if such assessment exceeds \$80.00 per month or \$960.00 per year.

Section 9: Special Assessments for Capital Improvements.

In addition to the monthly or annual assessments authorized above, the Board of Directors of the Association by resolution may levy a special assessment for a definite total amount which shall be equal and the same for each townhome building plot assessed, for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that such resolution shall be ratified, within sixty (60) days after the adoption thereof, by the written assent of two-thirds (2/3rds) of each class of members or by the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting of the membership called for this purpose. Such assessment may be payable in installments or in a lump sum as such resolution may provide, but in any event the total amount of such special assessment shall be paid in full within twelve (12) months from the date assent of the membership as above provided is obtained and the resolution levying such special assessment shall so provide.

Section 10: Written Assent in Lieu of Attendance.

If a meeting of the members shall be called for the purpose of acting upon the ratification of any resolution of the Board of Directors as may be required in Section 8 or 9 above, instead of attending such meeting, any member of any class may submit his written assent to the ratification of such resolution to the president or secretary of the Association at any time after notice of such meeting has

been given and prior to the time the meeting is called to order, and when such written assent is so given the same shall have the same force and effect as if such member giving such assent were personally present and voting assent at the meeting, both for the purpose of determining the presence of a quorum and for the purpose of determining the number of votes cast in favor of ratification of such resolution; however, the written assent as submitted shall not be considered in determining the presence of a quorum for the conduct of any other business which may be brought before the meeting.

Section 11: Uniform Rate of Assessment. Regular (monthly or annual) and special assessments must be fixed in the same amount for all townhome building plots subject to assessment. All townhome building plots upon which a residence has been built to substantial completion shall be subject to assessments regardless of who may own the same. All vacant townhome building plots or townhome building plots on which homes are being constructed which are not owned by declarant, as defined in this Declaration, shall also be subject to assessments; however, vacant townhome building plots or townhome building plots upon which homes have not been substantially completed and which are owned by the declarant, as defined in this Declaration, shall not be subject to assessments until substantial completion of the home on such townhome building plot. When construction of a residence on a townhome building plot owned by the declarant or any other owner has been substantially completed it shall, in the case of monthly assessment be subject to assessment on the first day of the month next following the date of substantial completion, and in the case of annual assessments a prorata part of the annual assessment shall be paid by the declarant or other owner for the number of months remaining in the assessment year after the date of substantial completion. It shall be the duty of the declarant to notify the Association at the time a residence has been

Section 12: Date of Commencement of Assessments.

The monthly or annual assessments hereinabove provided for shall commence as to all townhome building plots subject to assessments on the date specified in the resolution of the Board of Directors fixing such assessments. No assessment shall accrue against any townhome building plot or the owner thereof unless and until such assessment shall be levied by resolution by the Board of Directors as hereinabove provided. The Board of Directors shall not levy any assessment prior to the date of first conveyance of a townhome building plot by the declarant to a purchaser in excess of \$75.00 per month or \$900.00 per year.

Section 13: Effect of Non-Payment of Assessment, Remedies

of Association. If any assessment is not paid within thirty (30) days after the due date thereof, the same shall bear interest from the due date until paid at the rate of 10% per annum. The Association may bring an action at law or in equity against the owner personally obligated to pay the same to enforce collection and/or for foreclosure of the lien against his townhome building plot. Each such owner, by his assertion of title or claim of ownership or by his acceptance of a deed to a plot hereby expressly vests in the Association, and in its office and agents, the right, power and authority to institute all actions against such owner personally for the collection of such assessments, charges and debts and to enforce the above mentioned items by all methods available for the collection of debts and enforcement of liens. All such actions may be instituted and brought in the name of the Association and may be maintained and prosecuted by the Association in a like manner

10%
interest

as an action to foreclose the lien of a mortgage or deed of trust on real property.

ARTICLE IX

ARCHITECTURAL CONTROL BY FAIRWAY FOREST TOWNHOME ASSOCIATION

Section 1: Association Approval. No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made by any person other than the declarant, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony or external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by the architectural control committee to be composed of three (3) members to be appointed by the president of the Association, which architectural control committee may act through any of its members. In the event said Board, or in the event said architectural control committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval shall not be required and this Article will be deemed to have been complied with.

