



[IBHS]), and conditions (sometimes referred to collectively as the “Covenants”) applicable thereto, all of which are designed to govern, control, preserve, enhance and protect the value, amenities desirability and attractiveness of the Subdivision, or any part thereof, for the development, sale, use and enjoyment of the Subdivision as a residential development, and shall inure to the benefit of each owner thereof, their heirs, executors, administrators, guardians, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired, now and at any time hereafter. Declarant for itself and its successors and assigns, hereby declares that the Initial Property and all property which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, Transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration and in the instruments referred to herein, for the duration thereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Subdivision.

## **ARTICLE I Defined Terms**

**A. Definition of Terms:** Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified. Functional provisions contained in this Article shall be given the same force and effect as provisions set forth elsewhere in this Declaration.

Section 1.1 Annexation Agreement. “Annexation Agreement” shall mean the written instrument executed by Declarant and/or the Board, as provided in this Declaration, and recorded in the Official Public Records of Real Property of Galveston County, Texas, pursuant to which real property, and improvements thereon, if any, are made a part of this Declaration which is not limited to specific other property within the Subdivision.

Section 1.2 Appointed Board. “Appointed Board” shall mean the initial Board of Directors of the Association, which shall be appointed by the Declarant. Notwithstanding any other provision hereof, the Declarant hereby retains the unilateral right to appoint all Directors of the Association until such time as Declarant no longer owns any portion of the Property or any Declarant Owned Acreage (“Appointment Period”). From and after the time when Declarant no longer owns any portion of the Property or any Declarant Owned Acreage, the Appointed Board shall serve until an election can be conducted to elect a new board for the Association pursuant to the By-Laws.

Section 1.3 Architectural Guidelines. “Architectural Guidelines” shall mean such architectural guidelines as from time to time may be initiated by Declarant, and those which are adopted, or further promulgated and/or amended by Declarant during the Appointment Period, or thereafter by the ARC with approval of the Board of Directors, at such parties’ sole discretion, effective upon notice to the Owners, and shall include the “Sweetwater Cove Pattern Book” and the “Homeowner’s Architectural Guidelines”.

Section 1.4 Architectural Review Committee. “Architectural Review Committee” or “ARC” shall mean that certain committee provided for in and established in accordance with ARTICLE VIII of this Declaration.

Section 1.5 Articles of Incorporation. “Articles of Incorporation” or “Articles” or “Certificate of Formation” shall mean the Certificate of Formation of Sweetwater Cove Property Owners Association, Inc., a Texas non-profit corporation, which have been or will be filed in the Office of the Secretary of State of the State of Texas, as such articles may be amended from time to time.

Section 1.6 Assessment. “Assessment” shall mean all assessments assessable from time to time against Lots as set forth herein and those set forth in any “Annexation Agreement”, including but not limited to, Common Assessments, Special Assessments, Reimbursement Assessments, and Supplemental Assessments, all as hereinafter defined.

Section 1.7 Association. “Association” shall mean and refer to Sweetwater Cove Property Owners Association, Inc., which is or shall be a Texas non-profit corporation, its successors, assigns and/or replacements, the membership of which is composed of all the Owners of Lots within the Subdivision, as described in ARTICLE IV of this Declaration.

Section 1.8 Board of Directors. “Board of Directors” or “Board” shall mean and refer to the Board of Directors of Sweetwater Cove Property Owners Association, Inc., whether such Board of Directors be appointed by Declarant or elected by the Members of the Association in accordance with the provisions of this Declaration.

Section 1.9 Builder. “Builder” shall be a person or entity who is a homebuilder registered and licensed and in good standing as required by the laws of the State of Texas and who is included on the Builders Guild list or otherwise approved by Declarant or the ARC as provided in this Declaration.

Section 1.10 Builders Guild. “Builders Guild” shall mean and refer to the list of homebuilders established and maintained as provided in ARTICLE VIII hereof.

Section 1.11 Bylaws. “Bylaws” shall mean the Bylaws of the Association which have been or will be adopted by the Board, as amended from time to time.

Section 1.12 Capitalization Fees. “Capitalization Fees” shall mean the Operating Fund Capitalization Fees and the Reserve Fund Capitalization Fees as provided for in this Declaration.

Section 1.13 Common Assessment. “Common Assessment” shall mean the assessments made for the purpose of covering the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, which are to be paid by each Owner to the Association as provided herein for purposes provided herein and charges to such Owner and to the Lot of such Owner, as set forth herein and in any applicable Annexation Agreement.

Section 1.14 Common Property. “Common Property” or “Common Properties” shall mean and refer to those areas of land within the Property at any time shown and identified on any Plat as a park, sidewalks, pedestrian walkways, greenbelts, public dune walkovers, open space reserves, parking reserves, lagoon walkovers, trails, private dune walkovers, landscape reserves and subdivision entrances and other subdivision amenities as may be created and/or added to the Subdivision which are not currently identified on any Plat, including, but not limited to, recreational facilities, if any, which are maintained and regulated by the Association, together with such other property as the Association may, at any time or from time to time, acquired by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of any Plat and/or by virtue of grants or dedications by Declarant. Declarant has the right to determine whether the Common Property (or any common structure including, but not limited to, bike racks, mailboxes, hike and bike trails, bird watching, or nature preserve stands or structures, if any), or any portion thereof, will be made available to the general public or will be deemed private and available for use only by Members of the Association. References herein to the “Common Properties in the Subdivision” shall mean and refer to Common Properties as defined respectively in this Declaration and all Annexation Agreements, and all Plats.

Section 1.15 Community Architect. “Community Architect” shall be such licensed architect or architectural firm appointed and/or contracted with by Declarant or appointed and/or contracted with by the Board to perform the functions set forth in ARTICLE VIII hereof. It is provided, however, that any such appointment or contracting by the Board during the Appointment Period shall require approval of Declarant.

Section 1.16 Intentionally deleted.

Section 1.17 Declarant. “Declarant” shall mean and refer to Seamless Sweetwater Cove, LLC and its successors and assigns that have been designated as such by Declarant pursuant to a written instrument duly executed by Declarant and recorded in the Office of the County Clerk of Galveston County, Texas.

Section 1.18 Declarant Owned Acreage. “Declarant Owned Acreage” shall mean that certain real property described on **Exhibit “A”** attached hereto.

Section 1.19 Homeowners’ Architectural Guidelines. “Homeowners’ Architectural Guidelines” shall mean those certain Architectural Guidelines established by the Declarant, or promulgated by the ARC with approval of Declarant if during the Appointment Period, which shall apply to all construction, installation, removal, restoration, repair, modification and remodeling of any Improvement other than such as is governed by the Sweetwater Cove Pattern Book as provided in this declaration. Homeowners’ Architectural Guidelines shall be deemed to be “Architectural Guidelines” for all purposes under this Declaration.

Section 1.20 Improvements. “Improvements” shall mean all paving, landscaping, fixtures, structures and any appurtenances thereto of every type of kind, including, but not limited to, dwelling units, buildings, outbuildings, accessory buildings, finishes of any exterior surfaces

of any visible structure, additions, walkways, trails, sprinkler pipes, garages, porte-cocheres, road, driveways, parking areas, fences, windows, screening, walls, retaining walls, stairs, decks, gazebos, pool cabanas, fixtures, windbreaks, poles, signs, exterior tanks, solar energy equipment, exterior air conditioning fixtures and equipment, water softener fixtures, exterior lighting, recreational equipment or facilities, radio or television antenna and microwave antenna, patios, pools, Shoreline Protection, Sports Facilities, walkways, paving and landscaping, either temporary or permanent. The inclusion of any item in this definition shall in no way modify any provision of this Declaration prohibiting, requiring the approval of, or otherwise limiting, any such item.

Section 1.21 Lot and/or Lots. “Lot” and/or “Lots” shall mean and refer to the Lots shown upon any Plat (with the exception of the Common Properties).

Section 1.22 Maintenance Fund. “Maintenance Fund” shall mean the account(s) into which the Board and/or Manager shall deposit monies paid to the Association as Common Assessments, exclusive of such portions of the Common Assessments as the Board may allocate to a Reserve Fund.

