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DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR SINGLE-FAMILY ATTACHED RESIDENTIAL SUBDIVISION (DUPLEX) [8104 Baywood, Austin, Texas]

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL BY THESE PRESENTS: 17.00 INDX
1:49 PM 6002 3 3 08/08/91
22.89-CHK#
11.40-CHK#
10690.83-DOC#

CARI DOUGLAS GALLOWAY ("Galloway") and JULIE DOUGLAS ("Douglas") are the owners of the following lot in the County of Travis, State of Texas, locally known as 8104B Baywood, Austin, Texas, and more fully described as follows:

Lot 22-B, Resubdivision of Lots 22 and 23 of Spicewood Forest, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 89, Pages 355-356, Plat Records of Travis County, Texas ("Lot 22-B").

GUARANTY FEDERAL SAVINGS BANK ("GFSB") is the owner of the following lot in the County of Travis, State of Texas, locally known as 8104A Baywood, Austin, Texas, immediately adjoining Lot 22-B and more fully described as follows:

Lot 22-A, Resubdivision of Lots 22 and 23 of Spicewood Forest, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 89, Pages 355-356, Plat Records of Travis County, Texas ("Lot 22-A").

The two lots form one site on which is located a single-family attached residential building, commonly known as a duplex, one dwelling unit per lot. The boundary between the lots passes through the common wall of the building.

NOW, THEREFORE, Galloway, Douglas and GFSB (collectively, "Declarant") for the benefit of themselves, their heirs, successors and assigns, hereby declare that the real property described above as Lot 22-A and Lot 22-B shall be held, transferred, sold, conveyed, possessed and occupied subject to the easements, covenants, and restrictions herein set forth, which easements, covenants and restrictions shall be considered covenants running with the land and binding on Owners, their successors and assigns as follows:

I. RESTRICTIVE COVENANT ON DEVELOPMENT

Development of the site containing Lot 22-A and Lot 22-B is restricted to one single-family attached residential dwelling unit per lot, and is further restricted in accordance with regulations contained in the Austin City Code of 1981, as they apply to a single family attached residential subdivision, as such requirements may be amended from time to time.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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## II. CONSTRUCTION COVENANTS

Future construction of any dwelling units on the lots and any repair or extensions thereof or of dwelling units currently located on the lots shall be constructed in accordance with the requirements imposed by Chapters 13-5 (Building Code), 13-6 (Electrical Code), 13-7 (Fire Prevention Code), 13-8 (Mechanical Code), and 13-9 (Plumbing Code) of the Austin City Code of 1981, as such codes may be amended from time to time.

## III. COMMON WALL DECLARATION

The wall dividing the duplex shall become and remain a common wall and the common property of the owners of the attached residential dwelling units, their respective successors, heirs and assigns, so that any then owner shall be at liberty to use the wall by inserting timbers or other materials up to but not beyond a vertical line drawn through the center, or otherwise to use the common wall in any manner that may not interfere with the equal use of the other half of the wall by the other owner.

## IV. REPAIRING OR REBUILDING THE COMMON WALL

Should the common wall be damaged or destroyed by the default, negligence or other act or omission of one of the owners, his successors, heirs or assigns, such owner shall rebuild or repair the wall and shall compensate the other owner for any damages to the property of the other owner.

Should the wall at any time while in use by the owners, their successors, heirs or assigns, be injured by any cause other than the act or omission of either owner, the wall shall be repaired or rebuilt at their joint expense, provided that any sum received from insurance against such injury or destruction shall first be applied to such repair or restoration. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original wall or portion thereof or of the same or similar material of the same quality as that used in the original wall or portion thereof.

## V. EXTENSION OF WALL

Neither an owner nor the owner's successors, heirs or assigns, may extend the common wall vertically or horizontally without the written permission of the owner of the adjoining dwelling unit.

With this written permission, an owner and an owner's assigns may extend the height of the wall so long as it does not violate any applicable governmental ordinance, including Section 13-3-108 of the Austin City Code of 1981, and so long as the extension is the same width as the existing wall and does not impair the wall's

strength or damage the foundations of the building. Such extension shall be paid solely by the owner constructing same; provided, however, that the other owner shall have the right to use the extended part of the wall and to join it by paying the constructing owner one-half the cost of such part of the wall as will be used. The extension wall then shall be deemed part of the common wall and subject to this agreement.

#### VI. COMMON EXPENSES

Maintenance and repairs to the driveway, roof and foundation, as well as the painting of the exterior of the building including the exterior trim (collectively, "Common Elements") shall be joint expenses of the owners. The owner of each dwelling unit shall be bound and obligated equally to pay for the above maintenance and repairs (hereinafter referred to as "Common Expenses"), unless such repair was caused by the negligence or misconduct of one party and/or such party's tenant, agent, employee, guest or representative, in which case the cost of repair shall be attributed to the responsible owner according to such owner's pro rata share of negligence or misconduct.

