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FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

COPPERFIELD TOWNHOMES
(A Townhome Subdivision)

Effective as of July 1, 1986

17K3-1130

COPPERFIELD TOWNHOMES
(A Townhouse Subdivision)

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FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

COPPERFIELD TOWNHOMES
(A Townhouse Subdivision)

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

THIS DECLARATION, made as of the 1st day of July, 1986, by COPPERFIELD TOWNHOMES, INC., a Texas corporation (the "Declarant").

WHEREAS, the Declarant executed and filed for record its Declaration of Covenants and Restrictions dated as of April __, 1986, covering that certain real property situated in the County of El Paso, State of Texas, described on Exhibit "A" attached hereto and incorporated herein for all purposes, which Declaration is recorded in Book 1610, Page 419 of the Deed Records of El Paso County, Texas; and

WHEREAS, Declarant desires to amend and restate said Declaration of Covenants and Restrictions;

NOW, THEREFORE, Declarant does hereby publish and declare this First Amended and Restated Declaration of Covenants and Restrictions for Copperfield Townhomes, as follows:

ARTICLE I
Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Declarant" shall mean and refer to Copperfield Townhomes, Inc., and to any successors in interest.

(b) "Association" shall mean and refer to the Copperfield Homeowners' Association, a Texas non-profit corporation, and to any non-profit corporation which succeeds to all or substantially all of its assets by merger, consolidation, or conveyance of assets.

(c) "Properties" or "Subdivision" shall mean and refer to the properties described on Exhibit "A" attached hereto, which is subject to this Declaration and any amendments or supplements hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

(d) "Subdivision Plat" shall mean and refer to the map or plat of Copperfield Townhomes, recorded in Volume 60, Page 72 of the Map Records of El Paso County, Texas.

(e) "Lot" or "Lots" shall mean and refer initially to the twenty (20) enumerated lots shown on the Subdivision Plat. If a subdivision plat is hereafter filed for record by Declarant in the office of the County Clerk of El Paso County, Texas, replatting the area within any of the Lots, then, with respect to the replatted area only, the term "Lot" or "Lots" shall thereafter mean and refer to any of the numbered lots shown on such subdivision plat.

(f) "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plat, excluding the Lots and including the streets designated as Private Streets or Private Drives, together with any such other property, real or personal, as the Association may, at any time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof, and/or by virtue of the Subdivision Plat, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title.

(g) "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties except those as may be expressly excluded herein. In some instances Common Facilities may consist of improvements for the use and benefit of the Owners of all of the Lots constructed on portions of one or more Lots as is herein provided. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: storage structures; sidewalks; private streets; common driveways; guest parking spaces; landscaping; force main; the drainage area; electric transformers; and other similar appurtenant improvements.

(h) "Townhouse" shall mean and refer to any single family residential unit situated upon a Lot or Lots.

(i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired fee simple title through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure.

(j) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 3.02, hereof.

ARTICLE II Reservations, Exceptions and Dedications

Section 2.01. Subdivision Plat. All dedications, easements, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein for all purposes, insofar as they relate to the Lots.

Section 2.02. Existing Easements. Declarant, or its predecessors in title, has heretofore reserved, created and dedicated by separate recorded instruments utility easements in favor of certain public utility companies, and municipal and other governmental authorities servicing the Properties as shown and provided in such separate, recorded instruments, and such instruments are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Properties.

Section 2.03. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements and for the purpose of most efficiently and economically installing the improvements.

Section 2.04. Title to Easements and Appurtenances Not Conveyed. It is expressly agreed and understood that the title conveyed by Declarant to any Lot by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, cable television poles, lines, wires or pedestals, telegraph or telephone way or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto constructed by or under Declarant, its agents or its predecessors in title, through, along or upon any Lot or any part thereof to serve said Lot, or any other Lots or portions of the Properties or any improvements therein situated, and the right to maintain, repair, sell or lease such appurtenances to any municipality, or other governmental agency or to any public service corporation or private corporation or to any other party is hereby expressly reserved in Declarant and the Association.

Section 2.05. Minor Encroachments. Each Lot and the property included in the Common Properties shall be subject to a perpetual easement for minor encroachments from adjoining Lots which are caused or created by unintentional error in construction, settling, shifting of soil, protrusions and overhangs, and a temporary easement for ingress and egress during and in connection with the maintenance and construction of improvements on adjacent property.

Section 2.06. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Properties and all improvements currently existing or hereafter constructed thereon, for ingress and egress, installation, replacing, repairing and maintaining (i) the drainage area situated on the Common Properties, and (ii) all utilities, including, but not limited to, water, sewer, telephones, electricity, cable television, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to affix and maintain pipes, wires, transformers, conduits, pedestals, service lines or other utility facilities or appurtenances thereto, on, above, across, through and under the Properties or the improvements constructed thereon. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, cable television pedestals, electric transformers, or other utilities or appurtenances thereto may be reinstalled or relocated or may the drainage area be resurfaced on the Properties until approved by Declarant or the Association's Board of Trustees.

Section 2.07. Guest Parking Spaces and Sidewalks. An easement is hereby granted upon and across all portions of the Common Properties designated by the Association, or by the Declarant pursuant to Section 3.11 hereof, to be utilized as Guest Parking Spaces and upon and across those portions of the Common Properties to be utilized as Sidewalks; provided, however, that such easement shall not cover any area included within the portion of a Lot on which is situated a Townhouse. Such easement shall be for the common use and benefit of Owners and their families, guests or invitees, and their right to use the same for ingress and egress shall be had at all times, except as may be limited by the Board of Trustees of the Association. The Association shall have the right to remove or require the removal of any obstruction that may be placed in such easement that would constitute interference with its intended use, provided, however, that it is not intended that any private vehicles shall be permanently parked on the common driveway or accesses to garages.

Section 2.08. Private Driveway. The "Private Driveway" situated in the Common Properties shall be construed to be an easement available for the general use of the Owners of the Lots but not for public ingress and egress for the benefit of the Lots, except to the extent required by applicable governmental regulations. The "Private Driveway" shall consist of all other portions of the Common Properties not designated as Guest Parking Spaces or Sidewalk, including that portion of the Common Properties designated as Guest Parking, which provides direct access to Thunderbird Drive.

Section 2.09. Minor Curb Line Encroachments. Each Lot and the property included in the Common Properties shall be subject to an easement for encroachment by the curb line, if any, of any common driveway situated in the Common Properties onto said Lots and/or Common Properties to the extent and subject to the limitations hereinafter set forth. Said easement shall be up to one (1) foot in width and shall be along and parallel to the outside boundaries of such Private Streets or Alleys where such boundaries are common with boundary lines of said Lots and/or Common Properties; provided however, that such easement shall not cover any area included within the portion of a Lot on which is situated a Townhouse.

Section 2.10. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles to enter upon the Properties in the performance of their duties. Further an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Properties to render any service.

Section 2.11. Surface Areas. The surface of easement areas for underground utility services may be paved for streets, driveways and/or may be used for planting shrubbery, trees, lawns or flowers. However, it is expressly agreed that neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their agents, employees, servants or assigns, to the pavement or to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

Section 2.12. Mineral Exception. There is hereby excepted from the Properties and Declarant will hereafter except from all its sales and conveyances of the Properties, or any part thereof, including the Lots and the Common Properties, all oil, gas and other minerals in, on and under the Properties, if any not previously reserved, but Declarant hereby waives its right to use the surface of such land for exploration for, or development of, oil, gas and other minerals. Such exceptions and retained rights and reservations shall inure to the benefit of Declarant and its successors and assigns.

