

FILED  
At 3:10 O'clock P M

~~Vol 403 Page 506~~

FILED  
At 3:50 O'clock A M

AUG 18 1978

CORRECTION  
DECLARATION

AUG 7 1978

FRANK BORISKIE  
County Clerk, Brazos County, Bryan, Texas  
By Jane Moore Deputy

FRANK BORISKIE  
County Clerk, Brazos County, Bryan, Texas  
By Mark Murphy Deputy

COVENANTS, CONDITIONS & RESTRICTIONS

Date Recorded 8-21-78

148494

149139

OAKWOOD TOWNHOMES PLANNED UNIT DEVELOPMENT

~~DATE RECORDED 8-9-78~~

(This Declaration is being refiled to correct the recording reference to the plat of OAKWOOD)

THE STATE OF TEXAS    §  
COUNTY OF BRAZOS      §

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, BUILDING CRAFTS, INC., hereinafter referred to as "Declarant", is the owner of that certain real property in the City of Bryan, County of Brazos, State of Texas, described as:

That 3.00 acre Lot No. 1, out of the Oak Village Subdivision, Phase I, Plat recorded in Volume 383, Page 651 of the Deed Records of Brazos County, Texas;

and states that from this property will be cut out 61 townhome lots with streets and easements. Said lots, streets, and easements are more fully described in a Plat of Field Notes. Said plat and certificate and dedication are filed for record in the office of the County Clerk of Brazos County, Texas on August 18, 1978, under Clerk's File No. 149157.

AND WHEREAS, the above owner will convey the said properties subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth;

NOW THEREFORE, the above Owner hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring 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 OAKWOOD TOWNHOMES HOME OWNER'S ASSOCIATION, a 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 Lot 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 heretofore 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 and chattels owned by the Association for the common use and enjoyment of the resident members and the associate members. The Common Area to be owned and maintained by the Association at the time of the conveyance of the first Lot is described as follows:

1. Exterior grounds
2. Parking, walks, drives
3. Concrete foundation slabs
4. Party walls
5. Exterior walls
6. Roofs and attics.

Section 5. "Lot" or "Parcel" shall mean and refer to any of the 61 units enumerated 1 through 61 on the Plat of OAKWOOD TOWNHOMES.

Section 6. "Townhome" shall mean townhouse or a single family residence unit joined together with at least one other single family resident by a common wall, or walls, and/or roof and/or foundation.

Section 7. "Declarant" or "Developer" shall mean and refer to BUILDING CRAFTS, INC., its successors and assigns.

Section 8. "Resident Member" shall mean those residents in OAKWOOD TOWNHOMES PLANNED UNIT DEVELOPMENT (both owners and renters or others having a legal right to be residents) in a townhome for which the Association assessments against said townhome are current.

Section 9. "PUD" shall mean this planned unit development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment: Every resident member and associate member shall have a right and easement of enjoyment in and to the Common Area and such easement to the Common Area shall be appurtenant to and shall pass with the title to every assessed Lot or membership, subject to the following provisions:

- A. The right of the Association to charge reasonable fees for the use of any recreational or other facility situated upon the Common Area.
- B. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner or a member for any period during which any assessment against his Lot or membership remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association.
- C. The right of the Association, with the advance written consent of all Mortgagees, if any, to dedicate or transfer all or any part of the Common Area to such public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Two Thirds (2/3) of the members of both classes of memberships agreeing to such dedication or transfer has been recorded.
- D. The right of the Association to limit the number of guests of members.
- E. The right of the Association, with the advance written consent of all Mortgagees, if any, to purchase, operate, and sell real estate and chattels for the common use and enjoyment of the resident members and the associate members provided that any such action must have the approval of Two Thirds (2/3) of all the members of both classes of membership in the Association.
- F. The right of the Association, with the advance written consent of all Mortgagees, if any, in accordance with its Articles and By-Laws, to borrow the money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgagee in said property shall be subordinate to the rights of the homeowners hereunder provided that any such action must have the approval of Two Thirds (2/3) of all the members of both classes of membership in the Association.