ARTICLE X

USE RESTRICTIONS

Section 1: Residential Use. No owner shall occupy or use his townhome building plot, or the building thereon, or permit the same or any part thereof to be used or occupied for any purpose other than as a private single-family residence for the owner or his tenant and their family and guests. No townhome building plot shall be used or occupied for any business, commercial, trade or professional purposes either apart from or in connection with the use thereof as a residence. An owner may rent his unit to a single

family provided that the unit is rented for a term greater than thirty (30) days, subject to all of the provisions of the Declaration.

Section 2: Obstruction of Common Area. There shall be no obstruction of the common area. Nothing shall be stored or placed in the common area or any part thereof without the prior written consent of the Board of Directors, except as may be otherwise permitted in this Declaration. The provisions of this Section shall not apply to any part of the common area which any owner has the right to use to the exclusion of all other owners.

Section 3: Insurance. Nothing shall be done or kept in the common area which will increase the rate of insurance on the common area or any part thereof, without the prior written consent of the Board of Directors. No owner shall permit anything to be done or kept in the common area, or any part thereof, which shall result in the cancellation of insurance or which would be in violation of any law. No waste shall be permitted in the common area.

Section 4: Temporary and Other Structures. No structure of a temporary character, trailer, mobile home, tent, shack, barn, or other structure or building other than the residence to be built thereon shall be used as a residence, either temporarily or permanently; no residence house shall be moved upon any townhome building plot from another location. During the construction and sales period of the dwelling hoses on any townhome building plot, the declarant may erect and maintain such structures as are customary in connection with such construction and sale of such Property, including, but without limitation to, a business office, storage areas, construction yards, signs, model homes and sales office, and the declarant shall also have the right to use any residence as a temporary office in connection with his construction and sales operation during the construction and sales period.

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Section 5: Garbage and Refuse Disposal. No townhome building plot shall be used or maintained as a dumping ground for garbage, trash, or rubbish. All trash, garbage or wastematter shall be kept in adequate containers at the designated area of the residence. There is reserved to the Association the determination of the method of garbage disposal; whether it shall be through public authority or through private garbage disposal service. All equipment for the storage or disposal of garbage and other wastematter shall be kept in clean and sanitary condition.

Section 6: Water, Sewage. No private water well or septic tank shall be permitted on any townhome building plot.

Section 7: Use of Common Area. Except in the individual patio areas appurtenant to a residence, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of the residence located thereon or as approved by the Association, or its designated architectural committee or representative. Except for the right of ingress and egress and the rights and easements of enjoyment granted in this Declaration, the owners are hereby expressly prohibited and restricted from using any part of the common area except in accordance with the rules and regulations of and as may be allowed by the Association, it being expressly acknowledged and agreed by all owners that this paragraph is for the mutual benefit of all owners of the Property, and any additions or annexations thereto, and is necessary for the protection of the Owners. Maintenance, upkeep and repairs of any patio area appurtenant to a residence shall be the sole responsibility of each individual owner.

Section 8: Animal Regulations. No animals, livestock, reptiles, insects, poultry or other animals of any kind shall be kept in any residence except that usual and ordinary

domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any residence provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in the Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per residence; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Board shall have the right to limit the size of pets and may prohibit maintenance of any animal which constitutes, in the opinion of the Board of Directors, a nuisance to any other owner. Animals belonging to owners, occupants or their licensees, tenants or invitees within the Property must be either kept within an enclosure, an enclosed balcony or on a leash being held by a person capable of controlling the animal. Furthermore, any owner shall be absolutely liable to each and all remaining owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the project by an owner or by members of his family, his tenants or his guests. It shall be the absolute duty and responsibility of each such owner to clean up after such animals which have deposited droppings or otherwise used any portion of the common Property.