Section 2.13. Leasing Restrictions. No Owner of any Lot may lease or rent his Lot for a term of less than thirty (30) days. Any lease or rental agreement shall be in writing, and shall be subject to the requirements of the terms hereof, the Bylaws, and the rules and regulations promulgated by the Association.

ARTICLE III **The Association**

Section 3.01. Authority to Manage. The Association shall be organized as a membership non-profit corporation under the laws of the State of Texas, the name of which cor-

poration shall be the Copperfield Homeowners' Association, and it shall be and constitute the governing and administrative body for all Owners for the protection, preservation, upkeep, maintenance, repair, restoration, operation and replacement of the Common Properties and Common Facilities, and for such purpose the Association is hereby irrevocably appointed as attorney-in-fact for all Owners.

Section 3.02. Membership. Each Owner of a Lot, including Declarant, shall by virtue of such ownership automatically be a Member of the Association and shall remain a Member thereof until such time as his total ownership ceases for any reason, at which time his membership in the Association shall also automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each Lot, and upon any transfer of ownership howsoever caused or brought about, the new Owner shall automatically be and become a Member of the Association. The Association may issue certificates evidencing membership therein at the cost and expense of the party requesting same.

Section 3.03. Board of Trustees. The affairs of the Association shall be managed by a Board of Trustees. All activities, rights, powers, duties, obligations, functions, and responsibilities of the Association shall be performed, exercised, discharged and accomplished through its Board of Trustees, except in any particular case where the laws of the State of Texas or the Bylaws of the Association require that action be taken by vote of the Members. The Board of Trustees may employ the services of a manager or managing agent. Until the election of the first Board, the Declarant shall exercise all of the powers, rights, duties and functions of the Board for the benefit of the Owners.

The Board of Trustees shall consist of not less than three (3) persons who are Members of the Association, spouses of Members, or in the event that a Lot is owned by a corporation or other business entity, an officer or director of such entity who resides in the Townhouse located upon the Lot owned by such entity. The Trustees shall be elected by the Members at the first meeting of the Members and at the annual meeting of the Members thereafter except as otherwise provided in the Bylaws or herein. The candidates receiving the highest number of votes up to the number of members of the Board to be elected shall be deemed elected. All votes shall be cast by written ballot. Members shall not vote cumulatively for the election of Trustees. The presence of a majority of Trustees at a meeting of Trustees shall constitute a quorum for the transaction of business. The action of a majority of Trustees present at the meeting at which there is a quorum shall be as the act of the Board. The annual meeting of the Board shall be held each year immediately following the annual meeting of the Members, at the place of such annual meeting of Members, for the election of officers and the consideration of any other business that may properly be brought before such meeting. Regular meetings of the Board shall be held at such times and places as the Board shall determine. Special meetings of the Board shall be held at any time upon the call of the President or upon call by one (1) Trustee. Notice of such special meeting shall be in writing.

The members of the Board shall serve for a term of two (2) years commencing at the time of their election until their successor is elected, their death, resignation, removal or until they are no longer Members of the Association, whichever is earlier. Any member of the Board may be removed from membership on the Board, with or without cause, by the affirmative vote of two-thirds (2/3rds) of the votes represented at a meeting of the Members of the Association called to consider such action.

Section 3.04. Rights, Functions and Obligations of the Association. In addition to all other rights, functions and obligations of the Association under the laws of the State of Texas, this Declaration or the Bylaws, the Association shall have the following rights, functions and obligations:

(a) Right to Non-Exclusive Easement. The Association shall have a non-exclusive right and easement to make such use of the Common Properties and Common Facilities as may be necessary or appropriate for it to perform the duties and functions which it is obligated or permitted to perform under the laws of the State of Texas, this Declaration or the Bylaws, and a non-exclusive right of entry, after reasonable notice to the Owners during reasonable hours, onto the individual Lots as may be necessary, for making emergency repairs thereon necessary to prevent damage to any other Lot, Townhouse or to the Common Properties and Common Facilities or any part thereof, or to abate any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained on a Lot, except that no notice shall be required in cases of emergency.

(b) Common Properties and Common Facilities Maintenance. The Association shall be obligated to provide, as a common expense of all Owners, for the care, operation, management, maintenance, repair, replacement and restoration of the Common Properties and Common Facilities. Without limiting the generality of the foregoing, said obligations shall include keeping the Common Properties and Common Facilities in good, clean, attractive and sanitary condition, order and repair, keeping the Common Properties and Common Facilities safe, attractive and maintained in a manner desirable as a residential community, and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Properties and Common Facilities.

(c) Other Association Functions. The Association may undertake or contract for any lawful activity, function or service for the common benefit or to further the common interests of all Owners. Such activities, functions or services may include, but shall not be limited to, the providing of insurance, police, patrol or similar security services, janitorial services, grounds maintenance or landscaping services, the providing of utilities or services which may be required for the enjoyment or betterment of the Common Properties and Common Facilities, the providing of garbage and trash collection and other services for each of the individual Townhouses, the providing of legal and accounting services necessary or desirable in connection with the operation of the Association or the enforcement of the provisions of the laws of the State of Texas regarding subdivisions such as Copperfield Townhomes, this Declaration or the Bylaws, and any other services for the benefit and enjoyment of all the Owners. Electricity, telephone and other utility services separately metered or charged shall be paid for by the Owner of the Lot or Townhouse served by such utility services.

(d) Labor and Services. The Association may as a common expense of the Owners, obtain and pay for the services of any person or entity as a manager or managing agent to manage, supervise and conduct the day to day operations of the Subdivision or Association, as well as the services of such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Subdivision and the

Association, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. Any agreement for professional management of the Subdivision or the Association or any other contract providing for services by the Declarant must provide for termination by either party without cause or payment of a termination fee on thirty (30) days or less written notice and a maximum contract term of three (3) years.

(e) Acquisition of Personal Property. The Association may acquire as a common expense and hold for the common use or benefit of all Owners, any tangible or intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each Owner's family, guests or tenants may use such property. All such property so acquired and owned by the Association shall be deemed to be part of the Common Properties for all purposes.

(f) Rules and Regulations. The Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of the individual Lots, Townhouses, the Common Properties and the Common Facilities. Such rules and regulations may, without limitation: (i) regulate the use of the Common Properties and Common Facilities to assure the equitable and proper use and enjoyment thereof by all persons entitled thereto, (ii) prohibit any conduct or activity in any Lot, Townhouse or on any part of the Common Properties or Common Facilities which constitutes a nuisance in law or in fact or which would not be consistent or in keeping with the peaceful, quiet and reasonable use and enjoyment of any Lot, Townhouse or the Common Properties or Common Facilities, (iii) prohibit, restrict or regulate the use of any portion of the Common Properties and Common Facilities by the guests of any Owner, and (iv) regulate and control vehicular traffic and parking areas, including, the prohibition of parking on a permanent or temporary basis.

The Association shall furnish each Owner with a written copy of each and every Rule and Regulation or shall post the same in a conspicuous place on the Common Properties and Common Facilities, however, failure to furnish or post any copy shall not be deemed to invalidate any rule or regulation to any extent.

The Association shall have the right to enforce any of the Rules and Regulations of the Association and the obligations of any Owner under this Declaration or the Bylaws.