Section 2. Title to the Common Area. The Declarant hereby covenants for itself, its heirs, and assigns, that it will convey title to the Common Area to the Association. As a right running with the real property and membership, ownership of each lot and membership shall entail the use and enjoyment of all walks, stairs, pavement, driveways, parking areas,

entrances, and exits owned by the Association and there shall always be access by both pedestrians and vehicles to and from each townhouse to a street dedicated to public use without hindrance of such communication ways by the Association and/or Owners or residents of the Townhomes. Title to the Common Area shall remain undivided in the Association so as to preserve the rights of the Owners with respect to their use and enjoyment of the Common Area.

Section 3. Lot Ownership and Association Membership. Each lot shall be owned in fee simple and shall be inseparable from membership in the Association. Transfer of a lot automatically transfers membership in the Association and all rights of the transferor with respect to the Common Areas and facilities to which ownership of such lot relates.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to covenants of record to assessment by the Association, including contract sellers, shall be a voting member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Voting membership shall be appurtenant to and may not be separate from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for voting membership.

Section 2. The Association shall have two classes of voting membership;

Class A. Class A members shall be all Owners of Townhome Lots with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for voting membership outlined above. When more than one person holds such interest in any Lot, all such persons shall be voting members. The vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B member (s) shall be the Declarant. The Class B member (s) shall be entitled to three (3) votes for each Lot owned, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(2) On the 1st day of January, 1981.

The Association shall keep a list of all members of each class.

Said lists shall be made available to the Mortgagee, if any, upon request.

#### ARTICLE IV

##### COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Person Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, 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 fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when assessment fell due. The personal obligation for delinquent assessments 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 for the purpose of promoting the recreation, health, safety, and welfare of the resident in the properties and the associate members, and in particular for the improvement and maintenance of the properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of the Townhomes situated upon the properties. Such uses shall include, but are not limited to, the cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area and of the maintenance of the exteriors of the Lots or Townhomes as may from time to time be authorized by the Board of Directors, and other facilities and activities including, but not limited to, mowing grass, caring for the

grounds, landscaping, walks and drives, party walls, foundation slabs, roofs and attics, exterior walls of the Townhomes, and the common parking areas, by the Association and other charges required by this Declaration of Covenants, Conditions, and Restrictions or that the Board of Directors of the Association shall determine to be necessary or desirable to meet the primary purposes of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, capital improvements, and other charges as specified herein.

Section 3. Basis and Maximum of Annual Assessments. Until January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$219.00 per unit, payable monthly in advance at the rate of \$18.25 per month.

From and after January, 1979, the Association's Board of Directors, at its next annual or special meeting and at each annual meeting thereafter, shall set the amount of the monthly assessments for each year for each Lot, taking into consideration the current maintenance costs and future needs of the Association; except, however, the monthly assessments may not be increased in any one year by more than Twenty percent (20%) of the then existing monthly assessment, except on the affirmative vote of owners entitled to cast Two Thirds ( $2/3$ ) of the votes of the Association, in person or by proxy, at a meeting duly called for such purposes.

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 or reconstruction, repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto provided that any such assessment shall have the assent of a Two Thirds ( $2/3$ ) dual majority of the votes of the members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of a meeting called for this purpose shall be sent to all members not less than 30 days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Notice and Quorum for Any Action Authorized except under

Sections 3 and 4. Any action authorized except under Section 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 Fifty (50) days in advance of the meeting. The presence at the meeting of members or of proxies entitled to cast a Sixty percent (60%) vote of all the votes of each class shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the same notice requirements and the required quorum at any such subsequent meeting shall be One-Half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than Fifty (50) days following the preceding meeting.