Section 1.23 Manager. “Manager” or “Property Manager” shall mean any one or more persons or professional property management firms employed by the Association as selected by the Board who is engaged to perform any of the duties, powers or functions of the Association as expressly determined by the Board.

Section 1.24 Member. “Member” shall mean the person, if one or more, all Persons collectively, who constitute the Owner of Lot, and Declarant as to all Lots and all Declarant Owned Acreage owned by Declarant from time to time.

Section 1.25 Operating Fund Capitalization Fee. “Operating Fund Capitalization Fee” shall mean the fee payable as an Operating Fund Capitalization Fee upon each and every transfer of a Lot (except for any transfer of any unimproved Lot from Declarant to any Builder, which transfer is for the purpose of such Builder’s construction upon such Lot of a single family residential dwelling for resale by such Builder (“Exempt Transfer”)), which fees shall be an Assessment for all purposes under this Declaration. Such fee shall be in an amount equal to one-half of the amount of the annual Common Assessment applicable to such Lot at the time of transfer thereof as provided in Section 7.7 of this Declaration, and shall be due and payable upon the transfer of the Lot. Such fees shall be deposited in the Operating Fund of the Association, and shall be in addition to the annual Common Assessments assessed against Lots as provided in this Declaration.

Section 1.26 Owner. “Owner” shall mean any person or persons, firm, corporation or other entity who is the record owner of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those who have such interest merely as security for the performance of an obligation, and shall also include Declarant as to all Declarant Owned Acreage owned by Declarant at any time. For purposes of membership voting rights in the Association, each Lot shall have one Owner and if multiple parties own a Lot they shall, among themselves, designate the representative “Owner” for purposes hereof and shall so notify the Board in writing of such designation. The Association shall not be required to recognize any one of multiple legal

owners of any Lot as an “Owner” for the purpose of exercising any voting rights under this Declaration, expect such owner is designated by all legal owners of such Lot and notice thereof is given to the Board as provided herein. Each and every owner or holder of a legal interest in a Lot shall be obligated as an Owner under this Declaration.

Section 1.27 Permitted User. “Permitted Users” shall mean such Persons, not necessarily owners of property within the Properties, as to whom the Board of Directors has entered into a written instrument regarding, or otherwise has permitted to use any Common Properties under such terms and conditions as deemed appropriate by the Board of Directors, provided that in no event shall such use prevent or materially impair continued use by Members of any such Common Properties.

Section 1.28 Person. “Person” shall mean a natural person, a corporation, a partnership or any other legal entity.

Section 1.29 Plat or Plats. “Plat” or “Plats” shall mean and refer to all subdivision plats filed for record in the Office of the County Clerk of Galveston County, Texas with respect to any real property annexed into the Annexation, including but not limited to the plat of Sweetwater Cove, Section One, otherwise known as the “Waterside Subdivision”, recorded in Plat Record 2006A, Map Number 204 in the map or plat records in the Office of the County Clerk of Galveston County, Texas (“Initial Plat”) and all amendments and all replats and partial replats of any thereof.

Section 1.30 Platted Reserves. “Platted Reserves” or “Reserves” shall mean and refer to any parcel or segment of land designated as a “reserve” on the Initial Plat or on any Plat of any property annexed by the Association. Such land shall be a “Platted Reserve” or “Reserve” for the purpose of this Declaration only to the extent same is actually annexed into the Association, and shall be then be used for any purpose set forth or permitted in the applicable Plat or Annexation Agreement.

Section 1.31 Properties or Property. “Properties” or “Property” shall mean and refer to the Initial Property, and such additions thereto as may hereafter be brought within the jurisdiction of the Association in accordance with this Declaration.

Section 1.32 Reimbursement Assessment. “Reimbursement Assessment” shall mean a charge against a particular Owner and such Owner’s Lot (or, in the case of multiple legal owners of a Lot, all such legal owners) for the purpose of reimbursing the Association for expenditures and other costs of the Association in connection with any violation, directly attributable to such Owner or owners, of this Declaration, the applicable Annexation Agreement, any Architectural Guidelines, or the Rules and Regulations, together with all late charges and interest and costs and fees permitted under this Declaration.

Section 1.33 Related User. “Related User” shall mean and refer to any member of the family of an Owner who resides with such Owner on a Lot, or any other person who resides with an Owner on a Lot, and all guests and invitees of any Owner or any such resident; and all employees and independent contractors of any Owner or any such resident; and all occupants,

tenants and contract purchases residing in a dwelling unit on a Lot of an Owner who claim by, through and under an Owner.

Section 1.34 Reserve Fund. “Reserve Fund” shall mean the account(s) into which are deposited all Reserve Fund Capitalization Fees and any portions of any other Assessments earmarked by the Board as contingency funds for the operation of the Association and/or the purchase of property beneficial to the Association, or construction, repair, replacement and other restoration work to, the Common Properties or of any Universal Common Area.

Section 1.35 Reserve Fund Capitalization Fee. “Reserve Fund Capitalization Fee” shall mean the fee payable as a Reserve Fund Capitalization Fee upon each and every transfer of a Lot by a Builder or any other person or entity other than Declarant, to any person or entity, which fees shall be an Assessment for all purposes under this Declaration. Such fee shall be in an amount equal to one-quarter of the amount of the annual Common Assessment applicable to such Lot at the time of transfer thereof as provided in Section 7.3 of this Declaration, and shall be due and payable upon the transfer of such Lot. Such fees shall be deposited in the Reserve Fund of the Association, and shall be in addition to the annual Common Assessments assessed against Lots as provided in this Declaration.

Section 1.36 Rules and Regulations. “Rules and Regulations” shall mean and refer to such rules and regulations concerning the Common Properties, the general welfare of the Association, the Subdivision and/or Members, or any other matter deemed appropriate by the Board, as may be promulgated from time to time by the Board and notice of same provided to the Members then existing.

Section 1.37 Set Back Areas. “Set Back Areas” shall mean the area on any Lot or Platted Reserve situated between any property boundary line and the nearest parallel building or other set back line as provided on any Plat or in any Annexation Agreement for such Lot or Platted Reserve, or in this Declaration.

Section 1.38 Shoreline Protection. “Shoreline Protection” shall mean and include the following:

- A. Bulkhead. “Bulkhead” shall mean the land and retaining walls, including but not limited to bulkhead and rip-rap, installed or to be installed, to hold and retain land and to separate same from any adjacent waters, together with all supporting improvements constructed or installed, or to be constructed or installed, in connection therewith, and
- B. Breakwater. “Breakwater” shall mean that the means by which wave action in waters adjacent to any land is attenuated, such means to include but not be limited to, rip-rap, concrete bag formations and reef domes, together with all supporting improvements.

Section 1.39 Special Assessment. “Special Assessment” shall mean a charge against each Owner and such Owner’s Lot representing a portion of the costs to the Association for any purposes set forth in, or otherwise permitted under, this Declaration.

Section 1.40 Sports Facilities. “Sports Facilities shall mean and refer to any and all basketball backboards, poles, hoops, nets, volleyball, badminton or tennis net or court, tetherball pole, football, soccer or field hockey goal, baseball or softball backstop, gold practice net, or other device or equipment used or designed for use in connection with any sport or athletic activity.

Section 1.41 Subassociation. “Subassociation” shall mean any Texas non-profit corporation or unincorporated association organized and established or authorized pursuant to any Annexation Agreement, the membership of which shall be composed of all Owners of Lots within the Additional Property which is the subject of such Annexation Agreement, but not all Owners of Lots within the Subdivision. Any Subassociation shall be in addition to and subject to this Declaration and the Association, and members of any Subassociation shall also be Members of the Association and shall be subject to all obligations of Owners under this Declaration. Any Subassociation provided for in any Annexation Agreement shall exist for the benefit of members thereof as provided in the applicable Annexation Agreement in order to provide for and/or maintain amenities and/or services or common areas that are unique to the owners of Lots within such Additional Property, as opposed to being common to or shared by all Owners within the Subdivision, and the purposes of such Subassociation and the voting rights associated therewith shall be as provided in the applicable Annexation Agreement.