Section 9: View Obstructions. No vegetation or other obstruction shall be planted or maintained upon any patio or balcony in such location or of such height as to unreasonably obstruct the view from any other residence in the vicinity thereof. If there is a dispute between owners concerning the obstruction of a view from a residence, the dispute shall be submitted to the architectural committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the architectural committee, be removed or otherwise altered to the satisfaction of the Board of Directors by the owner of the residence upon which the obstruction is located. Any item or vegetation maintained

upon any patio or balcony, which item or vegetation is exposed to the view of any owner, shall be removed or otherwise altered to the satisfaction of the architectural committee, if such committee determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. The architectural committee shall ensure that the vegetation on the common Property maintained by the Association is cut frequently, so that the view of any owner is not unreasonably obstructed.

Section 10: Further Subdivision. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote for each mortgage owned), or owners representing seventy-five percent (75%) of the voting power of the Association residing in owners other than grantor have given their prior written approval, and all applicable laws and regulations have been complied with, no owner shall further subdivide his unit (physically or legally); provided, however, that this provision shall not be construed to limit the right of an owner to rent or lease all of his unit by means of a written lease or rental agreement subject to the restrictions.

ARTICLE XI

INSURANCE

Section 1: Duty to Obtain Insurance; Types. The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered acceptable to the Federal National Mortgage Association (not less than \$1 million covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its members, with respect to the common Property and any other property

under its jurisdiction. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the common and limited common Property and, where not covered by an individual unit owner's policy, those portions of the unit's fixtures, installations or additions comprising a part of the buildings housing the units and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof in accordance with the original plans and specifications for the project, or as installed by or at the expense of the owners. Such insurance shall be maintained for the benefit of the Association, the owners, and the mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance, as necessary, including, but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, and vandalism insurance, fidelity bonds and worker's compensation, flood insurance, and such other risks as shall customarily be covered with respect to townhome projects similar in construction, location and use. Fidelity bond coverage must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees and employees of the Association and employees of the professional managing agent of the Association. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for "PUD" projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and The Mortgage Corporation

(*TMC*), so long as any of which is a mortgagee or owner of a townhome within the project, except to the extent such coverage is not available or has been waived in writing by the FNMA, the GNMA and TMC, as applicable. See the FNMA Conventional Home Mortgage Selling Contract Supplement for specific requirements regarding qualification.

Section 2: Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the owners, the Association and the owners hereby waive and release all claims against one another, the Board of Directors and Grantor, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

* Section 3: Right and Duty of Owners to Insure. It is the responsibility of each owner to provide insurance on his personal property and upon all other property and improvements within his unit. Nothing herein shall preclude any owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to person or property occurring inside his individual unit or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any owner, such owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

* Section 4: Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy

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or policies shall not be cancelled, terminated or expired by their terms, without ten (10) days' prior written notice to the Board, grantor, owners and their respective first mortgagees (provided that grantor, such owners of mortgagees have filed written requests with the carrier for such notice) and every other person in interest who requests such notice of the insurer.

* Section 5: Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a common expense to be included in the annual assessments levied by the Association and collected from the owners. That portion of the annual assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the reserve fund, to be used solely for the payment of premiums of required insurance as such premiums become due. *

Section 6: Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 1 of this Article shall be paid to the Board of Directors as trustees. The Board shall have full power to receive and to contract for the proceeds and to deal therewith as provided herein as if they were an attorney in fact for the owners. Insurance proceeds shall be used by the Association for the repair or replacement of the Property for which the insurance was carried or otherwise disposed of as provided in Article XII of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage

C. Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;

D. Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any owner or any tenant of any owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

E. Any right of the insurer to repair, rebuild or replace, and, if the improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured;

F. Notice of the assignment of any owner of his interest in the insurance by virtue of a conveyance of any townhome; and

G. Any right to require any assignment of any mortgage to the insurer.

ARTICLE XII

DESTRUCTION OF IMPROVEMENTS

Section 1: Restoration of the Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article XI hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance

with the original construction plans if they are available, unless changes recommended by the architectural committee have been approved in writing by seventy-five percent (75%) of the owners and by seventy-five percent (75%) of the holders of record of first mortgages upon the townhomes. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair, a reconstruction assessment of the owners shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair, the owners by the vote or written consent of not less than seventy-five percent (75%) of the owners, together with the approval of at least seventy-five percent (75%) of the first mortgagees of record of the townhomes in the project, shall determine whether the Association shall be authorized to levy a reconstruction assessment and proceed with such restoration and repair. If the owners and their mortgagees, as provided above, determine that the cost of such restoration and repair would be substantial and that it would not be in their best interests to proceed with the same, the owners may, at their discretion, proceed as provided in Section 2 below.

Section 2: Sale of Property. If the amount available from the proceeds of the insurance policies maintained by the Association is less than eighty-five percent (85%) of the cost of reconstruction, a certificate of the resolution authorizing such reconstruction shall be filed within six (6) months from the date of such destruction and, if such certificate is not recorded within said period, it shall be conclusively presumed that the owners have determined not to rebuild said improvements. In the event of a determination not to rebuild, the Association, acting through

the successors of each owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the units and for the benefit of all other owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

Section 4: Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Article XI, Section 1 of this Declaration, restoration and repair of any damage to the interior of any individual residence, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, plumbing, walls, floor, wall coverings and floor coverings, shall be made by and at the individual expense of the owner of the residence so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article XII, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the architectural committee as provided herein.

Section 5: Notice to Owners and Listed Mortgagees. The Board, immediately upon having knowledge of any damage or destruction to the common Property, or any portion thereof, which damage or destruction is substantial or may be restored only at a cost exceeding Ten Thousand Dollars (\$10,000), shall promptly notify all owners, all institutional holders of first mortgages on townhomes in the project, and all other mortgagees who have filed a written request for such notice with the Board.

ARTICLE XIII

EMINENT DOMAIN

Section 1: Definitions; Total Taking, Partial Taking, Special Partial Taking. The term "taking" as used

In this Article shall mean condemnation by exercise of power of eminent domain or by sale under threat of the exercise of the power of eminent domain. A "total taking" shall occur if there is a permanent taking by eminent domain of an interest in all or part of the common areas or of all or part of one (1) or more units, such that the ownership, operation and use of the project in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the owners of any units (i) not taken, or (ii) only partially taken and capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively the "remaining units") do not by affirmative vote of a majority of their entire voting interest (without adjustment among such units for relative voting rights because of such partial taking) approve the continuation of the project and the repair, restoration and replacement to the extent feasible of the common areas and the remaining units. A "partial taking" shall occur if there is any other permanent taking of the Property. A partial taking shall include, without limitation, a "special partial taking" which is described herein as a taking of all or part of one (1) or more units, as units, subject to all of the provisions of this Declaration, without involving any taking of the common areas except to the extent of the proportionate interest therein of the units taken, so that the taking authority becomes a successor in title to the owner or owners of the townhome or townhomes so taken with the same effect as if such units were purchased by the taking authority. Following any taking which in the opinion of the Board of Directors would constitute a total taking in the absence of the affirmative vote of the owners of the remaining units as required by the foregoing provisions, the Board of Directors shall call a special meeting of owners of the remaining units to be held promptly, and in any event

within sixty (60) days after the effective date of such taking, to determine if such owners of the remaining units, will or will not, decide to continue the project as provided herein.

Section 2: Awards, Repair, Restoration and Replacement.

A. In the event of a total taking, the Board of Directors shall: (i) except as provided in Section 3, represent all of the owners in an action to recover any and all awards, subject to the right of all first mortgagees of record, upon request, to join in the proceedings, (ii) proceed with the sale of that portion of the project which was not included in the condemnation proceedings and distribution of the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and in the same manner as provided in Article XII, Section 2, and (iii) distribute the condemnation award in accordance with the court judgment of the agreement between the condemning authority and the Association, if any, if there is no such judgment or agreement, in accordance with Article XII, Section 2 of this Declaration.

B. In the event of a partial taking, other than a special partial taking, the provisions of Section 2A(i) of this Article shall be applicable. The net proceeds of the partial taking awards shall be held by the Board of Directors, after deducting related fees and expenses and the portions of the awards allotted in the taking proceedings or, failing such allotment, allotted by the Board of Directors to (i) units totally taken or partially taken and not capable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the taking, and (ii) units taken in the same manner as in a special partial taking except that the taking is made subject to only some or to none of the restrictions (collectively the "taken units").

The proceeds of the partial taking award allotted to the taken units shall be paid to the owners

of the taken units; provided, however, that such proceeds shall first be applied to the balance then due on any mortgages of record in order of priority before the distribution of any such proceeds to any owner whose townhome is subject to any such mortgage. First mortgagees of record with respect to the remaining units affected by such partial taking shall be entitled to severance damages payable out of the award proceeds held by the Board of Directors to the extent that such mortgagees can prove that their security has been impaired by such taking. The balance of the net proceeds shall then be applied to the repair, restoration and replacement of the common property and the remaining units (but not owners' personal property nor those portions of the units which the owners are obligated to restore) to as nearly their condition prior to the taking as may be feasible, in the same manner and under the same provisions applicable to the proceeds of insurance, except that the total amount of the award payable to any member and his mortgagee or mortgagees for a destroyed unit or units shall not exceed the value of said members townhome interest.

If the funds held for restoration by the Board of Directors are less than the cost of restoration and repair, a reconstruction assessment of the remaining owners (determined with reference to the relative square foot floor areas of the remaining units, as restored) may be levied by the Board of Directors to provide the necessary additional funds for such reconstruction. In no event shall the Board of Directors be required to undertake any repair or restoration work or make any payments with respect to any unit in excess of that portion of the awards reasonably attributable to the loss to that unit. Following any partial taking, the Association and the project shall continue, subject to and with the benefit of all the provisions of this Declaration, so far as applicable to the remaining units, and the voting interests of the owners shall be the same.

C. In the event of a special partial taking or a temporary taking of any townhome, the owner of the townhome taken, together with his mortgagees, shall have exclusive rights to prosecute the proceedings for the respective taking awards and to retain the proceeds thereof. In the event of a temporary taking of common areas, the Board of Directors shall have exclusive rights to prosecute the proceedings for the respective taking awards and shall apply the proceeds thereof to reduce common expenses.

Section 3: Awards for Owners' Personal Property and Relocation Allowances. Where all or part of the project is taken by eminent domain, each owner shall have the exclusive right to claim all of the award made for such owners' personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, however, or the provisions of Sections 1 and 2, the Board of Directors, except in the case of a special partial taking, shall represent each owner in an action to recover all awards with respect to such portion, if any, of an owner's personal property which is at the time of any taking, as a matter of law, part of the real estate comprising any unit, and shall allocate to such owner so much of any awards as is allotted in the taking proceedings or, failing such allotment, allotted by the Board of Directors to such owner's personal property. The amount so allocated shall be paid to the owner entitled thereto, whether or not the unit in which such owner's personal property was located is to be restored by the Board of Directors; provided, however, that such proceeds shall first be applied to the balance then due on any mortgages of record encumbering such owner's townhome, in order of priority. Notwithstanding restoration of the unit, the Board of Directors shall have no responsibility for restoration of such owner's personal property.

Section 4: Notice to Owners and Listed Mortgagees. The Board of Directors immediately upon having knowledge of any taking by eminent domain of the Property, or any

portion thereof, or any threat thereof, shall promptly notify all owners, all institutional holders of first mortgages on townhomes in the project and those mortgagees who have filed a written request for such notice with the Board.

ARTICLE XIV

RIGHTS OF MORTGAGEES

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any deed of trust upon a townhome made in good faith and for value, provided that after the foreclosure of any such deed of trust such townhome shall remain subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce The Mortgage Corporation ("TMC"), the Government National Mortgage Association ("GNMA") and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of townhomes within the project, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of mortgagees, TMC, FNMA, GNMA, VA and FEA, conflict with any other provisions of this Declaration or any other of the restrictions, these added restrictions shall control):

A. Each first mortgagee of a mortgage encumbering any townhome, upon filing a written request for notification with the Board, is entitled to written notification from the Association of any default by the Mortgagor of such townhome in the performance of such mortgagor's obligations under the restrictions, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, a "first mortgagee" shall mean a mortgagee of a mortgage with first priority over other mortgages or deeds of trust on a townhome.

B. Every owner, including every first mortgagee of a mortgage encumbering any townhome, who obtains title to

such townhome pursuant to the remedies provided in such mortgage, or pursuant to foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal."

C. Each first mortgagee of a mortgage encumbering any townhome, which obtains title to such townhome, pursuant to judicial foreclosure or the powers provided in such mortgage, shall take title to such townhome free and clear of any claims for unpaid assessments or charges against such townhome which accrued prior to the time such holder acquires title to such townhome.

D. Unless at least two-thirds (2/3rds) of the first mortgagees (based upon one (1) vote for each mortgage owned) or two-thirds (2/3rds) of the owners (other than grantor) have given their prior written approval, neither the Association nor the owners shall:

1. By act or omission seek to abandon or terminate the Property; or
2. Change the method of determining the obligations, assessment dues or other charges (other than the special assessments of late charges imposed by the Board in accordance with the provisions of this Declaration) which may be levied against any owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards; or
3. Partition or subdivide any townhome unit; or
4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common Property. (The granting of easements for public utilities or for other purposes consistent with the intended use of the common Property under this Declaration shall not be deemed a transfer within the meaning of this clause); or
5. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the common Property of the Property; or

6. Fail to maintain or cause to be maintained fire and extended coverage on insurable common areas as provided in Article XI of this Declaration; or

7. Use hazard insurance proceeds for losses to improvements to any common Property for other than the repair, replacement or reconstruction of such improvements, subject to the provisions of Article XI of this Declaration.

E. First mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of annual audited financial reports and other financial data, (3) receive written notice of all meetings of the owners, and (4) designate in writing a representative to attend all such meetings.

F. All first mortgagees, upon written request, shall be given thirty (30) days' written notice prior to the effective date of any proposed material amendment to the restrictions, and prior to the effective date of any termination of an agreement for professional management of the Property following any decision of the owners to assume self-management of the project.

G. The common Property reserve fund described in Article VIII of this Declaration must be funded by regular scheduled monthly, quarterly, or semi-annual payments rather than by large special assessments.

H. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person handling funds of the Association, including, but not limited to, employees of the professional manager.

I. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, TMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering townhomes. Each owner hereby agrees that it

will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential townhomes, if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a townhome.

J. Each owner hereby authorizes the first mortgagee of a first mortgage on his townhome to furnish information to the Board concerning the status of such first mortgage and the loan which it secures.

ARTICLE XV

THE ASSOCIATION

Section 1: Organization. The declarant shall cause the Association to be organized as a non-profit corporation under the laws of the State of Texas. The Association shall be so organized before the Declarant conveys the first townhome building plot to a purchaser. The declarant shall also convey to the Association, free and clear of liens, the common area prior to the time that the declarant conveys the first townhome building plot to a purchaser.

Section 2: Membership. Each and every owner of the fee or a fee interest in a townhome building plot in the property and all additions or annexations thereto shall automatically, upon becoming such owner, be a member of the Association and shall remain a member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each townhome building plot and may not be separated from such ownership.

Section 3: Classes of Membership, Voting Rights.
The Association shall have two classes of voting membership designated as "Class A" and "Class B" who shall be composed and have voting rights as follows:

Class A. - Class A members shall be all owners with the exception of the declarant, each of which owners shall be entitled to one (1) vote for each townhome building plot owned by him. When more than one person owns a fee interest in any townhome building plot, all such interested persons shall be members; however, the vote for such townhome building plot in which more than one person has a fee interest shall be cast by the person or persons having a majority interest, and in the event the persons having a majority interest are not able to agree in respect to a vote upon any matter, then such owners shall not have a right to vote on such matter as there shall be no fractional votes.