Notwithstanding the above, no maintenance or repairs shall be made to the Common Elements except by agreement of the owners of the dwelling units, except in emergency situations. Any disagreements as to expenditures if not resolved between the owners within 60 days, will be resolved by the procedures contained in Paragraph X below if either owner so elects by giving written notice to the owner of the adjoining dwelling unit. Agreement shall be deemed reached if the owners have agreed on the person or contractor who shall perform the work, and on the materials, colors and maximum cost to be used and incurred in the performance of the work. The exterior of the building shall be painted a uniform color. An accent paint may be used if the entire building is accented in a consistent manner. No more than two (2) exterior paint colors shall be used on the building.

If any Common Expense is paid by one of the dwelling unit owners, the other dwelling unit owner shall pay his one-half share thereof within thirty (30) days from the date of written demand and presentation of a written accounting of such expenses; provided, however, that any sum received from insurance against any damage or destruction shall first be applied to such repair or restoration of the Common Elements so damaged or destroyed.

In the event any dwelling unit owner shall fail or refuse to pay his share of the Common Expenses as the same shall become due and payable, then all such assessments which have become due and payable and which have not been paid shall constitute a valid lien on the non-paying owner's dwelling unit and lot. Any such lien shall be prior to all other liens except for (1) liens for taxes or special assessments levied by the county, city or state governments

or any political subdivision or special district thereof, and (2) all liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to date payment for such common expenses became due and payable. A non-paying owner shall be liable for all costs of filing and prosecuting suit, including all costs of court and reasonable attorney's fees.

Nothing herein shall prevent the owners of the site from establishing a maintenance fund or other vehicle for funding maintenance and repairs to the site.

VII. INSURANCE, UTILITIES, TAXES, AND  
NON-COMMON EXPENSES

The owner of each dwelling unit shall be responsible for insuring his own dwelling unit.

Utilities for each dwelling unit shall be on separate meters and shall be paid separately by each dwelling unit owner. Taxes, assessments and other charges of any city, county, state or any political entity or any special district thereof shall be assessed on each lot individually.

Each dwelling unit owner shall be solely responsible for the exterior of his unit except as provided in paragraphs IV, VI and VII and for the interior of his unit, including walls, partitions, cabinets, floors, ceilings, carpeting, lighting and electrical fixtures and appliances, plumbing, windows and doors. To the extent that sewer and wastewater lines are not installed separately for each unit then the sewer and wastewater system shall be deemed a common element and be governed by Paragraph VI, Common Expenses.

Each dwelling unit owner shall be responsible for the upkeep and maintenance of the landscaping on his lot, including the cost and expense of maintaining, cutting and caring for grass, plants and shrubbery unless agreed otherwise by the then owners of the dwelling units.

VIII. UTILITY AND PARKING EASEMENTS

Each lot owner hereby grants and conveys to the other lot owner, the City of Austin and each authorized utility company an easement over such grantor's lot and dwelling unit for the installation, maintenance and repair, removal or replacement of any and all authorized utility lines, pipes, wires, conduits, facilities and equipment serving the site as a whole or any individual dwelling unit or appurtenances thereto.

The City of Austin requires two parking units for each dwelling unit. If the two parking units required by the City of Austin for each dwelling unit are located on the property of the

other lot owner, then the first owner hereby grants and conveys easement rights reasonably necessary for access, ingress and egress to and the use and enjoyment of the two parking spaces allocated to such lot.

To the extent necessary for the common repair and maintenance or to carry out the duties and responsibilities contained in this instrument, each lot owner hereby grants and conveys to the other lot owner easement rights necessary for such repair or maintenance of the driveway and parking spaces.

#### IX. MISCELLANEOUS RESTRICTIONS

The following restrictions, covenants and conditions are placed upon each unit in this site as a general plan or scheme of restrictions for the benefit of each unit:

1. Each unit shall be used and occupied by the owner or his lessee for residential purposes only and for no other purpose or purposes.
2. No unit shall be altered, remodeled, subdivided or converted into more than one dwelling unit.
3. No boats, airplanes, trailers, campers, or motor homes shall be allowed in the parking areas or the driveway.

#### X. REACHING AGREEMENTS

In the event the owners of Lots 22-A and 22-B cannot agree to any matter within or arising out of this instrument or concerning the common wall, such matter shall be submitted to the arbitration of an arbitrator mutually selected by the owners. If the owners cannot agree on an arbitrator, the owners shall select two disinterested and competent persons, one of whom shall be chosen by the owners of each of the respective lots, and if the two arbitrators so named cannot agree, the two arbitrators shall name a third arbitrator. The decision of any two of the arbitrators as to a resolution of the controversy shall be final and binding upon the then owners. Each party shall bear the cost of the arbitrators selected by said owner, and the cost of any arbitrator selected by the two owner-selected arbitrators shall be paid equally by each owner.