Section 6. Uniform Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots as provided in Section 3 hereof, and must be collected on a monthly basis, i.e., One Twelfth (1/12) of the annual assessment on each Lot each month.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. 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 Lot at least Thirty (30) days in advance of each annual assessment period; provided, however, that the Board of Directors shall have the right to adjust the annual assessment as long as any such adjustment does not exceed the maximum permitted hereunder with Thirty (30) days written notice given to each owner. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and, unless otherwise provided, the Association shall collect each month from the Owner of each Lot One Twelfth (1/12) of the annual assessment for such Lot. The Association shall upon demand, at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within Thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of Ten percent (10%) per annum, and the Association may bring an action at law against the Owner or member personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the OAKWOOD TOWNHOMES HOME OWNER'S ASSOCIATION, INC., 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 foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, 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 other Lot Owners. The Association acting on behalf of the Lot Owners shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same; and to subrogate so much of its right to such liens as may be necessary. No owner nor member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Further, the Association shall have the right to deprive the Owner, the Resident member, and the Associate member of the use of the Common Area, and have the further right to post the name of the delinquent party at the appropriate place on the Common Area designated by the Association, in the event of non-payment of assessments.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and/or mortgages granted or created by the Owner of any Lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Lot or transfer of any Lot pursuant to a foreclosure under such purchase-money

or improvement mortgages or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No extinguishment of the lien shall relieve the delinquent Lot Owner from his personal obligation and liability thereof.

## ARTICLE V

### ARCHITECTURAL CONTROL

Section 1. Review by Committee. No structure or other improvements, shall be constructed and maintained upon any Lot and no alteration or repainting to the exterior of the structure shall be made unless complete plans, specifications and plot plans therefor showing the exterior design, height, building material, and color scheme thereof, the location of the structure plotted horizontally and vertically, the location of driveways, fencing, and the grading plan shall have been submitted to and approved in writing by the Architectural Control Committee, and a copy of such plans, specifications, and plot plans as finally approved deposited with the Architectural Control Committee.

Section 2. Conforming Uses. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on lands within the Properties conform to and harmonize with the Existing surroundings and structures.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans and requests within Thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within Thirty (30) days after requests have been submitted, approval will be presumed and this Article will be deemed to have been fully complied with.

Section 4. Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions taken.

Section 5. Voting. A majority vote of the Architectural Control Committee is required for approval of proposed improvements.

Section 6. Limitation of Liability of Committee. The Architectural

Control Committee shall not be liable in damages to any person submitting requests for approval or to any Owner within the Properties by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove any such requests.

Section 7. Members. The Architectural Control Committee shall consist of Three (3) members designated by Declarant until the first meeting of the Board of Directors following the first annual meeting of the Association. At such first meeting, the Board shall appoint three persons who shall serve as the Architectural Control Committee.

## ARTICLE VI

### RESPONSIBILITY FOR MAINTENANCE

Section 1. The responsibility for maintenance of the PUD is divided as follows:

A. Townhome Units: Maintenance, Alterations, and Improvements.

- (1) The Association shall maintain, repair and replace as a common expense:
  - (a) All portions of a Townhome Unit (except interior wall surfaces) contributing to the support of the building, which portions shall include but not be limited to, the outside walls of the buildings and all fixtures thereof, perimeter walls, floor slabs, loadbearing walls, attic and roof construction;
  - (b) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained within Townhome Units which service part or parts of the property other than the Townhome Unit within which contained or which are contained in the floor slabs;
  - (c) All portions of patios, adjacent to and part of the Townhome Units; and
  - (d) All incidental damage caused to a Townhome Unit by maintenance, repair or replacement work shall be promptly repaired as a common expense.
- (2) The responsibility of each owner shall be as follows:
  - (a) To maintain, repair and replace at his expense all portions of his Townhome Unit except the portions of his Townhome Unit which are to be maintained, repaired, and replaced by the Association, as a common expense. This includes, without limitation, the heating system, air conditioning system, hot water heating system, and all parts thereto, and all glass surfaces. Such shall be done without disturbing the rights of other owners. Further, the electrical expenses shall be borne by the owner of said Townhome Unit;
  - (b) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building, patio fence, patio or otherwise, without first obtaining approval of the Board of Directors; and

(c) To promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

(3) Alteration and Improvement. Neither an owner nor the Association shall make any alterations in the portions of a Townhome Unit or building which is to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of a building or impair any easement without first obtaining approval in writing of owners of all other adjacent Townhome Units affected thereby, and the written approval of the Architectural Control Committee of the Association. A copy of the plans for all such work prepared by an architect licensed to practice in this state shall be filed with the Architectural Control Committee prior to the start of the work.