Nothing herein shall authorize the Board to furnish to any personal services primarily for the benefit or convenience of any Owner or Owners or any occupant or occupants of any Townhouse other than services customarily rendered to all Owners and occupants of Townhouses. The Board shall have the exclusive right and obligation to contract for all goods, services and insurance in connection with the administration of the Subdivision and Association, payment for which is to be made from the Maintenance Fund.

Section 3.05. Actions Without Meetings. Any action required by this Declaration or by law to be taken at a meeting of the Association or at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members of the Association

entitled to vote with respect to the subject matter thereof or signed by all of the members of the Board, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting.

Section 3.06. Officers. The Officers of the Association shall be elected by the Association and shall consist of a President, a Vice-President and a Secretary/Treasurer and such other officers as may be convenient or necessary in the judgment of the Board for the administration and operation of the Association. The President and the Vice-President shall be elected from among the members of the Board of Trustees.

Section 3.07. Meeting of the Members.

(a) The first meeting of the Members of the Association shall be held when called by the Declarant upon ten (10) days written notice to the Members. Such written notice may be given at any time but must be given not later than thirty (30) days after at least seventy-five percent (75%) of all of the Lots have been sold by the Declarant, a deed therefor recorded and the purchase price paid.

(b) Thereafter, an annual meeting of the Members of the Association shall be held at such other place as may be designated by the Board in El Paso, Texas at 8:00 P.M. on the third Tuesday in January of each calendar year (or the first business day thereafter if such day is a governmental or religious holiday). At the discretion of the Board, the annual meeting of the Members of the Association may be held at such other reasonable time [not more than sixty (60) days prior or subsequent to the aforesaid date] as may be designated by written notice of the Board delivered to the Members not less than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting.

(c) At the annual meeting, the Board shall present an accounting of the Maintenance Fund.

(d) Special meetings of the Members may be called by any Trustee at any time or may be called upon petition to the President by Members having thirty-three and one-third percent (33-1/3%) of the votes in the Association. Written or printed notice stating the place, day and hour of such special meeting and the purpose or purposes for which the meeting is called shall be delivered to each Member not less than three (3) nor more than twenty-one (21) days before the date of such meeting.

(e) For the purpose of determining the Members entitled to notice of a meeting and to vote at any meeting, the membership of the Association shall be determined at the close of business on the twenty-fifth (25th) day preceding such meeting.

Section 3.08. Accounting and Audit. The Board shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting the Subdivision and the Association and its administration, and specifying the maintenance and repair expenses of the Common Properties and Common Facilities and any other expenses incurred by or on behalf of the Subdivision or Association. Both the books of accounts and all vouchers supporting the entries made therein shall be available for examination at the office of the Association by all Owners and their mortgagees at convenient hours on working days and the Board shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with generally

accepted accounting procedures, consistently applied, and shall be audited at least once a year by an outside auditor.

Section 3.09. Notices. Any notice permitted or required to be given to a member of the Board or to an Owner may be delivered personally, by mail or by placing such notice in the mail box facilities of each Owner. If delivery is made by mail, it shall be deemed to have been delivered three (3) days after deposit in the U.S. Mail, postage prepaid, addressed to an Owner at his Townhouse or to such other address as the Owner may have given in writing to the Secretary/Treasurer of the Association for the purpose of service of notices. Any address for purposes of notice may be changed from time to time by notice in writing to the Secretary/Treasurer.

Section 3.10. Voting Rights. The Association shall have the following class or classes of voting membership with the following rights:

Class A: Each Owner of a Lot shall be the Class A Member, and by virtue of such membership, the Owner of each Lot shall be entitled to one vote in the Association. There shall be no fractional votes. When the Owner of a Lot consists of more than one person or entity, they shall designate in writing to the Board one of their number to cast their one vote with respect to such Lot.

Class B: Declarant shall be the sole Class B Member, and by virtue of such membership, shall be entitled to four (4) votes for each Lot owned by it; provided that the Class B Membership shall terminate at the time when the total votes outstanding in the Class A Membership shall equal or exceed the total votes outstanding in the Class B Membership; further, that Declarant shall have the right and option to terminate the Class B Membership at any time by notifying the Association in writing of its election to so terminate its Class B Membership. From and after the happening of whichever of these events occurs earlier, Declarant shall be deemed to be a Class A Member entitled to one vote for each Lot it owns.

Notwithstanding the above, Declarant shall transfer control of the Association to the Owners no later than the earlier of (i) four (4) months after seventy-five percent (75%) of the Lots have been conveyed to Owners, or (ii) three (3) years after the first Lot has been conveyed.

Section 3.11. Title to Common Properties. The Declarant shall retain the legal title to the Common Properties and Common Facilities until such time as it has completed improvements thereon and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Properties and Common Facilities has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Properties and Common Facilities granted to the Association herein.

ARTICLE IV Property Rights in the Common Properties and Common Facilities

Section 4.01. Members' Easements of Enjoyment. Subject to the provisions of Section 4.02 of this Article IV, every Member shall have a common right and easement of enjoyment in and to the Common Properties and Common Facilities, and such right and easement shall be appurtenant to and shall pass with the title to each Lot.

Section 4.02. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to promulgate, publish, and enforce reasonable rules and regulations governing the use and enjoyment of such Common Properties and Common Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Properties and Common Facilities by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Properties and Common Facilities or any part thereof at the same time;

(b) The right of the Association to grant or dedicate easements in, on, under or above such Common Properties or any part thereof to any public or governmental agency or authority or to any utility company for any service to Copperfield Townhomes or any part thereof;

(c) The right of the Association to transfer or convey all or any part of the Common Properties, or interests therein to any public or political authority or agency or to any utility company rendering or to render service to Copperfield Townhomes or any part thereof;

(d) The right of the Association to dedicate as public streets the Private Streets and Private Drives in such Common Properties, which are available for purposes of providing ingress and egress to Copperfield Townhomes;

(e) The right of the Association to suspend the voting rights of a Member and his right to use any facility on such Common Properties during the period he is in default in excess of thirty (30) days in the payment of any maintenance charge or special assessment against his Lot, and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; the aforesaid right of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in this Declaration, in its Bylaws, or at law or in equity, on account of any such default or infraction;

(f) The rights and easements existing or hereinafter created in favor of others, as provided for in Article II hereof;

(g) The restrictions as to use of such Common Properties provided for in Article X hereof;

(h) The right of the Association to borrow money and in aid thereof to mortgage the Common Properties, or any part thereof;

(i) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure of any such mortgage;

(j) The rights of the Association to rent or lease any part of the Common Properties or Common Facilities;

(k) The right of the Association to extend the enjoyment of its recreational facilities to persons other than Members; and

(1) The right of the Association to assess and collect the assessments provided for herein, and in addition, the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities which are a part of the Common Properties.

Section 4.03. Delegation of Use. Any Member may delegate his right of use and enjoyment of the Common Properties and Common Facilities, together with all easement rights granted to Members in this Declaration, to a member of his family, his tenants or guests, or contract purchasers who reside on his Lot. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by any process, or by operation of law, or in any other legal manner.