Section 1.42 Subdivision. “Subdivision” shall mean the Initial Property and all other land which is in the future to be, governed by the Association and made subject to this Declaration as well as future land subdivided into additional sections and added or annexed thereto in order to establish a uniform plan for development to be governed by the Association.

Section 1.43 Supplemental Assessment “Supplemental Assessment” shall mean an additional Common Assessment imposed on any Additional Property annexed into the Subdivision which shall be provided for in the Annexation Agreement therefor, for purposes of paying or defraying the costs of any special services or amenities benefitting solely such Additional Property (either alone or with other Additional Property upon which a similar supplemental assessment has been imposed). “Supplemental Assessments” shall be treated as a “Common Assessment” for all purposes under this Declaration as to all Lots made subject to a Supplemental Assessment.

Section 1.44 Sweetwater Cove Pattern Book. “Sweetwater Cove Pattern Book” shall be that set of Architectural Guidelines from time to time promulgated by the Declarant, or promulgated by the ARC and approved by the Declarant if during the Appointment Period, which shall apply to all new construction of residential structures on any Lot and shall also apply to all replacements of any existing residential structures and to all repairs and restoration of any residential structure on any Lot which structure has been 51% or more damaged or destroyed, and shall also apply to all remodeling of any residential structure on any Lot which involves a modification of 51% or more of such original structure. The Sweetwater Cove Pattern Book, as it exists from time to time, shall be considered “Architectural Guidelines” for all purposes under this Declaration.

Section 1.45 Universal Common Area. “Universal Common Area” shall mean all esplanades and right of way areas associated with any road or street in or near any of the Property,



and all areas of land, whether or not submerged or partially submerged, in or near any of the Property, as determined by Declarant during the Appointment Period, and thereafter as determined by the Board, as being of benefit or interest to the Association in any way, whether or not any such property in annexed into the Subdivision.

**B. Declarant Approval:** Notwithstanding anything contained in this Declaration to the contrary, wherever any provision in this Declaration permits or provides for any approval or exercise of any right by Declarant and/or the Board, the ARC or Community Architect, or the like, such approval and the exercise of any such right shall, during the Appointment Period, be required to be approved in advance in writing by the Declarant, unless and to the extent otherwise expressly agreed in writing by Declarant.

## **ARTICLE II Easements, Reservations, Exceptions and Dedications**

Section 2.1 Existing Easements Each Plat may dedicate for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and each Plat may further establish certain dedications, limitations, reservations, certain minimum setback lines, and restrictions applicable to the Property which are not in conflict with any provision of this Declaration. All (i) dedications, limitations, reservations, certain minimum setback lines, and reservations shown on a Plat and (ii) grants and dedications of easements and related rights heretofore made by Declarant and/or Declarant's predecessors in title affecting any or all of the Property and currently or hereafter placed of record in the Official Records of Galveston County, Texas and enforceable against the Property, or any portion thereof, are incorporated herein by reference and made 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 by or on behalf of Declarant conveying any part of the Property, whether specifically referred to therein or not.

Section 2.2 Utility Easements and Rights-of-Way. Declarant hereby reserves for itself an easement, and the right to use all easements and rights-of-way as shown on each Plat (such easements together with all other easements referred to in this Article II being collectively called the "Easements"), such portions of the Property designated on each Plat for Easements (such portions of property together with all other portions designated on a Plat or herein or in any Annexation Agreement as being subject to the Easement, being hereinafter sometimes collectively called the "Easement Property"), to the extent such Easements are intended for utility use as designated on a Plat, for the purpose of constructing, maintaining or repairing a system or systems of electric lighting, electric power, telegraph, cable television, aerial telephone line or lines, water lines, sewers or any other utility, or drainage, Declarant sees fit to install in across and/or under such Easement Property, Declarant may assign to any utility provider any or all such Easements or any rights on Declarant therein on a non-exclusive basis.

Section 2.3 Changes and Additions. Declarant hereby reserves the right to make changes in and additions to any or all Easements and Easement Property for the purpose of most efficiently and economically installing landscaping, sidewalks, trails, as well as improvements and

utilities and drainage within the Easement Property, as determined by Declarant at any time in Declarant's sole discretion.

Section 2.4 Easements and Appurtenances. It is expressly agreed and understood that the title conveyed by Declarant to any Lot or parcel of land within the Property by contract, deed or other conveyance shall be subject to (a) all easements referred to in this Declaration, including Filter Basin Easements and all those easements as may exist for time to time for roadways, Shoreline Protection, drainage, landscaping, private trails, water, sewer, storm sewer, electric light, electric power, telegraph, pipes, lines, poles or conduits, or in any utility facility or any Shoreline Protection device or improvement, or appurtenances thereto, constructed by or under Declarant or any easement owner, or their agents through, along or upon the Easement Property, or any part thereof, to serve the Property, and (b) the right of Declarant, its successors and assigns to maintain, repair, sell or lease such appurtenances (subject to the provisions of this Declaration) to any municipality, or other governmental agency or to any public service corporation or to any other party (and such right is hereby expressly reserved). Should any utility facility or appurtenances thereto including, but not limited to meters, boxes, lines, etc. located on a Lot require relocation, an Owner of the Lot will bear sole responsibility and the full cost of relocation. An Owner of the Lot must notify the Association prior to moving, modifying or relocating a utility facility or appurtenance thereto. No Owner or Builder shall be permitted to move or modify or relocate any Shoreline Protection.

Section 2.5 Landscape Easement There is hereby created an easement in favor of Declarant and the Association upon, across, over and under portions of the Property designated on any Plat as a "Landscape Easement" or on any common area designated as such on any Plat for ingress, egress, and use of the surface area in connection with the installing, replacing, repairing and maintaining of such landscaping, signage, lighting, drainage and irrigation as Declarant or the Association determines to install, that is to be common to the Subdivision. By virtue of this easement, it shall be expressly permissible for the Declarant and/or Association, and their agents and vendors, to install and maintain landscaping, sidewalks, lights, and/or trails or appurtenances thereto, on, across and under the portion of the Property upon which the landscaping easement lies. If the Declarant or Association installs landscaping, sidewalks, lights, and/or trails on the landscape easement located upon a Lot prior to the construction and placement of an improvement and driveway by the Owner, the Owner will be responsible for the replacement of all damage to the landscaping, lighting, sidewalks, and/or trails caused by the subsequent erection of the improvement and driveway. The Declarant or Association has sole discretion with regard to installing landscaping, signage, lighting, paving, drainage and irrigation upon property contained with any Landscape Easement. If landscaping, sidewalks, lights, signage, irrigation, drainage and/or trails are installed within portions of any Landscape Easement that is located upon a Lot, the Owner agrees to provide the access to the Association and/or Declarant necessary to install and maintain same. An Owner whose Lot contains a Landscape Easement in which no landscaping, sidewalks, lights, and/or trails have been installed by the Association or Declarant may, upon receiving approval by the ARC, install landscaping upon that portion of the Landscape Easement and, upon installation, the Owner shall have the sole obligation to maintain the same. The Association, however, retains the right to, at any time, remove, replace or alter any landscaping, or other item, placed or installed within any Landscape Easement.

Section 2.6 Installation and Maintenance Easement. There is hereby created an easement in favor of Declarant and all approved utility providers upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, water, sewer, telephones, electricity, gas, lighting, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, across and under the Easement Property and within any other public utility easements from time to time created, and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this Section 2.6, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Property until approved by Declarant or the Board. The utility companies furnishing service shall have the right to remove all trees situated within the Easements designated for utilities as shown on any Plat, and to trim overhanging trees and shrubs located on the portions of the Property abutting such Easements, Neither Declarant nor any utility company using the Easements herein referred to, shall be liable for any damages done by them or their assigns, their agents, employees or servants, to mailboxes, fences, sidewalks, shrubbery, trees or flowers or other property, if any, situated on the land covered by said Easements.