B. Maintenance of Common Areas and Facilities.

- (1) By the Association. The cost of the maintenance and operation of the common areas and facilities, including the replacement thereof, and including the utilities expenses for the common areas, shall be a common expense; also, the water utilities expenses to the individual Townhome Units shall be borne by the Association as a common expense; and
- (2) Alteration and Improvement. There shall be no alteration nor improvement of common areas and facilities without the prior approval in writing of Seventy Five percent (75%) of the owners of all the Townhome Units, and which does not interfere with the rights of any owners without their consent; and
- (3) Rules and Regulations. No occupier of the property, guest, or employee of the Association shall use the common areas and facilities or any part thereof in any manner contrary to the provisions of the By-Laws.

ARTICLE VII

ADMINISTRATION & MANAGEMENT

Section 1. Declaration and By-Laws Govern. The Administration and management of the Association shall be governed by the Declaration of Covenants, Conditions & Restrictions for OAKWOOD TOWNHOMES PLANNED UNIT DEVELOPMENT and the By-Laws of OAKWOOD TOWNHOMES HOME OWNER'S ASSOCIATION, INC. The Association shall be governed by a Board of Directors as is provided in the By-Laws of the Association. The Association shall have the right to pass and levy rules as provided in the By-Laws. The Association may delegate by written agreement any of its duties, powers, and functions to any person or firm to act as managing agent at a prior agreed to compensation.

Section 2. Management & Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements

entered into by the Association. A copy of all such agreements shall be available to the Lot Owners. Any management agreement entered into by the Association shall be for a term not to exceed one year (but shall be renewable at the option of the Association for successive one-year periods upon such terms as it may negotiate) and shall provide that such management agreement may be cancelled by an affirmative vote of a majority of the votes of the members of the Association. Any management agreement for the Association and/or properties will be terminable by the Association for cause upon Thirty (30) days written notice thereof. All management agreements shall be made with responsible parties having experience adequate for the management of a project of this type. All management agreements shall be subject to and consistent with the terms of this declaration.

Section 3. Records and Insurance. The Board of Directors or the managing agent shall keep or cause to be kept a record of detailed accounts of the receipts and expenditures affecting the Townhome development and its administration and shall specify the maintenance and repair expense of the common elements and any other expenses incurred on or for the Townhome development. The records so kept shall be available for the inspection by the Mortgagee, if any, and by all Owners at convenient hours on working days and shall be set and announced for general knowledge. All records shall be kept in accordance with good accounting procedures, and may be audited at least once a year by an independent certified accountant.

#### ARTICLE VIII

##### INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Board of Directors of the Association shall obtain and continue in effect blanket property insurance in form and amount satisfactory to mortgagees holding first mortgages or deeds of trust covering Townhome Units. The insurance other than title insurance which shall be carried upon the Townhome Units shall be governed by the following provisions.

- A. Authority to Purchase. All blanket insurance policies shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees as their interests may appear, and provision shall be made for the issuance of certificates of

mortgage endorsements to the mortgagees of Townhome Units. Owners may obtain additional insurance coverage at their own expense, and shall deposit a copy of such insurance policy with the Association.

B. Coverage.

- (1) Hazard Insurance. The building and improvements upon the land, all walls and fixtures located within the boundaries of all Townhome Units (including additions or improvements made by Owners, and all personal property included in the Common Area and facilities shall be insured in an amount equal to the full replacement value, excluding foundation and excavation costs, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection, if customarily available, against:
  - (a) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, debris removal, cost of demolition, vandalism and malicious mischief. Water damage insurance shall be written on Texas special coverage endorsement No. 222. This will provide coverage for broken water pipes and/or backup and air conditioning equipment with a \$250.00 deductible per building per occurrence;
  - (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location, and use as the Townhome Project buildings;
  - (c) waiver of the insurance company's right to subrogation against the Owners, their agents employees, or tenants and maintenance personnel, or other employees of the Association;
  - (d) additional property coverage as may be added by the Association when the insurance carrier is notified;
  - (e) a demolition endorsement or its equivalent;
  - (f) coverage shall not be prejudiced by:
    - (i) any act or neglect of the Owners when such act or neglect is not within the control of the Association;
    - (ii) by failure of the Association to comply with regard to any portion of the premises over which the Association has no control; and
  - (g) coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium without at least Thirty (30) days prior written notice to the first mortgagees named in the policy.
- (2) A comprehensive policy of public liability covering all common areas and facilities in the Townhome Project which would preclude the company from denying the claim for an Owner because of the negligent acts of the Association or other Owners, with limits not less than \$1,000,000.00 covering all claims for personal injury and or property damage if available, arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned and hired automobiles and such other risks as are customarily covered with respect to townhomes of similar construction, location and use.

- (3) Workman's Compensation coverage shall be maintained in amounts and coverages necessary to meet the requirements of law.
- (4) The Association shall maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:
  - (a) all such fidelity bonds shall name the Association as an obligee;
  - (b) such fidelity bonds shall be written up to an amount equal at least to One Hundred Fifty percent (150%) of the estimated annual operating expenses of the Townhome Project, including reserves;
  - (c) such fidelity bonds shall contain waivers of any defense bond upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and
  - (d) such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least Thirty (30) day's prior notice to the first mortgagees.
- (5) Such other insurance as is approved by the Board of Directors of the Association from time to time shall be maintained. Nothing in this Declaration shall prohibit the Association from purchasing insurance in excess of the requirements of this section.

C. Insurance Trustee. All insurance policies purchased by the Association shall be paid by the Association as a common expense.

D. Insurance Trustee. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear and shall provide that if the insurance proceeds covering property losses are in excess of \$5,000.00, then such proceeds shall be paid to a federally insured institution having offices in Brazos County, Texas, and possessing trust powers as may be approved by the Board of Directors of the Association, which trustee is herein referred to as the "Insurance Trustee".

The Insurance Trustee shall not be liable for payment of premiums nor the renewal of the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee.

- (1) Townhome Unit Owners. Proceeds on account of damage to common areas and facilities, shall be held for each Owner, with each Owner's share being the same as his interest in the common areas and facilities. In the event of damage to one or more Townhome Units, proceeds shall be held for the Owner of each such Townhome Unit.
- (2) Mortgagees. In the event a mortgagee holds a mortgage or deed of trust covering a Townhome Unit, the share of the Owner shall be held jointly for the Owner and the mortgagee as their interest may appear.

- E. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:
- (1) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.
  - (2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, according to their interest in the common areas and facilities. This is a covenant for the benefit of any mortgagee of a Townhome Unit and may be enforced by such mortgagee.
  - (3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittance to Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Townhome Unit and may be enforced by such mortgagee.
  - (4) Certificate. In making distribution to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the name of the Owner and their respective shares of the distribution.
- F. Association as Agent. The Association is hereby irrevocably appointed agent for each owner of a mortgage, deed of trust, or other lien upon a Townhome Unit and for each Owner of any other interest in the property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- G. Payment of Premium. Insurance premiums for each type of insurance coverage shall be a common expense, and collections for such premium payments shall be held in a separate escrow account for each type of insurance involved in a federally insured institution and used solely for the payment of the particular insurance as such premiums become due.
- H. Determination to Reconstruct or Repair. If any part of the property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:
- (1) Common Areas and Facilities. If damage is to the common areas and facilities, the damaged property shall be reconstructed or repaired unless it is determined in the manner elsewhere provided that the Townhome Project shall be terminated.
  - (2) Building.
    - (a) Partial Destruction. If the damage is to one or more of the buildings, and if any Townhome Unit in any of the buildings is found by the Board of Directors to be tenantable, the damaged property shall be reconstructed or repaired within Sixty (60) days after the casualty unless it is determined by agreement in the manner elsewhere provided that the Townhome Project shall be terminated.