#### XI. MISCELLANEOUS

If applicable in a given content, any use of a pronoun shall include the masculine, feminine or neuter, and the singular shall include the plural and the plural shall include the singular.

If any provision, section, paragraph, clause, phrase or word is held to be invalid or unenforceable, the validity and

enforceability of the remaining provisions, sections, paragraphs, clauses, phrases or words shall not be affected thereby. If anything in this instrument shall be susceptible to two or more interpretations, then the interpretation which shall most nearly be in accord with the intent of the instrument shall govern.

This Declaration may be amended by the then owners only in a writing signed by both parties and by an authorized representative of the City of Austin.

Nothing in this Declaration is intended to conflict with the requirements of Section 13-2-436 of the Austin City Code of 1981, as amended, and in the event of such conflict, the standards of Section 13-2-436 shall govern.

IN WITNESS WHEREOF the undersigned has executed this document to be effective as of the 22 day of July, 1991.

Cari Douglas Galloway  
CARI DOUGLAS GALLOWAY

Julie Douglas  
JULIE DOUGLAS

GUARANTY FEDERAL SAVINGS BANK

By: Scott Smith  
Name: Scott Smith  
Title: Executive Vice President

This Declaration of Easements, Covenants and Restrictions for a Single-Family Attached Residential Subdivision (Duplex) has been accepted by the authorized representative of the City of Austin this 15<sup>th</sup> day of AUGUST, 1991.

CITY OF AUSTIN

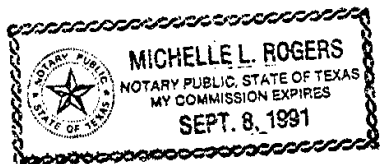
By: Tracy H. Watson  
Name: TRACY H. WATSON  
Title: ASSISTANT DIRECTOR  
DEPARTMENT OF PLANNING AND DEVELOPMENT

ACKNOWLEDGMENTS

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me this 2nd day of July, 1991, by CARI DOUGLAS GALLOWAY.

Michelle L. Rogers  
Notary Public, State of Texas



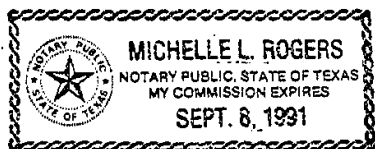
Michelle L. Rogers  
Typed or Printed Name of Notary

\_\_\_\_\_  
Date Commission Expires

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me this 22nd day of July, 1991, by JULIE DOUGLAS.

Michelle L. Rogers  
Notary Public, State of Texas



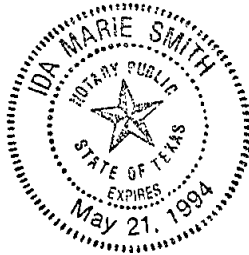
Michelle L. Rogers  
Typed or Printed Name of Notary

\_\_\_\_\_  
Date Commission Expires

STATE OF TEXAS  
COUNTY OF DALLAS

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This instrument was acknowledged before me this 15<sup>th</sup> day of July, 1991, by Scott Smith, Executive Vice President of GUARANTY FEDERAL SAVINGS BANK, a federal savings bank, on behalf of said bank.



Ida Marie Smith  
Notary Public, State of Texas

Ida Marie Smith  
Typed or Printed Name of Notary

May 21, 1994  
Date Commission Expires

RECORDER'S MEMORANDUM - At the time of recordation this instrument was found to be inadequate for the best photographic reproduction, because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

STATE OF TEXAS  
COUNTY OF TRAVIS

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This instrument was acknowledged before me this 1<sup>st</sup> day of AUGUST, 1991, by TRACY H. WATSON, ASST. DIRECTOR, DEPT. OF PLANNING & DEVELOPMENT of the City of Austin, on behalf of said city.

NOTARY SEAL

Carol Kamel  
Notary Public, State of Texas

Carol Kamel  
Typed or Printed Name of Notary

2-27-93  
Date Commission Expires

AFTER RECORDING RETURN TO:

CITY OF AUSTIN PLANNING DEPT.  
301 W. 11<sup>th</sup> ST.  
AUSTIN, TX 78701

Plat Dept. / K. Terrell  
D. Rangel

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ATTN: L. Down

STATE OF TEXAS COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me; and was duly RECORDED, in the Volume and Page of the named RECORDS of Travis County, Texas, on

FILED

AUG 8 1 41 PM '91

DANA OSEBAUVOIR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

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AUG 8 1991



Dana Osebauvoir  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS