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PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION

THE STATE OF TEXAS     §  
                                  §  
COUNTY OF BEXAR       §

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by EFRAIM JOFFE, of Bexar County, Texas, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the County of Bexar, State of Texas, being that certain residential subdivision to be known as Levy Townhouse Subdivision, and which property is more particularly described in the attached Exhibit "A"; and

WHEREAS, it is deemed to be in the best interests of Declarant, and any other persons who may purchase property in Levy Townhouse Subdivision, that there be established and maintained a uniform plan for the improvement and development of Levy Townhouse Subdivision as a highly restricted and modern townhouse subdivision of the highest quality.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in said Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to LEVY TOWNHOUSE OWNERS ASSOCIATION, INC., a Texas non-profit corporation, its successors and assigns.

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

Section 3. "Properties" shall mean and refer to that certain real property hereinafore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the

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Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Building Plot to an Owner other than a Declarant is described as Lot 21, Block 48, New City Block 17374, Levy Townhouse Subdivision, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Deed and Plat Records of Bexar County, Texas.

Section 5. "Building Plot" shall mean and refer to each of the individual tracts of land into which the property, excepting the Common Area, has been divided and is more particularly described as Lots 1 through 20, Block 48, New City Block 17374, and Lots 2 through 75, Block 49, New City Block 15330, Levy Townhouse Subdivision, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Deed and Plat Records of Bexar County, Texas, and being the locations of townhouse units thereon for individual use and ownership. Each Building Plot shall constitute a freehold estate subject to the terms, conditions and provisions thereof.

Section 6. "Declarant" shall mean and refer to EPHRAIM JOFFE, his heirs, successors, and assigns, if such successors and assigns should acquire more than one undeveloped Building Plot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Building Plot, subject to the following provisions:

(a) the right of the Association to make, publish and enforce reasonable Rules and Regulations for the use of the Common Area and any facilities situated thereon;

(b) the right of the Association to suspend the voting rights and right to use the facilities owned or operated by the Association by the Owner for any period during which any assessment against his Building Plot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations;

(c) the right of the Association to grant or dedicate any part of the Common Area to any public agency, authority, or utility for any service to the Properties or any part thereof;

(d) the right of the Association to limit the number of guests of

Owners using any portion of the Common Area and any facilities located thereon; and

(e) the right of the Association, in accordance with its Articles of Incorporation or By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said Properties shall be subordinate to the rights of the Owners hereunder.

Section 2. Delegations of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Declarant and every Owner of a Building Plot, which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Building Plot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Building Plot owned. When more than one person holds an interest in any Building Plot, all such persons shall be members. The vote for such Building Plot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Building Plot.

Class B. Class B member(s) shall be the Declarant and shall be entitled to nine (9) votes for each Building Plot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A members equals or exceeds the total votes outstanding in the Class B members; or

(b) on the fifth (5th) anniversary date of this Declaration. Control of the Owners Association will be vested in the purchasers of the units within one-hundred twenty (120) days of the termination of the Class B membership.

ARTICLE IV.

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Building Plot owned within the Properties, hereby covenants, and each Owner of any Building Plot by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing Vendor's Lien upon the property against which each such assessment is made. 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 property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties; the improvement, operation, administration, management, preservation and maintenance of the Common Area and any part thereof; the payment of all expenses and obligations lawfully incurred by the Association in connection with the Common Area or services for all Building Plots. It being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum annual assessment shall be One Hundred and No/100 Dollars (\$100.00) for each Building Plot, which shall be due and payable as provided hereinafter.

(a) From and after January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) (such percentage increase may be cumulative from year to year) above the maximum

assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by the vote of written assent of at least fifty-one percent (51%) of each class of members.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of members.

Section 5. Notice and Quorum For Any Action Authorized Under Sections 3 and 4. Any action authorized under Sections 3 or 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting. Each member not in attendance shall be delivered a proxy within ten (10) days of such meeting and should they not return their proxy within the thirty (30) day period, each Owner by acceptance of his Deed hereby expressly vests in the Board of Directors the right to cast a ballot on behalf of such Owner on such proposed action.

Section 6. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Building Plots as follows:

- (a) Building Plots owned by EYRAIM JOPPE, .....None
- (b) Building Plots with a completed residence sold to individual homebuyers.....100%

In the event the maximum assessments (including increases allowable under

Article IV., Section 3.) are insufficient to cover the actual costs of maintaining the Common Area within the Properties, Declarant shall be obligated to provide the Association with the amount required to make up such deficit, until the earliest of the events set forth in Article III., Section 2., at which time the aforesaid obligation shall terminate.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessment, which shall be either annually or monthly as the Association may select, provided for herein shall commence as to all Building Plots on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Building Plot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Building Plot have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Building Plot. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Owner, by his acceptance of a Deed to a Building Plot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil Statutes, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Building Plot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein

by non-use of the Common Area or abandonment of his Building Plot.

Section 9. Subordination of the Lien to Mortgages. The Vendor's Lien securing payment of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages granted or created by the Owner of any Building Plot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Building Plot. Sale or transfer of any Building Plot, pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Building Plot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Insurance.

(a) The Board of Directors of the Association shall obtain and continue in effect blanket property insurance, which meets Federal National Mortgage Association (FNMA) guidelines as established by the FNMA Conventional Selling Contract Supplement or any revisions or other FNMA publications, to insure the building and structures in the Common Area, naming the Association as beneficiary with an endorsement to the mortgage, if any, against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, and said insurance to include coverage against vandalism.

(b) The Board of Directors of the Association shall obtain comprehensive public liability insurance acceptable to FNMA 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.

(c) Each Owner shall be responsible at his own expense and cost for obtaining his own personal insurance of the contents of his own residence, garage, carport or parking space, including decorations, furnishings and personal property therein, and his personal property stored elsewhere on

the Properties; and for his personal liability not covered by liability insurance for all Owners obtained as a part of the common expense.

(d) The Board of Directors of the Association, or its duly authorized agent, shall obtain insurance which meets FRMA guidelines for such Owner's townhouse unit against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard. All such insurance coverage shall be written in the name of the Association as Trustee for the townhouse unit Owner with a non-contribution mortgagee clause. Premiums for insurance obtained by the Board of Directors on individual townhouse units shall not be a part of the common expense but shall be an expense of the specific townhouse unit covered and a debt owed by the Owner and shall be collectible by any lawful procedure permitted by the laws of the State of Texas. In addition, if said debt is not paid within thirty (30) days after notice of such debt, such amount shall automatically become a lien upon such Owner's Building Plot and townhouse unit and shall continue to be a lien until fully paid. This lien shall be subordinate to the lien of any purchase money and/or improvement mortgages and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors, shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other institution, the accounts of which Bank or institution are insured by a Federal governmental agency, with the provision agreed to by said Bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors, shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are



insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all Owners of the damaged townhouse units in such proportions as the Board of Directors deems fair and equitable in the light of the damage sustained by such townhouse units to make up any deficiency, except that the special assessment shall be levied against all townhouse unit Owners, as established by Article IV., Section 1, above, to make up any deficiency for repairing or rebuilding of the Common Area, not a physical part of a townhouse unit. In the event that such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and Owners of the damaged townhouse units in such proportions as the Board of Directors deems fair and equitable in the light of the damages sustained by the townhouse units.

(e) Nothing contained in subsection (d) above shall preclude an Owner from obtaining his own personal insurance on his own townhouse unit, provided that such Owner is able to supply proof of adequate coverage to the Board of Directors' complete satisfaction. In the event of damage or destruction by fire or other casualty to any townhouse unit or other property covered by insurance written in the name of an individual Owner, said Owner, shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of such townhouse unit or other property in a good workmanlike manner in conformance with the original plans and specifications of said townhouse unit. If for any reason whatsoever, such Owner should refuse or fail to so repair and rebuild any and all the damage to such townhouse unit or other property within thirty (30) days regardless of whether or not the insurance proceeds are sufficient to pay all costs of repair and restoration, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such townhouse unit or other property in a good and workmanlike manner in conformance with their original plans and specifications. The Owner shall then promptly repay the Association the amount actually expended for such repairs plus interest thereon at the rate of eighteen percent (18%) per annum, and the Association shall have a lien securing the payment of same identical to that provided above in this Section securing

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the payment of insurance premiums and subject to foreclosure as above provided.