ARTICLE V Regular Monthly and Special Assessments

Section 5.01. The Maintenance Fund. All funds collected by the Association from the regular monthly maintenance charges and from special assessments as provided for in this Article, shall constitute and be known as the "Maintenance Fund." The Maintenance Fund shall be held, used and expended by the Association for the common benefit of all Members for the following purposes, to-wit: (i) to promote the health, safety, recreation and welfare of the Members, such benefits to include, by way of illustration but not limitation, providing patrol, watchman or other security service, fogging for insect control, enforcing the provisions contained in this Declaration, employing one or more architects, engineers, attorneys, or other consultants, for the purpose of advising the Board in carrying out its duties and authority as set forth in this Declaration; (ii) to pay the expenses for the common services rendered for the common benefit of the Members; (iii) to pay the expenses, if any, of sanitary sewer service for Copperfield Townhomes; (iv) to pay the expenses for water, gas, electricity, telephone, storm sewer service and all other utilities or service, if any, furnished to the Common Properties and Common Facilities of Copperfield Townhomes, or any of the improvements thereon, or any part thereof; (v) to pay the expenses for the perpetual care, maintenance and care for the Private Streets and Drives; (vi) to pay the expenses for the maintenance, repair, care, upkeep, beautification, protection, taxes, insurance, replacement, reconstruction, management, supervision and operation of or for the Common Properties and Common Facilities, or any part thereof, and the exteriors of the Townhomes, as prescribed by Section 9.02; (vii) to pay for capital improvements to the Common Properties and Common Facilities; (viii) to pay the expenses of administration and management of the Association; (ix) to pay salaries of employees of the Association; (x) to pay all taxes and other public dues or charges which the Association shall be required to pay; and (xi) to pay all other charges, costs or expenses lawfully incurred by the Association, all of which charges, costs, taxes and expenses to be incurred or paid by the Association are sometimes referred to in this Declaration as the "common expenses" or the "common expenses of the Members". The foregoing uses and purposes are permissive and not mandatory, and all expenses incurred and expenditures and decisions made by the Association in good faith and in accordance with this Declaration, the Bylaws and governmental laws, rules and regulations shall be final and binding upon all Members.

Section 5.02. Monthly Assessments. The Association, by action of its Board of Trustees, shall levy monthly assessments against the Lots to obtain funds reasonably anticipated to be

needed for the purposes stated in the preceding Section 5.01, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs. The amount of the monthly assessment for a Lot shall not exceed \$125.00, except that for any calendar month after the calendar year 1986, the Association may increase said maximum amount of the monthly assessment for a Lot, but if any such change increases the maximum amount which can be assessed against a Lot to more than one hundred fifteen percent (115%) of the amount assessed for the last month in the preceding calendar year, the change must be approved by three-fourths (3/4ths) of the votes cast by each Class of Members at a meeting of Members. No Member shall be exempt or excused from the obligation to pay any monthly or special assessment by waiver of the use or enjoyment of the Common Properties or Common Facilities, or any part thereof, or by abandonment of his Lot or his interest therein.

Section 5.03. Commencement of Assessments. No Lot owned by Declarant or any purchaser thereof shall be subject to any regular monthly maintenance charge or special assessment unless and until (i) the substantial completion of such Townhouse or (ii) the Townhouse shall have been permitted to be occupied, whichever shall first occur. It shall be the duty of each builder to notify the Association at the time a Townhouse has been substantially completed or permitted to be occupied. The term "substantial completion" as used herein shall mean the Townhouse is ready for sale or occupancy, except for minor items which must be furnished, completed, corrected or adjusted. It also shall be the duty of each builder to notify the Association at the time a Lot owned by a builder is sold. The term "builder", for the purposes of this Declaration, is defined as a person, firm, corporation or other entity who is engaged in the business of building houses for sale or rental purposes, and not for his or its personal use or occupancy. Whenever a Lot owned by Declarant becomes subject to assessment as provided for in this Section, such Lot shall then be treated and assessed as any other Lot.

Section 5.04. Payment of the Monthly Assessment. The monthly maintenance assessment shall be due and payable to the Association monthly, in advance, and without demand, on the first day of each month; provided, that on the date of the purchase of a Lot from Declarant or builder, each Member shall pay to the Association a prorata part of the regular monthly maintenance charge, which shall bear the same ratio to the full monthly amount as the number of days remaining in the month of purchase bears to 30 or 31 days, as the case may be.

Section 5.05. Special Assessments. In the event that the Board at any time determines that the monthly maintenance assessment is or may prove to be insufficient, or in the event of casualty losses, condemnation losses or other events (including non-payment of monthly maintenance assessments by some Owners), or for the purpose of purchasing equipment or facilities for the Common Properties or Common Facilities, or for defraying in whole or in part the cost of constructing new capital improvements or altering, remodeling, restoring or reconstructing new capital improvements or altering, remodeling, restoring or reconstructing previously existing capital improvements upon such Common Properties or Common Facilities, including fixtures and personal property related thereto, then the Board, from time to time by the adoption of a resolution for such purpose, may levy and impose against each Lot which is subject to the monthly maintenance assessment, a special assessment for a specific amount, which shall be equal for each such Lot. Such special assessment shall not be levied, however, without the prior approval of Owners having at least a two-thirds (2/3rds) of the votes in the Association, unless a greater number of votes is required by law.

Section 5.06. Liens to Secure Assessments. The monthly maintenance assessments and special assessments shall be a person-

al obligation of the Owner of each Lot as well as an indebtedness against the Lot itself; and in the event any default is made in the payment of any such assessment or any part thereof as the same shall become due and payable, then a valid and subsisting lien is hereby created and shall exist upon and against the Lot in favor of the Association and its Members. No lien shall exist against any Lot for assessments which have not yet become due and payable. The liens provided for herein shall be prior to all other liens, except that such liens shall be subordinate, secondary and inferior to (i) all liens for taxes or special assessments levied by the City, County and State Governments or any political subdivision or special district thereof; (ii) 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 the monthly maintenance assessment or special assessment became due and payable; and (iii) all liens securing any loan made to any purchaser or any part of the purchase price of any Lot when such Lot is purchased from the Declarant or builder or for any part of the cost of constructing, repairing, adding to or remodeling the Townhouse situated on the Lot.

The liens to secure common expenses as herein provided for may be foreclosed without prejudice and subject to the aforesaid prior and superior liens, by suit by the Board or any authorized officer or Member of the Association, acting in behalf of all Owners in like manner as mortgages on real property. No foreclosure suit or sale thereunder shall affect or impair any of the prior liens above mentioned. The Board or any person authorized by it, acting in behalf of all Owners, shall have the power to bid on the Lot foreclosed at the foreclosure sale, the amount of which bid shall not exceed the total amount of all monthly maintenance assessments and special assessments in default, interest and other charges thereon and costs of foreclosure. In the event the Board shall purchase any Lot at any such foreclosure sale, it shall have authority to hold, lease, mortgage or convey the same as Trustee of all other Owners. All funds realized from the foreclosure sale shall be applied first to the cost and expense of filing and prosecuting suit, including all costs of court and a reasonable amount for attorney's fees, and then towards payment of the indebtedness sued on, together with interest and other charges thereon, and the remainder, if any, shall be paid over to the defendant or defendants in such foreclosure suit as their interests may appear. In the event the proceeds realized from the foreclosure, applied as aforesaid, shall be insufficient to pay off and discharge the whole amount of the assessment sued on, together with interest and other charges thereon, then the purchaser acquiring title to such Lot at such foreclosure sale, whoever he may be, other than the Owner sued, shall not be liable for the deficiency, except for a prorata part thereof as hereinafter stated, and any such deficiency shall be deemed a common expense, collectible from all Owners, including the purchaser at the foreclosure sale, on a prorata basis as in the case of the other common expense. The Owner sued shall remain personally liable to the Owners paying the deficiency.