Class B. - Class B member(s) shall be the declarant who shall be entitled to three (3) votes for each townhome building plot owned by it, whether improved or unimproved. The Class B membership shall cease and be converted into Class A membership on the happening of the following events, whichever occurs earlier:

1. When the total votes outstanding in the Class A members equals for a period of at least twenty-four (24) consecutive months the total votes outstanding in the Class B membership; or

2. On the 5th anniversary date of the first conveyance by the declarant of a townhome building plot with a residence thereon, to a purchaser.

Section 4: The purpose of the corporation shall be to promote the health, safety and welfare of the residents within the above described property and to provide for maintenance, repair, preservation, upkeep protection and architectural control of the common area of such property and such other purposes as may be stated in the Articles of Incorporation and consistent with the provisions of this Declaration.

ARTICLE XVI

LEGAL DESCRIPTION

Section 1: The following form may be used for the legal description of a townhome building plot. As an example,

in a deed to the townhome building plot designated as Tract One (1), it may be described as:

Lot one (1) of Block one (1) of the FAIRWAY FOREST TOWNHOMES, a residential development of land located in the 4.738 acres Mary Owens Survey, Abstract 611, in Harris County as recorded in Volume ____, page ____, Map Records of Harris County, Texas, and being more particularly described in the Master Declaration and the Exhibits attached thereto, recorded in the Real Property Records of Harris County, Texas, under Harris County Clerk's File Number ____, reference to all of which is made for all purposes.

Section 2: The same form may be used for the legal description of each townhome building plot located on the Property with appropriate change in the tract number in the first line thereof.

Section 3: The rights and use easements of each owner in the common area and his membership in the Association shall be appurtenant to the ownership and pass with the title of his townhome building plot and it shall not be necessary that the transfer of such rights, use easements and membership be expressly set out in any deed, mortgage or other instruments.

ARTICLE XVII

GENERAL PROVISIONS

Section 1: Duration. The rights, use easements and privileges of the owners of townhome building plots in and to the common area as provided for and set out in this Declaration shall be deemed to be covenants running with the land and shall be of perpetual duration. All other provisions, restrictions, covenants and conditions of this Declaration shall also run with and bind the land and the owners for an initial term of fifty (50) years from the date this Declaration is filed for record, after which time they shall be automatically extended for successive periods of ten (10) years each, except that at any time after the expiration of said initial term the same may be terminated or amended in whole or in part by a written agreement signed and acknowledged by the then owners of at least 75% of the townhome building plots and first lien mortgage holders and filed for record in the Deed Records of Harris County, Texas.

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Section 2: Enforcement. The Association, as a common expense to be paid out of the maintenance fund, or any owner at his own expense, shall have the right to enforce by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to take any such action upon any breach or default of or in respect to any covenant, restriction or condition shall not be deemed a waiver of their right to take such action upon any subsequent breach or default.

Section 3: Amendments by Declarant. The Declarant reserves and shall have the right at any time and from time to time, without the joinder or consent of any owner or any other person, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of correcting any typographical error, ambiguity or inconsistency appearing in this Declaration, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not impair the vested property rights of any homeowner or his mortgagee.

Section 4: Building Plot. The terms "townhome building plot" and "plot" as used herein shall mean one and the same thing, that is a tract of land for the erection and construction of a residence house thereon for individual ownership, and each such term includes all such tracts, without regard to the fact that the residence house constructed or to be constructed thereon may or may not adjoin or share a party wall with another residence house.

Section 5: Additional Electrical Utility Easement. Easements for the installation and maintenance of electrical transformers shall exist upon the open patio area of the townhome building plots as may be required for electric service to the residence thereon and for the extension of

lines from such transformers to furnish electric service to other townhome building plots in accordance with the plan of construction and development. The cost and expense for the maintenance or repair of any such utility facility shall be equally shared by all owners served by such facility except in cases where it is the obligation of the utility company furnishing the service to maintain and repair the same.

Section 6: Repair to Street and Driveways. It is to be expected that the street and the driveways in the common area which are to be maintained and repaired by the Association will normally develop minor cracks due to the expansion, contraction, swelling or shifting of soil, the expansion and contraction of concrete and other causes, which cracks ordinarily do not interfere with or impair the reasonably safe use of such surfaces, and it is agreed that the Association may, but shall not be obligated to, repair minor cracks of this nature; however, it shall be the obligation of the Association to repair the street and driveways which are part of the common area when in the judgment of the Association any injury, damage or disrepair to or of the same is of such nature as would render the use thereof hazardous, dangerous or unsafe under normal and reasonable circumstances.

Section 7: Severability. Invalidation of any one of the covenants, restrictions or conditions contained in this Declaration, or any part thereof, shall in no wise affect any of the other covenants, restrictions or conditions which shall remain in full force and effect.

Section 8: Interpretation. If this Declaration or any part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accord with the general purposes and objectives of this Declaration shall govern.

Section 9: Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by an owner at a meeting of members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of members representing not less than (i) sixty percent (60%) of the voting power of the Association, and (ii) sixty percent (60%) of the voting power of the Association residing in members other than grantor, provided that the specified percentage of the voting power of the Association necessary to amend a specified Section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective when the Certificate of Amendment is recorded. Holders of seventy-five percent (75%) of the first mortgages on all townhomes in the project at the time of such amendment, based upon one (1) vote for each mortgage owned, must approve in writing any amendment which affects their rights or interest in the above described amendment. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by the record holders of seventy-five percent (75%) of the first mortgages on all of the townhomes in the project at the time of such amendment, based upon one (1) vote for each mortgage owned:

A. Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to encumbrancers or first lien mortgage holders as provided in this Declaration.

B. Any amendment which would necessitate an encumbrancer after it has acquired a townhome through foreclosure to

pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

C. Any amendment which would or could result in an encumbrance being cancelled by forfeiture, or in the individual townhome not being separately assessed for tax purposes.

D. Any amendment relating to the insurance provisions as set out in Article XI hereof, or to the application of insurance proceeds as set out in Article XI hereof, or to the disposition of any money received in any taking under condemnation proceedings.

E. Any amendment which would or could result in (i) termination of the Property or partition or subdivision of a townhome unit, in any manner inconsistent with the provisions of this Declaration or a change in the boundaries or easement rights herein, (ii) the interest in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the Owners Association or (iv) the purpose to which any unit or the common elements are restricted.

F. Any amendment which would subject any owner to a right of first refusal or other such restriction in favor of the Association, if such owner exercises his right to sell, transfer or otherwise convey his townhome.

A certificate, signed and sworn to by two (2) officers of the Association that the record owners of sixty percent (60%) of the townhomes have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. Such a certificate reflecting any amendment which requires the written consent of any of the record holders of first mortgages shall be signed and sworn to by such first mortgagees.

Section 10: Protection of Grantor. Notwithstanding any other provision in this Declaration, the prior written approval of grantor, as developer of the Property, will be required before any amendment which would impair or diminish the rights of grantor to complete the Property or sell or lease townhomes therein in accordance with this Declaration shall become effective.

Section 11: Legal Proceedings. Failure to comply with any of the terms of the restrictions by an owner, his family, guests, employees, invitees or tenants, after compliance with the notice and hearing procedures set forth in the Bylaws of the Association (except for the nonpayment of any assessments provided for herein), shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof. The Board, any owner (not at the time in default hereunder), or grantor shall be entitled to bring an action for damages against any defaulting owner, and in addition may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant thereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

Section 12: Violation of Restrictions. Without in any way limiting the generality of the foregoing, if the Board of Directors determines that there is a violation of any provision of this Declaration, or the architectural committee determines that an improvement which is the maintenance responsibility of an owner is in need of installation, repair, restoration or painting, then the Board shall give

written notice to the responsible owner of the condition or violation complained of. Unless the architectural committee has approved in writing corrective plans proposed by the owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board after it has given said written notice, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Board, after notice and hearing, shall undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the owner and his townhome whose residence is the subject matter of the corrective work. Such cost shall be deemed to be a special assessment to such owner, and his townhome, and shall be subject to levy, enforcement and collection by the Board in accordance with the assessment lien procedure provided for in this Declaration.

This Declaration has been executed as of this 15th day of March, 1980.


Anthony D. Vecchi
Grantor