(f) Should any mortgagee fail to concur in the application of the insurance proceeds to the cost of repair and restoration, such proceeds shall first be applied to the sums secured by the first mortgage, with the excess, if any, applied to the cost of repair and restoration of such townhouse unit or other property.

(g) All costs, charges and premiums for all insurance that the Board of Directors authorized as provided herein, except on the individual townhouse units, shall be a common expense of all Owners and be a part of the maintenance assessment.

Section 12. Taxes. Each Owner shall directly render for taxation his own Building Plot and improvements and property thereon, and shall at his own cost and expense directly pay all taxes, levied or assessed against or upon his Building Plot and improvements and property thereon. The Association shall render for taxation, and as part of the common expense and all Owners shall pay as a part of the maintenance assessment, all taxes levied or assessed against or upon the Common Area and the improvements and property appertaining thereto.

Section 13. Utility Bills. Each Owner shall pay directly to the utility company for the cost of water, gas, sewage disposal, and any other utilities consumed by each Owner. All utilities used in the Common Area shall be billed to the Association and shall be part of the Common expense, and each Owner shall pay his 1/94th pro-rata share thereof as in the case of other common expenses.

#### ARTICLE V.

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design

and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI.

MAINTENANCE AND REPAIRS

Section 1. Definition. In addition to maintenance upon the Common Area, the Association shall, if the owner neglects to, provide exterior maintenance upon each Building Plot which shall be subject to assessment hereunder as follows: paint, repair, replace (but not in the event of fire, or other casualty loss normally covered by insurance on the premises) and care for roofs, gutters and downspouts (if any), exterior building surfaces, trees, shrubs, grass, walks, water distribution system owned by the Association or any owner, and other exterior improvements. Such exterior maintenance shall include: glass surfaces, enclosed patio areas (if any), windows and doors and their fixtures of hardware, landscaping installed by Owner (if any), exterior light fixtures operated from a residence, and air conditioning equipment, circuit breakers and switch panels, sewer, gas and electric power service lines.

Section 2. Owner's Maintenance. The Owner shall maintain and keep in first class condition the exterior of his townhouse unit and grounds, including but not limited to painting all wood surfaces every three (3) years, and repair any roof leaks. The Owner shall maintain and keep in repair the following equipment and lines located outside the residence: air conditioning compressor condenser, including pipes and electrical lines connecting same to the residence, sanitary sewer line connecting the residence to the sanitary sewer collection system, electric circuit breakers, any portion of natural gas, and/or telephone service lines located on the Building Plot but not maintained by the gas and/or telephone companies; provided, however that any lines, pipes, wires, conduits, or systems running through a residence which serve one or more other residences and which are not maintained by any utility company, shall be operated, repaired and maintained by the townhouse units affected, and shall not be disturbed or relocated by an Owner with out the written consent and approval of Declarant or the Association. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another residence or impair any easements or hereditament, nor do any act nor allow any

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condition to exist which will adversely affect the other residences or their Owners.

Section 3. Neglect of Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, invitees, employees or agents, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Building Plot is subject.

Section 4. Authority of Association. In the event an Owner is responsible for certain exterior maintenance as set forth in the Rules and Regulations of the Association, and such Owner shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Building Plot and to repair, maintain and restore the Building Plot and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Building Plot is subject.

#### ARTICLE VII.

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhouse units upon the Properties and placed on the dividing line between the 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 or partly on one Building Plot instead of on the dividing line between the Building Plots, due to error in construction or shifting, such wall shall nevertheless be deemed to be on the dividing line and shall constitute a party wall for the purposes of this Article. Reciprocal easements shall exist upon and in favor of the adjoining townhouse units for the maintenance, repair and reconstruction of party walls.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair 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 other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice; however, to the right of any such Owners to call for a larger contribution from the others under any rule 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 negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

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

Section 6. Arbitration. In the event of 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 decision 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 VIII.

##### RE-SUBDIVIDING OF BUILDING PLOTS

Any Building Plot or part hereof may be re-subdivided or consolidated with any adjoining Building Plot or Building Plots or part or parts thereof to constitute a single Building Plot on which a residence may be constructed, provided that the same shall be approved by the Architectural Control Committee.

#### ARTICLE IX.

##### USE RESTRICTIONS

The Building Plots and the Common Area shall be occupied and used as follows:

Section 1. Residential use. No Owner shall occupy or use his Building Plot or building thereof, or permit the same or any part thereof to be occupied or used for any purpose other than as a private single family residence for the

Owner, his family, guests and tenants of not less than 1000 square feet of floor area, measured through the exterior walls of the Building. No 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. All townhouse units shall be constructed of at least sixty percent (60%) masonry, brick, stucco, stone, rock or other material approved by the Architectural Control Committee.

Section 2. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 3. Insurance. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

Section 4. Nuisances. No noxious or offensive activity shall be carried on upon any Building Plot, or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, driveway or yard adjacent to a street, or in the Common Area. No vehicle shall be parked on streets or driveways so as to obstruct ingress and egress by the Owners of Building Plots, their families, guests and invitees except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible.

Section 5. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn, servant quarters or other out buildings shall be used on any Building Plot at any time as a residence either temporarily or permanently; nor shall any used residence or other used structure be moved onto any Building Plot. During the sales period of the initial dwelling units, the Declarant may erect and maintain such structures as is customary in connection with such sale of such property, including, but without limitation, a business office, storage areas, construction yards, signs, model units and sales office.

Section 6. Signs. No sign of any kind shall be displayed to public view on any Building Plot or building except one sign of not more than three (3) square feet in area advertising the merits of the property for sale or rent. During the initial sales period of the dwelling units, the Declarant may use other signs and displays to advertise the merits of the property for sale or rent.

Section 7. Oil and Mining Operations. No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Building Plot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Building Plot.

Section 8. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Building Plot, except that dogs, cats or other household pets, not to exceed a total of two (2) pets, may be kept provided that they shall not become a nuisance and are not kept, bred, or maintained for any commercial purposes.

Section 9. Garbage and Refuse Disposal. No Building Plot shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall be kept screened by adequate planting or fencing so as to conceal them from public view. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal contractor(s). All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

Section 10. Sewage and Water. No sewage treatment system nor water well shall be permitted on any Building Plot.

Section 11. Use of Common Area. Except in enclosed areas on a Building Plot, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Properties except such as are installed in accordance with the initial building of the buildings located thereon or as approved by the Association's Board of Directors or their designated architectural committee. Except for the right of ingress and egress and the right and easement of enjoyment as defined herein, the Owners are hereby prohibited and restricted from using any of the Properties outside the interior property lines of each Building Plot, except as may be allowed by the

Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of the Properties, and any additions thereto, and is necessary for the protection of said Owners. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area and the exteriors and roofs of the residences, including but not limited to, parking areas and walks, may be taken by the Board of Directors or by its duly delegated representatives.

Section 12. Outside Antennas. Without prior written approval of the Board of Directors, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Properties, nor upon any structure situated upon the Properties other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 13. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 14. Annoyance. No activity shall be carried on upon any Building Plot or the Common Area which might reasonably be considered as giving annoyance to neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the Properties as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit. The Board of Directors of the Association shall have the sole and exclusive discretion to determine what constitutes an annoyance.

#### ARTICLE X.

##### EASEMENTS

Section 1. Construction. Each Building Plot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, reconstruction, repair, shifting, settling, movement, and overhangs, as designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing two (2) townhouse units is partially or totally destroyed, and then rebuilt, the Owners so affected agree that minor encroachments of parts of the adjacent townhouse units on Common Area due to construction shall be permitted and that a valid easement for said encroachment

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and the maintenance thereof shall exist.

Section 2. Utility, Emergency and Association. There is hereby created a blanket and perpetual easement upon, across, over, under and above all of the Properties for ingress, egress, installing, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a cable television system, if any such system is installed. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or television company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said residences. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pick-up vehicles 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 management company selected by the Association to enter in or to cross over the Common Area and any Building Plot to perform the duties of maintenance and repair of the unit or Common Area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, gas lines, or other utilities may be installed or relocated on the Properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association's Board of Directors. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easement on said parcels.

Section 3. Use of Easements. Easements for underground utility services may be crossed by driveways and walkways provided the Declarant makes prior arrangements with the utility company furnishing service. Such easements for underground services shall be kept clear of all other improvements, including building, patios, or other pavings, other than crossing walkways or driveways, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants, to shrubbery, trees, flowers, or other improvements of

the Owner located on the land covered by said easements.

Section 4. Changes and Additions to Easements. The Declarant reserves the right to make minor changes and additions to the above easements, as to any Building Plots owned by it, for the purpose of efficiently and economically installing and operating the above-mentioned utilities.

ARTICLE XI.

MORTGAGEES

Section 1. Notice to Association. An Owner who mortgages his townhouse unit shall notify the Association giving the name and address of his mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Townhouses".

Section 2. Notice of Default. The Association shall notify a first mortgagee in writing, upon request of such mortgagee, and once request is given, it shall be deemed a continuing request, of any default by the mortgagor in the performance of such mortgagor's obligations as set forth in the Declaration which is not cured within thirty (30) days.

Section 3. Taxes and Other Charges on Common Area. The Association shall immediately reimburse first mortgagees who may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area; or who may pay overdue premiums on hazard insurance policies; or who may secure new hazard insurance coverage on the lapse of a policy.

Section 4. Examination of Books. The Association shall permit first mortgagees to examine the books and records of the Association during normal business hours.

Section 5. Reserve Fund. The Association shall establish an adequate reserve fund for replacement of the Common Area property and fund the same by regular monthly payments rather than by special assessments.

Section 6. Annual Audit. The Association shall furnish each first mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.

Section 7. Notice of Meetings. The Association shall furnish each first mortgagee upon request of such mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such mortgagee to attend such meetings, one such request to be deemed to be a

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request for prior written notice of all subsequent meetings of the Association.

Section 8. Notice of Amendments to Declaration, etc. The Association shall furnish each first mortgagee prior written notice for the following: (i) abandonment or termination of Levy Townhouse Subdivision, as a townhouse development; (ii) any material amendment to the Declaration, By-Laws, or Articles of Incorporation of the Association; and (iii) the termination of any professional management contract for the townhouse development.

Section 9. Leases. The Association shall require that all leases of any townhouse unit must: (i) be in writing, and (ii) provide that such leases are specifically subject in all respects to the provisions of this Declaration, Articles of Incorporation and By-Laws of the Association, and that any failure by the Lessee to comply with the terms and conditions of such documents shall be a default under such leases. Other than the foregoing, there shall be no restriction on the right of any townhouse Owner to lease his unit.

Section 10. Notice of Damage or Destruction. The Association shall furnish the first mortgagees timely written notice of any substantial damage or destruction of townhouse units and of any part of the Common Area and facilities.

Section 11. Notice of Condemnation or Eminent Domain. The Association shall furnish the first mortgagees timely written notice of any condemnation, or eminent domain proceeding regarding all or any portion of a townhouse unit or of the Common Area and facilities and of any proposed acquisition of all or any part of such properties through condemnation or eminent domain proceedings.

Section 12. Consent of Mortgagees Required.

A. Unless all of the first mortgagees of Building Plots in Levy Townhouse Subdivision have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, release, alienate, hypothecate, sell, or otherwise encumber real estate or improvements thereon which are owned, directly or indirectly, by such Association, for the benefit of the Owners of Building Plots in the subdivision; the granting of easements for public utilities or other public purposes consistent with the intended use of such property by the subdivision shall not be deemed a transfer within the meaning of this clause;

(b) change the ratio of assessment or the method of determining the obligations, assessments, dues or other charges which may be levied against a residential lot owner.

B. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owner), or Owners (other than the Declarant) of townhouse lots in Levy Townhouse Subdivision have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission change, waive or abandon any scheme of regulation, or enforcement thereof, pertaining to architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the subdivision;

(b) fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(c) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such improvements.

Section 13. Management Agreements. Any management agreement entered into by the Association will be terminable by the Association without cause upon not more than thirty (30) days' written notice, and the term of such management agreement will not exceed the period of one (1) year, renewable by agreement of the parties to such agreement for successive one (1) year periods.

Section 14. Delegations of Owner's Use of Common Area. Regarding an Owner's delegation of his rights of enjoyment to the Common Area and facilities as provided for in Article II., Section 2, of this Declaration, no such delegation shall work a severance of the rights of enjoyment of the Common Area and facilities from the ownership of a Building Plot, and any such delegation by any Owner shall automatically terminate upon conveyance of legal title to such Building Plot by said Owner.

Section 15. Exemption from Right of First Refusal. When any first mortgagee or purchaser comes into possession of a townhouse unit pursuant to the remedies provided in the mortgage, such as foreclosure of the mortgage or deed of trust, or deed or assignment in lieu of foreclosure, such mortgagee

shall be exempt from any "right of first refusal" of other restriction on the sale or rental of the mortgaged townhouse unit which the Association might have, including, but not limited to, restrictions on the age of unit occupants and restrictions on the posting of signs pertaining to the sale or rental of townhouse units. The mortgagee or purchaser also take the unit free of any claims for unpaid assessments and charges against the unit which accrued prior to the time such holder came into possession of the unit, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all units in the development including the mortgaged unit.

ARTICLE XII.

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by injunctive relief and to receive damages or both, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Articles of Incorporation of the Homeowners Association, and By-Laws. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Duration. The rights, use, easements and privileges of the Owners in and to the Common Area as provided for herein 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 run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Building Plot Owners; and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Building Plot Owners. Any amendment must be recorded in the Deed Records of Bexar County, Texas.

: :

Section 4. 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 or conforming this Declaration to the requirements of FIMA, 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.

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writing duly signed, acknowledged and filed for record, for the purpose of correcting any typographical error, ambiguity or inconsistency appearing in this Declaration or conforming this Declaration to the requirements of FNMA, 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 5. Rights of Mortgagees, Trustees or Lienholders. No violations of any of these restrictions, covenants, or conditions, shall affect or impair the rights of any mortgagee, trustee or lien holder under any mortgage or deed of trust, or the rights of any assignee of any mortgagee, trustee or lienholder under any such mortgage or deed of trust.

IN WITNESS WHEREOF, the undersigned, has hereunto set its hand and seal this 8<sup>th</sup> day of May, 1984.

BY:

EFRAIM JOFFE

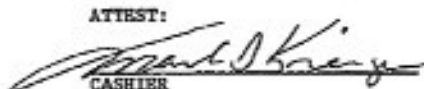


"DECLARANT"

INTERFIRST BANK SAN ANTONIO, N.A., Texas, the lien holder, joins in the execution hereof for the purpose of subordinating all of the liens held by it against the Properties unto these presents, and does hereby consent and agree to the imposition of the foregoing reservations, restrictions, covenants and conditions; and it does hereby agree that a foreclosure shall not affect such reservations, restrictions, covenants and conditions.

ATTEST:

CASHIER



INTERFIRST BANK SAN ANTONIO, N.A.

BY:



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STATE OF TEXAS

COUNTY OF BEXAR

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

GIVEN UNDER MY HAND AND SEAL of office this the 8th day of May, 1984.

Daniel E. Corbett  
NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES: 12/9/85



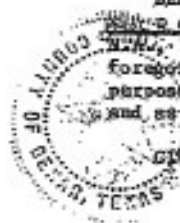
STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared FRANK ANTONIETTI, JR., VICE PRESIDENT, of INTERFIRST BANK SAN ANTONIO, S.A., Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Bank.

GIVEN UNDER MY HAND AND SEAL of office this the 8th day of May, 1984.

Mary H. Hone  
NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES: 10-6-86



5/7/84:lph

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EXHIBIT "A"

Lots 1 through 21, Block 48, New City Block 17374, and Lots 2 through 75, Block 49, New City Block 15330, Levy Townhouse Subdivision, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Deed and Plat Records of Bexar County, Texas.

Return to:  
Ephraim Goffe  
1343 Busse Rd  
S. A. Texas 78212

RECORDED  
JUN 29 1984



County Clerk BEXAR COUNTY, TEXAS

1984 JUN 28 P 2 00

FILED IN OFFICE  
OF CLERK  
BEXAR CO.

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NOTICE

INSTRUMENT FILE NUMBER 789219 789224 *plots*  
DOES NOT PERTAIN TO REAL PROPERTY. THIS INSTRUMENT  
CAN BE FOUND IN ANOTHER RECORD.