Section 5.07. Maintenance Fund. The monthly maintenance assessments collected shall be paid into the Maintenance Fund to be held and used for the benefit, directly or indirectly, of the Subdivision; and such Maintenance Fund may be expended by the Board for the purposes set forth herein including, without limitation, providing for the enforcement of the provisions of this instrument, the Bylaws of the Association and Rules and Regulations promulgated thereunder; for the maintenance, operation, repair, benefit and welfare of the Common Properties and Common Facilities and generally for doing those things necessary or desirable in the opinion of the Board to maintain or improve the Subdivision. The use of the Maintenance Fund for any of these purposes, except as provided herein, is permissive and not mandatory, and the decision of the Board with respect thereto shall be final, so long as made in good faith.

Section 5.08. Effect of Non-Payment of Assessment. If any regular monthly maintenance assessment is not paid within fifteen (15) days from the due date thereof, or if any special assessment is not paid within ten (10) days of the due date thereof, the same shall bear interest from the due date until paid at the maximum non-usurious interest rate allowed under the laws of the United States of America or the State of Texas, and if placed in the hands of an attorney for collection, or if suit is brought thereon, or if collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount, but not less than ten percent (10%) of the amount owing, as attorney's fees. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against his Lot. 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 as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 5.09. Working Capital Fund. To ensure that the Association will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, Declarant shall establish a working capital fund equal to at least two (2) months estimated monthly assessments for each Townhouse, which is subject to assessment pursuant to Section 5.03. Any amounts paid into this fund shall not be considered as advance payments of the monthly assessments. Each Townhouse's share of the working capital fund shall be collected at the time the sale of the Townhouse is closed and shall be transferred to the Association for deposit to a segregated fund. Within sixty (60) days after closing has been held for the first Townhouse, Declarant shall pay each completed unsold Townhouse's share of the working capital fund to the Association. Declarant shall then reimburse itself for this payment from the funds collected at closing when any unsold Townhouse is thereafter sold. After all Lots have been sold, any balance in the working capital fund shall be transferred to the Maintenance Fund.

ARTICLE VI **Architectural Control Committee**

The Properties are a part of a community development commonly known as "COPPERFIELD TOWNHOMES". The overall plan for the development of the several areas or elements which make up and are collectively, commonly known as "COPPERFIELD TOWNHOMES" contemplates centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the area as a whole, while at the same time permitting compatible distinctiveness of the individual developments within the greater area. For this purpose the Copperfield Townhomes Architectural Control Committee (the "Architectural Control Committee") has been established, consisting of three (3) persons appointed by the Declarant who shall serve until such time as all Lots subject to the jurisdiction of the Association have Townhouses thereon and are occupied as residences at which time the Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Trustees. In the event of the death or resignation of any person serving on the Architectural Control Committee, the Declarant shall designate a successor, or successors, who shall have all the authority and power of his or their predecessor(s). However, the Architectural Control Committee may employ one or more architects, engineers, attorneys or other consultants to assist the Architectural Control Committee in carrying out its duties hereunder; and the Association shall pay such consultants for such services they render to the Committee.

All construction and development in the Subdivision shall be subject to the approval of the Architectural Control Committee, and no building, structure or other improvements, including but not limited to Townhouses, exterior painting and facilities of the Common Properties, shall be commenced, erected, constructed or placed upon the Properties, and no changes or alterations shall be made to any building or improvements hereafter constructed or placed thereon, unless and until the final plans and specifications therefor (specifying, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials and location of the proposed improvements or alterations thereto, together with site landscaping and grading plans, and plans for off-street parking of vehicles) have been first submitted to and approved in writing by the Architectural Control Committee as to minimum structural and mechanical standards, quality of materials, harmony of exterior design and colors with existing structures, and location and situation of the Lot with respect to topography, finished ground elevation, property and building lines, easements, walks and parking spaces. Any and all plans and specifications which have not been expressly disapproved within thirty (30) days after date of submission shall for all purposes be deemed to have been approved.

The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in the sole discretion of the Architectural Control Committee, with the design or overall character and aesthetics of Copperfield Townhomes.

No construction of a building, structure, fence, wall or other improvement shall be commenced in the Subdivision until the contractor to perform such construction shall have been approved in writing by the Architectural Control Committee. In the event the Committee fails to approve or disapprove a contractor within thirty (30) working days after his name is submitted to it, approval will not be required, and the provisions of this Article VI will be deemed to have been fully complied with.

ARTICLE VII U t i l i t i e s

Section 7.01. Electric Service. An electric distribution system will be installed within the Subdivision. The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground or aboveground (as the case may be) service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company. The electric company furnishing service shall make the necessary connection at said point of attachment and at the meter. In addition, the Owner of each Lot 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 Townhouse construction on such Owner's Lot. Aboveground and underground service will be available in certain areas of the Subdivision. In those particular areas wherein the underground service is maintained in the Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase 120/240 volt, three (3) wire, sixty (60) cycle alternating current.

Section 7.02. Water Service. Water service to the Properties shall be provided by the City of El Paso, Texas, by way of water mains to be owned, operated, maintained and repaired by the City, and to the individual Lots and the Common Properties by way of distribution lines to be owned, operated, maintained and repaired by the Association between the point of connection to the city water mains and the point where the pipe penetrates the property line of each Lot. It shall be the responsibility of each Owner to maintain and repair the portion of the water line situated on his Lot.

Section 7.03. Sanitary Sewer Service. Sanitary sewer service shall be provided to each Lot and to the Common Properties by means of sanitary sewer collection lines within the Properties to be owned, operated, maintained and repaired by the Association, and which shall connect to the main sanitary sewer lines of the City of El Paso, Texas. It shall be the responsibility of each Owner to maintain and repair the portion of the sanitary sewer line which is situated on his Lot.

Section 7.04. Telephone and Cable Service. Telephone and Cable service shall be available to each Lot and the Common Properties by way of underground or aboveground (as the case may be) cables which shall be installed, owned and maintained by the telephone or cable company. The Association shall be authorized and empowered to grant such specific easements, in, under, or or above the Common Properties as the telephone or cable company may require to furnish such service.

Section 7.05. Storm Sewers. Storm sewers in the Common Properties for the drainage of surface waters shall be owned, operated, maintained and repaired by the Association.

ARTICLE VIII Utility Bills, Taxes and Insurance

Section 8.01. Obligations of the Owners.

(a) Each Owner shall have his separate electric meter and shall directly pay at his own cost and expense for all electricity, telephone and cable service, water, sewer, garbage collection and other utilities used or consumed by him on his Lot.

(b) Each Owner shall directly render for taxation his own Lot and improvements thereon, and shall at his own cost and expense directly pay all taxes levied or assessed against or upon his Lot and the improvements and property thereon.

(c) Each Owner shall be responsible at his own cost and expense for his own property insurance on his Townhouse and contents thereon, and the additions and improvements thereto, including decorations, furnishings, and personal property therein; and also for his personal liability not covered by liability insurance for all Owners which may be obtained by the Association as part of the common expense in connection with the Common Properties.

Section 8.02. Obligations of the Association.

(a) 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 Properties and Common Facilities.

(b) The Association shall render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon such Common Properties and the improvements and the property appertaining thereto.