- (b) Total Destruction. If the damage is to one or more of the buildings, and if none of the Townhome Units in the buildings are found by the Board of Directors of the Association to be tenantable, then the damaged Townhome Project will be terminated without agreement. as elsewhere provided, unless within Sixty (60) days after the casualty, Owners who own Seventy Five percent (75%) of the undivided interest agree in writing to such reconstruction or repair.
- I. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the building plans and specifications; or if not, then according to plans and specifications approved by the Board of Directors of the Association.
- J. Responsibility. If the damage is only to those parts of one or more Townhome Units for which the responsibility of maintenance and repair is that of the Owner, then the individual Owner shall be responsible for reconstruction and repair after casualty. All damages to the common areas and facilities shall be the responsibility of the Association for reconstruction and repair after casualty.
- K. Estimate of Costs. Immediately after determination to rebuild or repair damage to the property, the Association shall obtain reliable and detailed estimates of the costs to rebuild or repair.
- L. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of costs thereof are insufficient, assessments shall be made against all Townhome Owners in sufficient amount to provide funds for the payment of such costs. Such assessments on account of damage to common areas and facilities or one or more of the Townhome Units shall be in proportion to each Owner's interest in the common areas and facilities.
- M. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee, or by the Association in the case of insurance proceeds of \$5,000.00 or less, and funds collected by the Association from assessments against owners, shall be disbursed in payment of such costs in the following manner:
- (1) Association. If the total of assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than \$5,000.00, then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.
- (2) Insurance Trustee. The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the Association from collections of assessments against owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:
- (a) Association. Lesser Damage. If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$5,000.00, then the construction fund shall be disbursed in payment of such costs by the Association,

provided however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

- (b) Association. Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Association, and approved in writing by the mortgagee who holds the majority of mortgages on mortgaged Townhome Units.
- (c) Surplus. If there is a surplus balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the beneficial owners of the funds as shown in Section 1, E. of Article VIII.

## ARTICLE IX

### USE RESTRICTIONS AND REQUIREMENTS

Section 1. New Construction Requirement. All buildings or structures on the property shall be of new construction and shall be located within the building limit lines as shown on the plat unless expressly approved in writing by the Association.

Section 2. Legal Descriptions. Each Lot or subdivision of a Lot conveyed shall be designated by a separate legal description and shall constitute a fee simple estate subject to the terms, conditions, and provisions hereof.

Section 3. No Commercial Uses. The Lots shall be used only for residential purposes as a private residence, and no professional business, or commercial use shall be made of the same, or any portion thereof; nor shall an Owner's or resident's use of a Lot endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

Section 4. No Mining. No drilling, digging, quarrying, or mining operation of any sort shall be permitted on the Lots.

Section 5. Minimum Size. No buildings other than Townhomes of at least 1,000 square feet of living area, being single family residences, joined together by a common wall or walls and/or roof and/or foundation, and storage buildings, shall be constructed or moved on the Lots.

Section 6. No Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other

outbuildings shall be used on any Lot at any time as a resident either temporarily or permanently.

Section 7. No Advertising. No advertising signs (except one "For Rent" or "For Sale" sign of not more than 6 square feet per Lot) billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Lots.

Section 8. Exemption for Declarant and Association. The foregoing covenants of this Article IX shall not apply to the activities of BUILDING CRAFTS, INC., or OAKWOOD TOWNHOMES HOME OWNER'S ASSOCIATION, INC., a non-profit corporation incorporated or to be incorporated under the laws of the State of Texas. BUILDING CRAFTS, INC., its successors or assigns may maintain and use, while constructing and selling the Townhomes, in or upon such portions of the property as BUILDING CRAFTS, INC., determines, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, and signs.

## ARTICLE X

### RIGHTS OF HOLDERS OF FIRST MORTGAGE LIENS

Section 1. Alienation, Releases, Transferral, Hypothecation and Encumbrance of Common Areas and Facilities. Except as to the Association's right to grant easements for utilities and similar or related purposes, the common area may not be alienated, released, transferred, hypothecated or otherwise encumbered without the prior written approval of all holders of First Mortgage Liens on units in these properties. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by Two Thirds (2/3) of all the members of both classes of membership in the Association has been recorded.

Section 2. Financial Statements, Records, and Notice of Meetings. All holders of First Mortgage or equivalent Liens on Units shall have the right to:

- A. Inspect the books and records of the Association during normal business hours.
- B. Receive an annual audited financial statement of the Association within Ninety (90) days following the end of any fiscal year of the Association.

- C. Written notice of all meetings of the Association and to designate a representative to attend all such meetings.