(c) The Association shall have the authority to obtain and shall obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the building and structures on the Common Properties and the contents thereof and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have authority to obtain and shall obtain and continue in effect as a common expense of all Owners comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Trustees, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Properties. The Association shall also have authority to obtain and shall obtain and continue in effect as a common expense of all Owners blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid out of the Maintenance Fund as a common expense to all Owners.

ARTICLE IX Maintenance and Repairs

Section 9.01. By the Owners. It shall be the duty, responsibility and obligation of each Owner at his own cost and expense to care for, maintain and repair the interior of his Townhouse and improvements on his Lot and the fixtures, appliances, equipment and other appurtenances thereto. The Association shall have no duty or obligation to any Owner in this regard. Each Owner of a Townhouse shall furnish and be responsible for, at his own expense, all of the maintenance and repairs necessary to keep the interior of the Townhouse, and the glass of the windows and heating and airconditioning equipment situated on the exterior of the Townhome at all times, in good condition and repair consistent with reasonable maintenance standards and guidelines adopted by the Association and standards associated with first-quality townhome, residential complexes. All such maintenance, repairs or replacements shall be equal in quality to the original work and materials of the Townhouse (subject to the complete discretion of each Owner as to matters of interior style or color) and shall be performed in compliance with the rules and regulations of the Association and all governmental laws, ordinances, orders and requirements.

Section 9.02. By the Association. The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the following: (i) Common Properties and Common Facilities and all parts thereof, including, but not limited to, the Sidewalks, Private Streets and Drives, landscaping, waterscaping, lawns, parking areas, buildings (if any), gazebos, common exterior lighting systems, and other improvements and the utility facilities, if any, owned by the Association; and (ii) the exteriors of the Townhomes (save and except the airconditioning and heating equipment and the glass of the windows situated on the

exterior of the Townhomes). Additionally, the Association shall have the authority, but not the obligation, to maintain and repair the interior of any Townhouse, at the expense of the Owner thereof, if the Board determines that the Townhouse is not in good condition or repair, or that the Townhouse's Owner has not properly maintained the Townhouse consistent with reasonable maintenance standards or guidelines adopted by the Board or standards generally associated with first-quality residential townhouse subdivisions, or as otherwise required in this Declaration. If the Board is obligated or otherwise elects to exercise the authority conferred herein, it shall, except in the case of an emergency, give written notice to the Owner of the Townhouse stating (i) that the Owner has failed to properly maintain the Townhouse or comply with the maintenance standards or guidelines, and describing with reasonable specificity the particular conditions or violations which the Board has determined to exist; (ii) a reasonable period of time (but not less than thirty [30] days after giving of notice) within which the Owner must correct or cure the specified conditions or violations; and (iii) the intention of the Board, if such conditions or violations are not timely corrected or cured, to exercise its rights and authority pursuant hereto and to perform, or cause to be performed, at the Owner's expense, such maintenance or repair of or to the Townhouse as the Board, in its sole discretion, deems necessary. All of the costs and expenses incurred by the Association in connection with such maintenance or repair, shall be deemed to be an Assessment as provided herein and payable by the Townhouse's Owner promptly upon demand by the Association. Such Assessment shall be secured by the lien provided for in this Declaration and solely for the foregoing purposes and after expiration of the 30-day notice period prescribed above, the Association is granted a reasonable right of entry unto the Lots and into the Townhouses, except for emergencies, provided such entry is made during reasonable times, in a peaceful and lawful manner, and after reasonable notice to the Owner of the reasonable time during which the Association intends to perform such corrective work.

ARTICLE X Building and Use Restrictions

Section 10.01. Residence Building and Garages. No building or other structure shall be built, placed, constructed, reconstructed or altered on any Lot other than single family houses which shall not exceed two (2) stories in height, or contain less than one thousand seven hundred fifty (1,750) square feet of living area exclusive of open or screened porches, terraces, patios, driveways and garages. Each Townhouse shall have an enclosed garage on the Lot accomodating at least two (2) cars. No such garage or carport shall ever be changed, altered, reconstructed or otherwise converted or any purpose inconsistent or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall to the greatest extent practicable utilize such garages for the garaging of vehicles belonging to them and shall not park such vehicles on the Private Streets and Drives, or in the guest parking spaces.

Section 10.02. Townhouse Design. The Townhouses to be built on the Lots shall be of the townhouse design. If they are constructed as attached Townhouses, there shall be no visible open space between houses on adjoining Lots or building sites. If party walls are used, they shall be subject to the provisions of the following Section. If party walls are not used in the townhouse design, then the exterior of the side walls shall be one (1) inch from the dividing line between Lots, and to create the appearance of attached houses, the two (2) inch space between Townhouses at the front and rear elevations shall be caulked or sealed with suitable material so that there shall be no visible open space between Townhouses. The space between roof lines or the roof

line of one attached Townhouse and the wall of another shall be capped with flashing material, or otherwise covered in accordance with good construction practices, to prevent water from falling between Townhouses.

Section 10.03. Party Walls. Party walls, where used, shall in all cases meet the requirements of the City of El Paso Building Code or other applicable code, and other applicable ordinances, rules or regulations of the City of El Paso or any of its departments. Each party wall shall be placed on the dividing line between Lots, and to the extent not inconsistent with any of the provisions hereof, 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 through construction error situated wholly on one Lot instead of on the dividing line between Lots, such wall shall nevertheless be deemed a party wall for joint use by adjoining Lot Owners. Reciprocal easements are hereby created and shall exist upon and be in favor of Owners of adjoining Lots for the maintenance, repair and reconstruction of party walls and the foundation footings, piers and beams supporting the same. Each Owner sharing a party wall shall also be deemed to covenant and agree and shall be bound as follows:

(a) The cost of usual and ordinary reasonable repairs and maintenance of a party wall shall be equally shared by the Owners who make use of such wall.

(b) If a party wall is destroyed or damaged by or as a result of any force, act, event or occurrence which is not caused or brought about by the negligence of any Owner sharing such party wall, or if caused or brought about by the negligence of both, then either Owner who has used the party wall may restore it and the adjoining Owner shall contribute one-half (1/2) the cost of such restoration. However, if a party wall is destroyed or damaged as a result of any negligent act or omission on the part of one and not the other Owner sharing such party wall, then either Owner may restore such party wall and the Owner at fault shall pay or contribute the whole cost of such restoration.

(c) Notwithstanding any other provision of this Section, an Owner who by his negligence or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(d) The right of any Owner to contribution from any adjoining Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(e) In the event any dispute arises concerning a party wall, or under the provisions of this Section, the same shall be resolved and settled through the process of arbitration. Each party to the dispute shall choose one arbitrator and the two arbitrators so chosen shall choose a third arbitrator, and the decision of a majority of the arbitrators shall resolve and settle the dispute and shall be binding upon all parties to the arbitration. Should any party refuse to choose an arbitrator within ten (10) days after written request therefor, the Board of Trustees of the Association shall select an arbitrator for the refusing party.

Section 10.04. Residential Use. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other occupant shall use or occupy his Lot, 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 families. No Lot shall be used or occupied for any business, commercial, trade or professional purpose either apart from or in connection with the use thereof as a residence, whether for profit or not.

Section 10.05. Temporary and Other Structures. No structure of a temporary character, trailer, mobile or motor home, modular home, tent, shack, barn or other structure or building, other than the residence to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no residence house shall be moved upon any Lot from another location; except, however, during the construction and sale period of the Townhouse.

Section 10.06. Private Driveways and Sidewalks. If the plans and specifications provide for, and the Architectural Control Committee approves, any sidewalk, the same shall also be constructed, at no cost or expense to the Association, at the time the Townhouse is constructed, and all such sidewalks shall have a concrete finish. Such driveway, and any such sidewalks, shall be repaired and maintained at the sole cost and expense of the Owner of the Townhouse to which such driveway and any such sidewalk are appurtenant. An easement over and across the Common Properties is hereby created and established for the use, construction, repair and maintenance of such driveway and any such sidewalks.

Section 10.07. Antennas. Outside TV-FM antennas shall be allowed; however, no antenna shall be erected as a free-standing structure or which extends more than ten (10) feet above the highest part of any Townhouse. All antennas must be attached to the Townhouse and be erected so as to minimize their view from the street side of the Townhouse. Short wave, satellite disks and/or other radio antennas shall not be installed or constructed within the Properties.

Section 10.08. Fences. All fences must be approved by the Architectural Control Committee prior to installation and thereafter maintained in a neat and presentable manner at all times.

Section 10.09. Nuisance. No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Board of Trustees of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No Owner or resident of any Townhouse shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or other portion of the Common Properties.

Section 10.10. Signs. No sign of any kind shall be displayed to the public view on any Lot or the Common Properties except as follows:

(a) Builders or Owners may display one (1) sign of not more than six (6) square feet on any unimproved Lot to advertise the Lot and any Townhouse situated thereon for sale, during the construction and/or sales period.

(b) For so long as Declarant shall own any Lot in the Properties, no sign of any kind may be displayed or suffered to be displayed to public view on any Lot by any Owner unless and until the size, shape and subject matter thereof shall have been approved in writing by the said Declarant, which shall have the sole discretion to approve or disapprove the display of any such sign. At such time as Declarant shall no longer own any Lot in the Properties, the Board of Trustees of the Association

thereupon shall succeed to the right to approve or disapprove, in its sole discretion, the display of any such sign. The Association shall have the right to approve or disapprove, in its sole discretion, the display of any such sign. The Association shall have the right to remove any sign, billboard or other advertising structure or device which is placed on any Lot in violation of this Section and to recover all costs of such removal from the responsible party. The Association shall not be subject to any liability or claim for trespass or other tort in connection with or arising from such removal.

Section 10.11. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or on any portion of the Common Properties, except that dogs, cats or other common household pets [not to exceed two (2) adult animals] may be kept, but they shall not be bred or kept for commercial purposes. All permitted house pets shall be kept inside the house and enclosed patio area except that pets may be taken to common areas approved by the Association if such pets are leashed when outside the house.

Section 10.12. Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot or from any portion of the Common Properties is prohibited, except as necessary in connection with landscaping or construction of improvements thereon.

Section 10.13. Garbage and Refuse Disposal. All Lots and the Common Properties shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Properties shall be used or maintained as a dumping ground for garbage, trash, rubbish or other waste matter. All trash, garbage or waste matter shall be kept in adequate containers with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of improvements thereon. No garbage, trash, rubbish, debris or other waste matter of any kind shall be burned on any Lot.

Section 10.14. Parking Areas. The portions of the Common Properties designated for parking of vehicles are for the temporary use of Owner and their guests, visitors and invitees.

Section 10.15. Use of Common Properties. There shall be no obstruction of any part of the Common Properties, which are intended to remain unobstructed for the reasonable use and enjoyment thereof, nor shall anything be done or kept on the Common Properties which would increase the rates or result in the cancellation of any insurance relating to the Common Properties or any part thereof. No Owner shall appropriate any part of the Common Properties to his exclusive use, except for the required and/or approved driveways or sidewalks thereof which are appurtenant to his Townhouse, nor shall any Owner do anything which would violate the easements, rights and privileges of any Owner in regard to any portion of the Common Properties which is intended for the common use and benefit of all Owners. Except as may be herein required or permitted, no Owner shall plant, place, fix, install or construct any vegetation, hedge, tree, shrub, fence, wall, structure or improvement, or store any of his personal property, on the Common Properties or any part thereof without the written consent of the Association being first obtained. The Association shall have the right to remove anything placed on the Common Properties in violation of the provisions of this Section and to recover the cost of such removal from the party responsible.

Section 10.16. Clothes Drying. Open air drying of clothes shall not be permitted.

Section 10.17. Septic Tanks. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot or other portion of the Properties.

Section 10.18. Combining Lots or Portions of Lots. No Townhouse may be erected on less than one whole Lot, unless the prior written approval of a majority of the Members of the Association and a majority of the Board of Trustees and the Architectural Control Committee shall have been obtained.

Section 10.19. Storage. Garbage cans or containers, recreational equipment, boxes, cartons, tools and like equipment may be stored in carports or garages, provided that the same are screened from public view in a manner acceptable to the Board and Architectural Control Committee and not allowed to accumulate therein, and are not a fire hazard.

Section 10.20. Prohibition Against Drilling. No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, or oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts or derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted on any Lot.

Section 10.21. Storing Boats, Trailers, Campers, Buses, Trucks, Etc. No boat, trailer, camping unit, bus, truck, tractor or self-propelled or towable equipment or machinery of any sort shall be stored, parked, maintained or repaired on any Lot except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be visible from streets or other Lots, except that (i) during the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of necessity therefor, and (ii) this restriction shall not apply to automobiles and pick-up trucks in good repair and attractive condition.

Section 10.22. Street Numbers and Mailboxes. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community and the decision of the Architectural Control Committee that any such matters are not harmonious shall be final.

Section 10.23. Sight Lines. No fence, wall, tree, hedge or planting shall be placed, or permitted to remain, on any Lot in such manner as to obstruct sight lines for vehicular traffic, except for decorative fences for entry to the Subdivision.

ARTICLE XI Condemnation or Destruction

Section 11.01. Condemnation. If any proceedings are instituted that could result in a temporary or permanent taking, injury or destruction of all or part of the Common Properties or Common Facilities, by the exercise or the power of, or power in the nature of, eminent domain, or by an action or conveyance in lieu of condemnation, the Association and each Owner shall be entitled to notice thereof and the Association shall, and the Owners at their respective expenses may, participate in the proceedings incident thereto. The Association shall represent the Owners in any proceedings, negotiations, settlements, or agreements. For this purpose, each Owner shall be deemed to have appointed the Association as attorney-in-fact.

With respect to Common Properties or Common Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Lot owners' interest therein. After such determination, any proceeds from the settlement of any damage or award shall be payable to the Association,

for the benefit of Association members and their mortgage holders, to be used as determined by the Association and mortgage holders.

Section 11.02. Destruction. If any part of the Common Properties or Common Facilities is destroyed or damaged by fire or other casualty, any insurance proceeds or other payments shall be paid to the Association, as trustee, to be held in trust for the benefit of the Association members and their mortgagees as their respective interests may appear. The Association shall thereupon contract to repair or rebuild the damaged portions of the Common Properties or Common Facilities in accordance with the original plans and specifications therefor. The funds held in the insurance trust fund shall be used for this purpose. If the insurance proceeds are insufficient to pay all of the cost of repairing or rebuilding, the Association shall levy a special assessment on all Owners to make up any deficiency, in accordance with the provisions set out herein relating to special assessments.

ARTICLE XII

General Provisions

Section 12.01. Incorporation. The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed or conveyance hereafter executed by Declarant conveying all or any part of the land in the Subdivision, whether or not referred to therein, and all estate conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Declaration.

Section 12.02. Notice to Mortgage Holders. The holder, insurer or guarantor of the mortgage on any Lot is entitled to timely written notice of: (i) any condemnation or casualty loss that affects either a material portion of the Subdivision or the lot securing the mortgage; (ii) any 60-day delinquency in the payment of assessments or charge owed by the owner of any Lot on which it holds the mortgage; (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed amendments of a material nature as specified in Section 12.03. To obtain this information, the mortgage holder, insurer or guarantor should send a written request to the Association stating both its name and address and the Lot or address of the Lot it has the mortgage on. A holder of a first mortgage on a Lot who has requested notification from the Association of any proposed amendments of a material nature as specified in Section 12.03, is hereinafter referred to as an "Eligible Mortgage Holder".

Section 12.03. Amendments. This Declaration may be amended in whole or in part by an instrument executed by the president of the Association when approved by three-fourths (3/4ths) of the votes cast by each class of members at the meeting of members. If any proposed amendments are of a material nature, as hereinafter defined, additional approval shall be obtained from Eligible Mortgage Holders, as defined in Section 12.02, representing at least fifty-one percent (51%) of the Lots which are subject to mortgages held by Eligible Mortgage Holders. For this purpose, a change to any of the following is considered material: voting rights; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair, and replacement of Common Properties or Common Facilities; responsibility for maintenance and repair; reallocation of interests in the Common Properties or Common Facilities, or rights to their use; boundaries of any Lot; convertibility of Lots into Common Properties or Common Facilities or vice-versa; expansion or contraction of the Subdivision, or the addition, annexation, or withdrawal of property to or from the Subdivision; insurance or fidelity bonds; leasing of Lots; imposition of any restriction on the Lot Owner's right to sell or transfer his or her Lot; a decision by the Association to establish self-management when professional management has been required

previously by an Eligible Mortgage Holder; restoration or repair of the Subdivision (after hazard damage or partial condemnation) in a manner other than as specified in this Declaration; any action to terminate the legal status of the Subdivision after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Section 12.04. Duration. This Declaration shall remain in full force and effect for a term of thirty (30) years from the date this Declaration is recorded in the Office of the County Clerk of El Paso County, Texas, after which time this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the holders of three-fourths (3/4ths) of the votes of each Class of Members with voting privileges has been filed for record in the Office of the County Clerk of El Paso County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or one (1) year after it is so filed for record, whichever is the later date.

Section 12.05. Enforcement. The terms and provisions of this Declaration shall run with and bind the land in the Subdivision, and shall inure to the benefit and be enforceable by Declarant, the Association, or the Owner of any Lots, and by their legal representatives, heirs, successors and assigns. This Declaration may be enforced in any proceeding at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain the violation thereof or to recover damages by reason thereof, and to enforce against the property any lien created by this Declaration. The failure of Declarant, the Association or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the right to do so thereafter. No bond shall ever be required of the Declarant or the Association as a condition of any injunction or restraining order, or if required for any reason whatsoever, it is specially agreed that a bond in an amount not to exceed \$1,000.00 shall be deemed reasonable and satisfactory for all purposes.

Section 12.06. Severability. Invalidation of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated.

Section 12.07. Gender and Grammar. The singular whenever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

Section 12.08. Titles. The titles of this Declaration and of Articles and Sections contained herein are for convenience only and shall not be used to construe, interpret or limit the meaning of any term or provision contained in this Declaration.

Section 12.09. Successors in Title. The terms and provisions of this Declaration shall apply to, be binding upon and inure to the benefit of Declarant and the Association and their respective successors and assigns.

EXECUTED this _____ day of _____, 1986, but effective as of the 1st day of July, 1986.

COPPERFIELD TOWNHOMES, INC.

By *Martin D. Balk*
Martin D. Balk, its President

THE STATE OF TEXAS)
 :
County Of El Paso)

The foregoing instrument was acknowledged to before me by
Martin D. Balk, President of COPPERFIELD TOWNHOMES, INC.,
this 7th day of August, 1986, on behalf of said Texas
corporation.

Kathryn A. [Signature]
Notary Public in and for El Paso
County, State of TEXAS

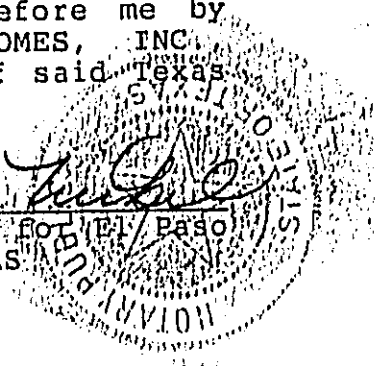


EXHIBIT "A"

To
First Amended and Restated Declaration
of Covenants and Restrictions
For

COPPERFIELD TOWNHOMES

A portion of Tract 1A, H. G. FOSTER SURVEY 259, El Paso County, Texas, containing 3.653 acres, more or less, and being more particularly described by metes and bounds as follows, to-wit:

Beginning at a point on the westerly right-of-way line of Spring Crest Drive; point being the northeast corner of Lot 47, Block 1, Thunderbird Mountain Estates, City of El Paso, El Paso County, Texas: Thence South $64^{\circ}14'20''$ West along the northerly boundary line of said Thunderbird Mountain Estates a distance of 285.91 feet; Thence North $51^{\circ}36'24''$ West a distance of 35.06 feet; Thence North $48^{\circ}45'06''$ East a distance of 44.17 feet; Thence North $51^{\circ}28'57''$ West a distance of 402.11 feet; Thence South $38^{\circ}23'36''$ West a distance of 44.32 feet; Thence North $51^{\circ}36'24''$ West a distance of 14.61 feet to a point on the southerly right-of-way line of Thunderbird Drive; Thence northeasterly along said southerly right-of-way line, being a curve to the right, an arc distance of 306.62 feet; curve having a radius of 542.39 feet, a central angle of $32^{\circ}23'24''$ and a long chord bearing of North $54^{\circ}35'18''$ East a distance of 302.55 feet; Thence North $70^{\circ}47'00''$ East along said southerly right-of-way line a distance of 185.13 feet to the P.C. of a curve to the right; Thence southeasterly along said curve to the right an arc distance of 30.14 feet to a point on the westerly right-of-way line of said Spring Crest Drive; curve having a radius of 20.00 feet, a central angle of $86^{\circ}19'48''$ and a long chord bearing South $66^{\circ}03'06''$ East a distance of 27.36 feet; Thence South $22^{\circ}53'12''$ East along said westerly right-of-way line a distance of 408.70 feet to the Point of Beginning.

Described parcel lies within Tract 1A, H. G. Foster Survey Number 259 and contains 159,128.42 square feet, equal to 3.653 acres.

89207

CC AUG 11 10:40

El Paso County

STATE OF TEXAS

COUNTY OF EL PASO
I hereby certify that this instrument was filed on the
date and time stamped hereon by me and was duly
recorded in the volume and page of the Official Public
Records of this County, El Paso County, Texas.

AUG 11 1986



COUNTY CLERK, EL PASO COUNTY, TEXAS

[Signature]

*Return to:
Copperfield Tunnings
c/o Martin Bank
140 Shaker Martin
El Paso, TX 79912*

17K3-1159