Section 3. Notice of Changes. All holders of First Mortgage or equivalent liens on units must be notified in writing by certified mail by the Association prior to:

- A. Abandonment or termination of the properties or common area.  
B. Any material amendment to this Declaration or the By-Laws or Articles of Incorporation of the Association.  
C. The effectuation of any decision by the Association to terminate professional management and assume self-management of the Common Area.

Section 4. Substantial Damage to or Destruction of any Unit or Any Part of the Common Areas and Facilities. All other provisions of this Declaration notwithstanding neither an Owner of a unit nor any other party shall be entitled to any priority over any holder of any First Mortgage Lien or equivalent security interest on a Unit with respect to any distribution to any Unit of any insurance proceeds with respect to substantial damage to or destruction of such Unit or any part of the common areas and facilities. In the event of substantial damage to or destruction of any Unit or any part of the common areas and facilities all holders of First Mortgage or equivalent Liens on Units must be notified in writing by certified mail by the Home Owner's Association within a reasonable time.

Section 5. Condemnation and Eminent Domain Proceedings. In the event this Home Owner's Association becomes aware of any condemnation proceedings affecting the Common Area or properties it shall within a reasonable time give all holders of First Mortgage or equivalent Liens on Units written notice by certified mail. All other provisions of this Declaration notwithstanding neither an Owner of a Unit nor any other party shall be entitled to any priority over any holder of any First Mortgage or equivalent security interest on a Unit with respect to any distribution to such Unit of the proceeds of any condemnation or eminent domain proceeding.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Enforcement of Declaration, By-Laws and Articles of

Incorporation. The Association, or any Owner shall have the right to collect damages and to enforce, 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. 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. Leases by Owners. All leases of lots by Owners shall be in writing, for terms of not less than Six (6) months, and shall expressly provide that the conditions and terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation and the By-Laws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing, there is no restriction on the right of any Unit Owner to lease his unit.

Section 3. Encroachments Upon the Common Areas. In the event any portion of any Unit encroaches upon the Common Area, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the properties or their improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 4. Certain Express Rights Regarding the Common Area. The Common Area shall be expressly subject to the following:

- A. Each unit Owner will have the right to the use, for at least one automobile, of parking space.
- B. None of the common areas and facilities, recreational facilities, parking space or other amenities contemplated as a part of the properties are proposed to be leased to the Owners or to any other restriction in favor of the developer.
- C. There shall be no restriction upon any Owner's right of ingress to and egress from his unit.

Section 5. 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 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of Twenty (20) years from the date this Declaration is recorded, after which time they

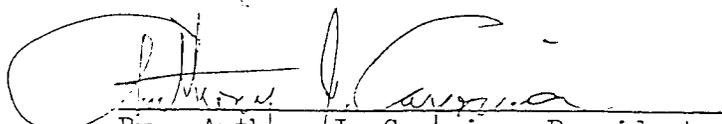
shall be automatically extended for successive periods of Ten (10) years. This Declaration may be amended during the first Twenty (20) year period by an instrument signed by not less than Ninety percent (90%) of the Lot Owners and all the holders of First Liens and thereafter by an instrument signed by not less than Seventy Five percent (75%) of the Lot Owners and all the holders of First Liens. Any amendment must be recorded.

Section 7. FHA/VA Approval. If there have been any mortgages insured by FHA or guaranteed by VA, as long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

In addition, while there is Class B membership and solely in order to meet project approval, if necessary, of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation this Declaration may be amended by Declarant without consent of the Unit Owners providing such amendment does not result in a taking of Unit Owner's property rights or in any manner interfere with the security of any mortgage holders of record.

IN WITNESS WHEREOF, BUILDING CRAFTS, INC., being the Declarant herein, has caused this instrument to be executed this 4th day of August, 1978.

BUILDING CRAFTS, INC.

  
By: Anthony J. Caprina, President

ATTEST:



STATE OF TEXAS        §

COUNTY OF BRAZOS     §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared ANTHONY CAPORINA, President of BUILDING CRAFTS, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said BUILDING CRAFTS, INC., and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4 day of August, 1978.

Carol A. Seibert  
Notary Public in and for  
Brazos County, Texas