Section 2.7 Emergency and Service Vehicles Easement. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, and other service vehicles to enter upon the Property (but not within buildings) 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 Property (but not within buildings) to render any service deemed appropriate by the Association.

Section 2.8 Electric System Easement. An electric distribution system comprised of both underground and overhead lines, pedestals, and overhead transformer poles located throughout the Subdivision, will be installed in the entire Subdivision, to service all of the Lots which are platted in the Subdivision. The owner of each Lot shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the service cable and appurtenances from the point of electric company's metering at the 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 at the property lines of each lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on a Plat or by separate recorded instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various Lot Owners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various Lot Owners to permit installation, repair and maintenance of each Lot Owner's owned and installed service wires. In addition, the owner of each Lot shall at his or its 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 each such Lot. For so long as electrical

service is maintained in the Subdivision, the electric service to each Lot therein shall be uniform in character.

The electric company has installed the electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling Lots, including homes, and if permitted by the restrictions applicable to such Subdivision, townhouses, duplexes, condominiums, patio homes, and apartment structures, all of which are designed to be permanently located where originally constructed (such Lots expressly to exclude mobile homes) which are built for sale or rent and all of which multiple dwelling Lot structures are wired so as to provide for separate metering to each Lot.

Section 2.9 Surface Areas of Easements. The surface of Easement Property designated for underground utility services may be used for fencing and planting of shrubbery, trees, lawns, or flowers unless otherwise prohibited by any Architectural Guidelines. However, neither the Declarant nor any supplier of any utility or service using any portion of any Easement Property shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such Easement Property.

Section 2.10 Filter Basin Easements. (A) There is hereby declared and created as to each and every Lot within the initial Property which in any way abuts any portion of Sweetwater Cove, Sweetwater Lake or Galveston Bay (herein, the "Water Bodies"), as indicated on the Plat of the initial Property or as otherwise determined by Declarant, an easement ten (10) feet in width along such property lines, or portions of property lines, of such Lots, which abut any such Water Body, in favor of Declarant and the Association, for the purpose of providing an area for the facilitation of the natural filtration of natural and man-made water run-off from each such Lot prior to the entry of such water into the applicable adjacent Water Body ("Filter Basin Easement"). There shall also be a Filter Basin Easement created and/or reserved as to all other Lots hereafter annexed into the Subdivision which abut any Water Body, the width of which shall be as set forth in the Plat of such Lot or in the applicable Annexation Agreement for such Lot. The surface of each such Lot shall be graded and configured in such a way as to create within the Filter Basin Easement area of such Lot a basin containing indigenous vegetation intended to facilitate filtration as aforesaid. There is expressly prohibited within any part of any Filter Easement area on any Lot (i) any and all mowing and/or removal or disturbance of any existing indigenous vegetation, (ii) any and all filling in of the ground level, or any other action to change or alter the grading of any such area, (iii) the storage of any objects or materials, (iv) any and all planting or placement within any Filter Basin Easement area of any plant or vegetation which is not indigenous to Galveston Island waterfront property, and (v) the placement or construction of any Improvement other than, as to each such Lot, a single footbridge of such design and materials as is approved by the Town Architect and otherwise complies with the Architectural Guidelines. The owner of each such Lot shall keep the Filter Basin Easement area on his or her Lot free and clear of all trash and debris at all times.

(B) In the event of any default on the part of an Owner in observing any of the foregoing requirements, such default continuing for ten (10) days after the mailing of written notice to the Owner at the address of the Owner shown on the Association's records, the Declarant, the Association, or its assignee or designee, may, without liability to the Owner or occupant of such Lot in trespass or otherwise, enter upon such Lot and take such actions as deemed necessary by Declarant or the Association to accomplish compliance with such requirements and restrictions, including the removal of all property, materials and improvements situated within such easement area in violation hereof, and may further charge the owner of such Lot for the cost thereof, and the Owner agrees, by ownership of the Lot, to pay such costs immediately upon receipt of written request therefore. To secure payment of such charges in the event of non-payment by the owner, a vendor's lien is herein and hereby retained against such Lot in favor of Declarant and the Association and their assignees, but subordinate to purchase money liens and first mortgages. Such vendor's lien shall be applicable and effective whether mentioned specifically in the deed for such a lot or not.

### **ARTICLE III**

#### **Property Subject to this Declaration**

Section 3.1 Description. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration consists of all of the initial Property, and all additional property which Declarant may, but is in no way obligated to, hereafter annex into the Subdivision as provided herein.

Section 3.2 Mineral Exception. There is hereby excepted from the Property and Declarant intends to hereafter except from all its sales and conveyances of the Property, or any part thereof, including the Lots and Common Properties, all oil, gas, and other minerals, in, on, and under the Properties, but each such reservation shall be subject to the provision and requirements of Article XIII of this Declaration.

Section 3.3 Additions to the Property. Additional lands may become subject to the scheme of this Declaration in the following manner:

(a) **Additions by Declarant.** The Declarant shall have the right to bring within the scheme of this Declaration additional properties included in Declarant Owned Acreage in future stages of development ("Additional Property") in its sole discretion. Any additions of Additional Property authorized under this and the succeeding subsection of this Declaration shall be made by filing of record in the Official Records of Galveston County, Texas, an Annexation Agreement with respect to the applicable Additional Property, which shall extend the scheme of the Covenants of this Declaration to the Additional Property. All such Annexation Agreements must impose Common Assessments and Capitalization Fees on the Additional Property, on a uniform, per Lot basis, at least equivalent to the Common Assessments and Capitalization Fees imposed by this Declaration on the initial Property, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration and additional Supplemental Assessments which shall be unique to such Additional Property, as may be applicable to the Additional Property as determined by Declarant. Any such Annexation Agreement may also provide that the Additional Property which is thereby to be annexed shall be subject to a Subassociation, in addition to being subject to the Association.

(b) **Mergers.** Upon a merger or consolidation of the Association with another homeowner's association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the other association as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the Covenants established by this Declaration or any amendment thereto. No merger or consolidation involving the Association shall be permitted during the Appointment Period without the express prior written consent of Declarant.

Section 3.4 Withdrawal of Annexed Property. Provided that there is no materially adverse impact on the Association, as determined by the Board, which impact is not mitigated by other means reasonably acceptable to the Board, all or any portion of the Property which has theretofore been annexed into the Subdivision ("Annexed Property") may be withdrawn from the Subdivision and from this Declaration in the manner described below. The withdrawal of Annexed Property shall be accomplished by the execution, acknowledgment and recordation of a withdrawal notice ("Notice of Withdrawal"). The Notice of Withdrawal (i) shall be executed and acknowledged by all of the Owner(s) of the Annexed Property to be withdrawn; (ii) shall, if the Annexed Property to be withdrawn is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Subdivision or any Declarant Owned Acreage; (iii) shall contain an adequate legal description of the Annexed Property to be withdrawn; (iv) shall contain a statement and declaration that all or any portion of the property which is being withdrawn is withdrawn from the Subdivision and shall not be thereafter subject to this Declaration or the Annexation Agreement for such Annexed Property. The withdrawal shall be effective upon recordation of the Notice of Withdrawal and, upon recordation of the Notice of Withdrawal, the Annexed Property described therein shall no longer be part of the Subdivision or subject to this Declaration or to the Annexation Agreement for such Annexed Property. Any Annexed Property which is withdrawn from the Subdivision and this Declaration pursuant to a Notice of Withdrawal may be re-annexed at any subsequent time in one or more annexations, and the withdrawal of such Annexed Property does not create any future impediment to any number of re-annexations or withdrawals of such Annexed Property. The withdrawal of such Annexed Property shall not impair the validity of any action taken by the Board or the Association, notwithstanding the exercise by the Owners of such Annexed Property of any voting rights hereunder with respect to such action. Additionally, the Owners of such Annexed Property shall be liable for their prorata share of any Assessments imposed or imposable against any and all Lots within such Annexed Property prior to the date of recordation of the Notice of Withdrawal, and further provided that the Association shall not be obligated to refund any portion of any Assessment paid in advance by any Owner of any Lot within such Annexed Property.

## **ARTICLE IV**

### **Association Membership and Voting Rights**

Section 4.1 Organization. The Declarant has organized and formed, or will organize and form, the Association as a non-profit corporation under the laws of the State of Texas. The

affairs of the Subdivision shall be administered by the Association, subject to the rights and reservations in favor of Declarant and to the other provisions of this Declaration.

Section 4.2 Purpose. The purpose of the Association in general is to provide for and promote the health, safety, and welfare of the members of the Association, to collect the Assessments, to enforce the Restrictions set forth herein and in the By-Laws, and to administer the Maintenance Fund and the Reserve Fund, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Property, Universal Common Areas, Filter Basin Easements, and such other purposes as are stated in the Articles of incorporation or By-Laws of the Association consistent with the provisions of this Declaration and all amendments thereto. The Association shall have all rights, powers and duties of an "Association" as that term is used in the Texas Property Code as amended from time to time.

Section 4.3 Directors. The Association shall act through a three (3) member Board of Directors, which shall manage the affairs of the Association. The initial Directors of the Association have been selected by Declarant and will be considered the Appointed Board as that term is defined in Article of this Declaration. Each Director on the Appointed Board shall serve for a term of three (3) years from date of appointment, and thereafter, until his successor is duly appointed and qualified by Declarant. Upon the expiration of the Appointment Period, the Members shall elect a Board of Directors as provided for in the By-Laws. Any Director vacancy, from whatever cause, occurring in the Appointed Board during the Appointment Period shall be filled by appointment made by the Declarant and the person appointed to fill such vacancy shall serve for the remainder of the term. The Directors shall have the power to select one or more advisory directors from the residents of the Subdivision to serve for such periods of time as the Appointed Board or, later, the Member-elected Board of Directors shall deem appropriate, for the purpose of providing advice and counsel to the Board of Directors or Appointed Board, provided that such advisory directors shall have no right to act on behalf of the Association. An officer, director, or committee member of the Appointed Board or any future Board of Directors shall not be liable to the Association or any Owner for any action or omission occurring in such person's capacity as an officer, director, or committee member so long as such action or omission is made or taken in good faith or pursuant to the business judgment rule recognized under the laws of the State of Texas.

Section 4.4 Members. Declarant shall be a Member of the Association. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease, but there shall only be one (1) vote per Lot, except as stated below. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

The Association shall have two classes of membership:

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot in the Subdivision owned by the Declarant and shall further be entitled to twenty (20) votes for each acre (or portion of an acre) of land within the Declarant Owned Acreage then owned by Declarant; provided that the Class B Membership shall cease and become converted to a Class A membership on the happening of the following events, whichever occurs earlier:

- (a) when Declarant owns no Lots in the Subdivision and owns no Declarant Owned Acreage;
- (b) on January 1, 2039; or
- (c) when Declarant unilaterally terminates its Class B membership status by an instrument signed by Declarant and filed in the Official Public Records of Real Property of Galveston County, Texas. No Member, other than the Declarant, shall be permitted to be a Class B Member.

From and after the happening of whichever of these events occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in the Subdivision owned by it.

Class A. Class A Members shall be all the Members of the Association, with the exception of the Declarant (the sole Class B Member). Each Class A Member shall be entitled to one vote for each Lot in the Subdivision owned by such Member.

Section 4.5 Notice. Any notice permitted or required to be given to a Member of the Association or to an Owner may be delivered personally, by mail, email, facsimile or other electronic means, or by placing such notice in the mail. If delivery is made via mail, it shall be deemed to have been delivered when deposited in the U.S. mail postage prepaid, addressed to an Owner at such Owner's Lot or to such other address as the Owner may have given in writing to the Association for the purpose of services of notices. If delivery is by personal delivery, it shall be deemed to have been made when delivered to such Member's Lot, unless such Lot is at such time unimproved, or to such other physical location as the Member or Owner shall theretofore have given the Association written notice. Any address for purposes of notice may be changed from time to time by notice in writing to the Association.

Section 4.6 Disputes. In addition to the other powers conferred by law or hereunder, the Board of Directors is hereby empowered to create procedures for resolving disputes between Owners and the Board of Directors or the Association, including appointment of committees to consider and recommend resolution of or to resolve any such dispute.

## **ARTICLE V**

### **Duties and Powers of Association**

Section 5.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board, or persons to whom the Board had delegated such powers, shall have the duties and powers



hereinafter set forth, and, in general, shall have the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance the Common Properties and Universal Common Areas, and to improve and enhance the attractiveness, desirability and safety of the Subdivision and to carry out the duties otherwise provided in this Declaration.

Section 5.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any property, including any Improvements thereon, and any personal property, transferred to the Association by or pursuant to the request of Declarant, together with the responsibility to perform any repair, maintenance or improvements to become necessary thereon, provided that such property and such responsibilities are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien of property taxes and assessments not then due and payable), and if to be annexed into the Subdivision, shall be subject to the terms of this Declaration, and the terms of any Annexation Agreement annexing such property into the Properties, and further may be subject to such easements, covenants, conditions, restrictions and equitable servitudes or other encumbrances as determined by Declarant, which would not, in the reasonable opinion of Declarant, materially adversely affect the use and enjoyment of such property by the Association or by Owners or others authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any subsidiary of Declarant including, but not limited to, any purchase price, rent, charge or fee, in consideration of such transfer.

Section 5.3 Duty to manage and Care for Property. Except as and to the extent, if any, that any duty of care, management, operation, repair or maintenance of any Common Properties or Universal Common Areas has been specifically delegated to an Owner of one or more Lot(s) herein or in the Annexation Agreement for such Lot(s), the Association shall manage, operate, care for, maintain and repair all Common Properties, Universal Common Areas, and Easements, and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members and all others entitled to use same.

Section 5.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon all Common Properties, including all improvements thereon, and shall have the right to contest any such taxes or assessments, provided that the Association shall contest the same by appropriate legal proceedings. The Association may also assume and/or contribute to the payment of taxes on Universal Common Areas, if so determined by the Board.

Section 5.5 Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire and extended coverage insurance with respect to all insurable improvements and personal property, title to which is owned by the Association, and to all Improvements in all Common Properties,

including coverage for vandalism and malicious mischief and, if and to the extent reasonably available and if deemed appropriate, coverage for flood risk. Casualty, fire and extended coverage insurance with respect to insurable Improvements shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost. As to any other Common Properties with respect to which the Association does not have fee title, and any and all Universal Common Areas, the Association may, in its discretion, if determined by the Board to be beneficial to the Association, obtain and maintain insurance thereon.

Section 5.6 Duty to Maintain Liability Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury, death, and property damage, on or about all Common Properties, and such insurance shall include, if the Association owns or operates motor vehicles, public liability for bodily injury, death, and property damage arising as a result of the ownership and operation of motor vehicles. Public liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, have limits of not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. As to any other Common Property with respect to which the Association does not have title, and as to any or all Universal Common Areas, the Association may, in its discretion, if determined by the Board to be beneficial to the Association, obtain and maintain insurance thereon.

Section 5.7 Duty to Prepare Budgets. The Association shall prepare, or shall cause to be prepared, an annual budget for the Association.

Section 5.8 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 5.9 Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property for the common benefit of Owners, including real property, improvements and personal property. The Association may construct Improvements on Common Properties and may demolish Improvements at any time existing on any Common Properties.

Section 5.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations, fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Properties, and the use of any other property within the Subdivision ("Rules and Regulations"). Any such Rules and Regulations shall be reasonable and uniformly applied (as to all Owners in the Association, if deemed by the Board to be applicable, but, in any event, to all Owners of similarly restricted Lots). Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that all persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this

Declaration, in the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 5.11 Power to Enforce Declaration and Rules and Regulations and Architectural Guidelines. The Association shall have the power to enforce the provisions of this Declaration and of all Rules and Regulations and all Architectural Guidelines by all lawful means, and may take such action as the Board deems necessary or desirable to cause such compliance by each Member and each Related User and each Permitted User as not prohibited by law. Without limiting the generality of the foregoing, the Association, acting through the Board of Directors or any committee or agent authorized by resolution of the Board of Directors, shall have the power to enforce the provisions of this Declaration and of the Rules and Regulations and Architectural Guidelines by any one or more of the following means: (i) by entry upon any property, including any Lot, within the Subdivision without liability by the Association or its authorized agent to the Owner thereof, for the purpose of enforcement of this Declaration or Rules and Regulations or Architectural Guidelines; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, or Architectural Guidelines, by mandatory injunction or otherwise; (iii) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations or Architectural Guidelines; (iv) by suspension of the voting rights of a Member during and for up to one hundred eighty (180) days following any breach by such Member or a Related User of such Member of this Declaration or such Rules and Regulations or Architectural Guidelines, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting a Reimbursement Assessment against any Member for breach of this Declaration or such Rules and Regulations or Architectural Guidelines by such Member or a Related User of such Member; and (vi) by levying and collecting reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or such Rules and Regulations or Architectural Guidelines by such Member or a Related User of such Member; and (vii) by filing and enforcing a lien on the Lots of any Member who fails to pay any fine, penalty or Reimbursement Assessment after thirty (30) days written request therefor from the Board of Directors. Notwithstanding (i) above, it is provided that, after completion of the main residential living structure on any Lot and the commencement of occupancy of such structure, entry upon a Lot shall require not less than one (1) business day's prior notice to the Owner thereof, and shall further require that all persons making entry upon such Lot for such purpose present the Owner thereof (or the occupant of such Lot) with proper identification of such persons upon or prior to making any such entry, and do not breach the peace in so doing.

Section 5.12 Power to provide Special Services for Members. The Association shall have the power, but no obligation, to provide services to a select Member or group of Members without providing such services to all Members. Any service or services to a select Member or group of Members shall be provided pursuant to an agreement in writing, or through one or more Annexation Agreements, which shall provide for payment to the Association by such Member or group of Members of the reasonably estimated costs and expenses of the Association of providing such services, including a fair share of the overhead expenses of the Association, and shall contain reasonable provisions assuring that the obligations to pay for such services shall be binding upon

any heirs, personal representatives, successors or assigns of the Member or group of Members and that the payment for such services shall be secured by a lien on the property of the Member or group of Members.

Section 5.13 Power to Charge for Facilities and Services. The Association shall have the power to establish reasonable and uniformly applied (as to each group of Members, Related Users, guests or invitees or Permitted Users using the particular facilities or receiving such services in accordance with the level of benefit to and/or usage of each such group) charges for the use of facilities and services. The charges may include reasonable admission or other fees for any special or extraordinary use of property or facilities or services of the Association such as special parking privileges, community rooms, or other uses beyond the ordinary use of Common Properties, facilities and services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Board of Directors.

Section 5.14 Power to Grant Easements. In addition to any blanket easements described in this Declaration or any Annexation Agreement, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under Common Properties.

Section 5.15 Power to Employ Managers. The Association shall have the power to retain and contract with, and pay for the services of a Manager or Managers to undertake any of the management or other functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Board of Directors, and may delegate any of its duties, powers or functions to any such Manager. Any contract or agreement with any such Manager shall be written such that it can be terminated by the Association for cause on no more than thirty (30) days prior written notice, and without cause on not more than ninety (90) days prior notice, and if any such contract provides for renewals, such renewals may not be automatic but shall be required to be affirmatively exercised by the Association for each renewal. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

Section 5.16 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, accounting and other professional services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

Section 5.17 Association Duties in the Event of Damage or Destruction to Common Properties. In the event of damage to Common Properties or any Improvement thereon by flood, fire or other casualty or act of God or in the event any governmental authority shall require, or the Board of Directors shall deem to be necessary, any repair, reconstruction or replacement of any Common Properties, the Association shall have the duty to repair, reconstruct or replace the same with comparable Improvements. Any insurance proceeds payable by reason of damage or destruction of Common Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction or replacement. If

funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements or improvements by governmental authorities, or deemed necessary by resolution of the Board of Directors, the Association may, as elsewhere provided in this Declaration, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement or improvement, levy a Special Assessment on all Owners, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the Member or group of Members responsible therefor, to provide the necessary additional funds. Repair, reconstruction or replacement of Common Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction and replacement, the Association may use any such excess for future maintenance, repair, improvement and operation of any common Properties. The Association may, through determination by the Board of benefit to the Association thereby, elect at its option to repair or replace areas damaged as described above, and is hereby granted the right to levy a Special Assessment for such purposes. The Association may also have the right, if deemed by the Board to be beneficial to the Association, to exercise any or all of the foregoing rights, duties and powers with respect to any or all Universal Common Area.

Section 5.18 Association Powers in the Event of Condemnation. If any common Properties or interest therein are taken under exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other person with an interest in such property including any Mortgagee of such Property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners therein and is hereby appointed as the attorney-in-fact for each Owner for such purpose. Any award or funds received by the Association shall be held as determined by the Board, as a reserve for future maintenance, repair, reconstruction or replacement of Common Properties or may be used for Improvements or additions to, or operation of, Common Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

Section 5.19 Title to Common Properties on Dissolution of Association. In the event of dissolution of the Association, except if such dissolution is in connection with a merger or consolidation of the Association with or into an entity created for a similar purpose, the Common Properties shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies to be used for the common benefit of Owners for similar purposes for which the particular Common Property was held by the Association, or to a non-profit corporation, association, trust or other organization. To the extent the foregoing is not possible, the Common Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members in proportion to the number of Lots owned by each Member.

Section 5.20 General Corporate Powers. The Association shall have all of the ordinary powers and rights of Texas non-profit corporation formed under the Texas Non-Profit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of

Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration or the Articles of Incorporation and Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation and Bylaws.

Section 5.21 Limited Liability. It is understood that the judgment of the Association, its successors, legal representatives and assigns, in the allocation and expenditure of the Assessments shall be final so long as such judgment is exercised in good faith. Neither the Association, the Board of Directors, nor any Director, shall have any liability to any person or entity under any theory or circumstance for any error or judgment, action or inaction of the Association, the Board of Directors, or any Director. The enumeration of the services for which the Assessments may be expended carries no obligation to furnish any of such services except to the extent of funds actually received by the Association. The Association, in furtherance of the provisions of this Section, shall have the right, at Association expense, to maintain policies of insurance on all of the Directors of the Board of Directors against any and all liability incurred by them in performance of their duties hereunder.

## **ARTICLE VI**

### **Property Rights in the Common Properties**

Section 6.1 Title to Common Properties. The Declarant may retain the legal title to any or all of the Common Property until such time as: (i) Declarant no longer owns any portion of the Property or any Declarant Owned Acreage; or (ii) in the sole opinion of Declarant, the Association is able to operate and maintain the same, whereupon title to the Common Properties shall be conveyed to the Association, Until title to such Common Properties have been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Properties granted to the Association in this Declaration and all amendments thereto. The Common Properties shall remain undivided and shall not be subject to an action for partition or division of the Owners thereof so long as the Subdivision is maintained as a Subdivision in accordance with the provisions hereof.

Section 6.2 Members' Easements of Enjoyment. Except as otherwise provided herein, or in any Rules and Regulations, every Member shall have a common right and easement of enjoyment in and to the Common Properties, subject to this Declaration and all Rules and Regulations, and such right and easement shall be appurtenant to and shall pass with the title to each Lot.

Section 6.3 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in its discretion, to make, publish, and enforce 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 by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Property or any part thereof at the same time; and

(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 facility or equipment situated in any part of such Common Properties and owned by the Association to any public or political authority or agency or to any utility company rendering or to render service to the Subdivision or any part thereof; and

(c) The right of the Association to enter management and/or operating contracts or agreements relative to the maintenance and operation of such Common Properties in such instances and on such terms as its Board of Directors may deem appropriate; and

(d) The right of the Association to suspend the voting rights of a Member or his right to use any Common Properties during the period he is in default as provided in this Declaration; and the aforesaid rights 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 and any amendment thereto or in its By-Laws or at law or in equity on account of any such default or infraction; and

(e) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II and Article hereof, in this Declaration and in all amendments thereto; and

(f) The rights reserved herein to Declarant to use all Common Properties as deemed necessary by Declarant to complete the development and marketing of the Subdivision, which rights shall be in effect for so long as Declarant owns any Lots or property within the Subdivision or any Declarant Owned Acreage.

Section 6.4 Delegation of Use. Any member may delegate his right of use and enjoyment of the Common Properties in the Subdivision, together with all easement rights granted to Members in this Declaration and all amendments thereto, to the members of his family, his tenants, guests (subject as provided in this Declaration), or contract purchasers who reside on his Lot. The term "Members" 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 legal process, or by operation of law, or in any other legal manner. The Association retains the right to forcibly remove from the subdivision, or its Common Properties, any individual who has no legal right to use and enjoy the Common Properties. The Association may prosecute such individuals as trespassers and pursue all legal process available to the Association, both civil and criminal, to affect their removal and prosecute same.

## **ARTICLE VII**

### **Assessments**

Section 7.1 The Maintenance Fund. All funds collected by the Association from the Common Assessments provided for in this ARTICLE VII, together with all funds collected by the Association from the Reimbursement Assessments that may be imposed on Lots by this Declaration and all Annexation Agreements, 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: to promote the health, safety, recreation, and welfare of the Members, including, without limitation, the creation, promulgation or enforcement of any rule, provision or restriction set forth within the Declaration or any dedicatory instrument governing the Association and/or the Property, the installation, construction, erection, maintenance and relocation of improvements related to the enhancement and beautification of the Common Properties and Universal Common Areas, and any other areas provided by this Declaration or any amendment thereto to be developed or maintained by the Association, such as shrubbery, trees, walkways and street lights, dune structures and walkovers, side-walks, bridges including foot bridges, beach equipment, landscaping, irrigation, retaining walls, fences, jogging trails, etc. and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members. The Maintenance Fund may also be used to reimburse the Community Architect, Declarant, or any agent acting on behalf of the Association for monies expended in connection with the architectural review and approval process for individual applications of construction review as well as funds expended in connection with the design of the Subdivision. Supplemental Assessments as collected shall be used for the purposes set forth in the applicable Annexation Agreement and shall be held in a separate account therefore, and may, if such Annexation Agreement provides for a Subassociation, be held by such Subassociation,

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 7.1 of Article VII preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith are presumed reasonable and shall be binding and conclusive on all Members.

Section 7.2 Covenant for Assessments. Subject to the provisions set forth below in Sections 7.3 and 7.4 of this Article VII relating to the rate at which the maintenance charge and assessments imposed herein shall be paid on unimproved Lots, each and every Lot is hereby severally subjected to and impressed with a regular annual maintenance charge or assessment in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) per annum per Lot (herein sometimes referred to as the "Common Assessment") which shall run with the land, subject to increase and decrease and payable as provided in Section 7.5 below. Notwithstanding anything to the contrary contained herein, Owners of unimproved Lots shall be charged and shall pay an additional "Lot Maintenance Charge" of Three Hundred Twenty-five and No/100 Dollars (\$325.00) per annum for each year that their Lot is unimproved. Such Lot Maintenance Charge shall be deemed to be a Common Assessment for all purposes hereunder. The Declarant shall not be assessed the Lot Maintenance Charge or Common Assessment, upon the Lots or reserves which are owned by Declarant.

Each Owner of a lot, by his or her claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his or her lot and/or assessed against him or her by virtue of his or her ownership, thereof, as provided in this Declaration or any applicable Annexation Agreement, as the same shall become due and payable, without demand. The charges, assessments interest, costs, and reasonable attorney fees herein provided for shall be



a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the obligation to pay such assessment accrued, but no Member shall be personally liable for the payment of any assessment made or becoming due and payable after his or her ownership ceases. No Member shall be exempt or excused from paying any such charge or assessment by waiver of the use or enjoyment of the Common Properties, or any part thereof, or by abandonment of his or her Lot or of any interest therein,

Section 7.3 The Annual Common Assessment. The annual Common Assessments provided for herein shall commence on the date of sale from of the first Lot from the Declarant or upon substantial completion of the roads and underground utilities servicing the Property, whichever is later. The first annual Common Assessment shall be payable on the day fixed for commencement. The assessments for each calendar year, including the first year, shall be due and payable to the Association in advance, on the 1st day of July of each year. Provided, however, that, upon the purchase of their Lot (as evidenced by the date of the contract of sale or deed, or their occupancy, whichever is earlier), each Member shall be obligated to pay to the Association a pro rata part of the annual Common Assessment and Lot Maintenance Charge assessed on such Lot for the remainder of the fiscal year of the such assessments, and which shall be payable in full upon such purchase.

The Board of Directors may decrease or increase the amount of the regular annual Common Assessment or any other Assessment provided for in this Declaration or any Annexation Agreement at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing or decreasing the annual maintenance charge assessment shall become effective prior to the expiration of ninety (90) days from the date of its adoption, and the Owner of each Lot shall, within thirty (30) days from such effective date, pay to the Association or be credited by the Association for the proportionate part of such increase or decrease for the balance of the year in which such resolution is adopted; provided, however, that no resolution of the Board of Directors which fixes the amount of the regular annual maintenance charge or assessment at less than eighty-five percent (85%) of the amount assessed in the preceding fiscal year, or in excess of one hundred fifteen percent (115%) of the amount assessed in the preceding fiscal year, shall become effective unless and until such resolution is ratified by the written assent of fifty-one percent (51%) of a quorum of Members present and voting in person or by proxy at a special meeting of the Association membership called for this purpose. The written assent or the vote of the Membership must be given prior to the effective date of the resolution of the Board of Directors or the Appointed Board. No increase or decrease in the annual maintenance charge or assessment shall take effect retroactively.

If any resolution of the Board of Directors which requires ratification or assent of the Members of the Association as above provided shall fail to receive such approval or assent, then the amount of the regular annual maintenance charge or assessment last in effect shall continue in effect until duly changed in accordance with the above provisions.

Section 7.4 Quorum for any Action Authorized Under Section 7.3. The quorum required for any action authorized by Section 7.3 of this Article VII hereof shall be as follows:

At the first meeting called, as provided in this Article VII, the presence at the meeting of Members, or of proxies, entitled to cast twenty percent (20%) of all the votes of the membership shall constitute a quorum, If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any such subsequent meeting shall be one-half (1/2) the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting,

Section 7.5 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, or any maintenance or improvement of any Universal Common Area, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7.6 Reimbursement Assessments. The Board of Directors may levy a Reimbursement Assessment against any Member if the failure of the Member or any Related User of such Member to comply with this Declaration, the Articles of Incorporation, the Bylaws, any Architectural Guidelines, or the Rules and Regulations shall have resulted in the incurring or expenditure of expense or funds, or in the determination that costs will be incurred or funds will be expended, by the Association, to cause such compliance or to correct the effects of any such non-compliance. Such Assessment shall be known as a "Reimbursement Assessment" and shall be levied only after not less than thirty (30) days written notice and a hearing opportunity in front of the Board. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is owing which shall be made following such hearing opportunity.

Section 7.7 Operating Fund Capitalization Fees. Upon the transfer of ownership of any Lot by a Builder ("Transfer"), the Lot shall be subject to an Assessment of an Operating Fund Capitalization Fee in the amount provided herein, which fee shall be an Assessment for all purposes under this Declaration. Such fee shall be in an amount equal to one-half (1/2) of the amount of the annual Common Assessment for such Lot as provided in Section 7.3 hereof, shall be due and payable upon the date of the Transfer thereof, and shall be deposited in the Operating Fund of the Association, such fee is in addition to the annual Common Assessment assessed against each Lot. Notwithstanding the foregoing, no such fee shall be chargeable upon any transfer of any Lot from Declarant to a Builder.

Section 7.8 Reserve Fund Capitalization Fees. Upon the transfer of ownership of any lot by a Builder ("Transfer"), the Lot shall be subject to an Assessment of a Reserve Fund Capitalization Fee in the amount provided herein, which fee shall be an Assessment for all purposes under this Declaration. Such fee shall be in an amount equal to one-quarter (1/4) of the amount of the annual Common Assessment for such Lot as provided in Section 7.2 hereof, shall be due and payable upon the date of the Transfer thereof, and shall be deposited in the Reserve

Fund of the Association. Such fee is in addition to the annual Common Assessment assessed against each Lot. Notwithstanding the foregoing, no such fee shall be chargeable upon any transfer of any Lot from Declarant to a Builder.

Section 7.9 Foundation Contribution. (a) The Board shall have the authority to establish and collect on behalf of the Community Foundation a contribution ("Foundation Contribution") from each Owner of a Lot upon each transfer of title to a Lot (other than any exempt transfer of a Lot as defined in this section 7.9). The Foundation Contribution shall be payable to the Association at the closing of the transfer of the Lot and shall be secured by the Association's lien for Assessments under Section 7.1 against the applicable Lot. The transferring Owner shall notify the Association of a pending title transfer at least seven (7) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information as the Board of Directors may require.

(b) The Association's Board from time to time shall determine the amount of the Foundation Contribution after consultation with the Foundation. The Foundation Contribution may be based upon a sliding scale which varies in accordance with the Gross Selling Price of the Lot and improvements thereupon or another factor as determined by the Association's Board of Directors; provided, however the Foundation Contribution shall not be greater than one-half of one percent (0.50%) of the Gross Selling Price of the property in the case of a sale by a Builder (hereinafter defined) or greater than one percent (1%) of the Gross Selling Price of the property in the case of a sale by an Owner other than a Builder. As used herein, the term "Gross Selling Price" means the total cost to the purchaser of a Lot and all improvements thereupon as indicated on the title company's closing statement or other similar document, and the word "Builder" means any person undertaking the construction of a Dwelling Unit and other improvements on a lot within the Properties for the purpose of selling same. Notwithstanding the provisions of subsection (a) above concerning the time for payment of the Foundation Contribution, the Foundation may enter into agreements with Builders which provide that the Foundation Contribution with respect to a particular Lot which will become payable upon the sale of the Lot by the Builder may instead be calculated and paid at the time the Lot is acquired by the Builder based on the estimated sales price of the Dwelling Unit to be constructed by the Builder and without a subsequent adjustment is the actual Gross Selling Price is a higher or lower amount any Lot and the improvements thereon, if improved, when the same is purchased, or for any part of the cost of construction, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot.

Any foreclosures of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 7.12 Effect of Non-Payment of Assessment. If any Assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest interest rate allowed under the laws of 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 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 7.13 Collection and Enforcement. In order to secure payment of the Assessments levied hereunder and other sums due hereunder (including interest, late fees, attorneys fees, reimbursements, delinquency, and other charges made by the association), an assessment lien and superior title shall be and is hereby reserved in and to each Lot and assigned to the Association, without recourse, which lien shall be enforceable as hereunder set forth by the Declarant, Association, the Board of Directors on behalf of the Association, or any Owner on behalf of the Association, each Owner, by acceptance of a deed to its Lot, grants a power of sale to the Association to sell such property upon default in payment of any amount owed, and hereby expressly recognizes the existence of such lien as being prior to its ownership of such Lot. Each Owner, by acceptance of a deed to its Lot hereby vests in the Board of Directors and such Board's agents the right and power to bring all actions against such Owner (or Owners) personally for the collection of such unpaid assessments, and other sums due hereunder as a debt. The Board shall further have the right upon majority vote of the Board to enforce the aforementioned lien by judicial foreclosure and all methods available for the enforcement of such liens, and, if approved unanimously by the Board, by non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code (as same may be amended or revised from time to time hereafter). In addition to and in connection therewith, by acceptance of the deed to its Lot, each Owner expressly GRANTS, BARGAINS, SELLS AND CONVEYS in the President of the Association from time to time serving as trustee (and to any substitute or successor trustee as hereafter provided for) such Owner's Lot and all rights appurtenant thereto, for the purpose of securing the said Assessments, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time.

It is the intent of this Subsection to comply with the provisions of the TEXAS PROPERTY CODE, the TEXAS RULES OF CIVIL PROCEDURE, any other laws applicable to non-judicial foreclosure by power-of-sale provisions, judicial foreclosure, or expedited foreclosure proceedings.

Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same. The provisions of Chapter 209 of the Texas Property Code, as amended from time to time, shall be complied with by the Association.

The collection of such Assessments and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest,

costs and attorney's fees, shall be chargeable to and be a personal obligation of such defaulting Owner. Notice of the lien referred to above may, but shall not be required to, be given by the recordation in the Official Public Records of Real Property of Galveston County, Texas of an affidavit, duly executed, sworn to and acknowledged by an officer of the Association or its duly authorized employee or agent, setting forth the amount owed, the name of the Owner (or Owners) of such Lot, according to the books and records of the Association, the legal description of such Lot, or in such other manner as may be specified by the Texas Property Code.

Failure by the Board of Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

Section 7.14 Texas Residential Property Owners Protection Act. Notwithstanding any of the foregoing, nothing contained herein shall abrogate any right of an Owner required by Chapter 209 of the Texas Property Code (The Texas Residential Property Owners Protection Act) as amended (The "Act"), and any provisions hereof which are not valid under The Act shall not be enforceable, but such invalidity or unenforceability shall not affect any other provision in this Declaration.

Section 7.15 Exempt Property. All Common Areas and all properties dedicated to, and accepted by, a local public authority and all properties owned by the Association or a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from all Assessments. Notwithstanding the foregoing, no land or improvements devoted to dwelling use on any of such properties shall be exempt from such Assessments.

Section 7.16 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration, or any claim by the Owner of non-use of the Common Properties or abandonment of his Lot, or any claim by any Owner of inconvenience or discomfort arising from the making of repairs or improvements to Common Properties or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

Section 7.17 Notice of Transfer. In the event of any sale, gift, conveyance or other transfer of a Lot, the transferor and the transferee of the Lot which is the subject of any such sale, gift, conveyance or transfer shall notify the Association in writing of such sale, gift, conveyance or other transfer, stating the name and address of the transferor, the name and address of the transferee, the date of the sale, gift, conveyance or other transfer, and providing a legal description of the Lot which is the subject of such sale, gift, conveyance or other transfer, together with a legible copy of the written instrument of sale, gift, conveyance or other transfer, all within ten (10) calendar days after the date of any such sale, gift, conveyance or other transfer. No sale, gift, conveyance or other transfer shall be effective as to the Association to relieve the Owner (transferor) of the Lot of the duties, obligations, liens, charges, assessments and undertakings of such Owner by virtue of his ownership of a Lot accruing after any transfer as aforesaid, or portion thereof, until such notice has been provided to the Association.

Section 7.18 Subassociation Assessments. In addition to all Assessments provided for in this Declaration, each Owner of a Lot, and each Lot, within any Additional Property which, by its Annexation Agreement, is subject to any Subassociation, shall be liable for such additional assessments, fees and charges as established by such Subassociation ("Subassociation Assessments"), and such Lots shall be deemed to be imposed with a lien thereon the same as that created in this Declaration for Assessments, and such Subassociation shall have such additional rights and remedies to enforce the collection of such Subassociation Assessments as the Association has in connection with the Assessments, as provided in this Declaration.

Section 7.19 Limitation of Liability. It is understood that the judgment of the Association, its successors, legal representatives and assigns, in the allocation and expenditure of the Assessments shall be final so long as such judgment is exercised in good faith. Neither the Association, the Board of Directors, nor any Director, shall have any liability to any person or entity under any theory or circumstance for any error or judgment, action or inaction of the Association, the Board of Directors, or any Director. The enumeration of the services for which the Assessments may be expended carries no obligation to furnish any of such services except to the extent of funds actually received by the Association. The Association, in furtherance of the provisions of this Section, shall have the right, at Association expense, to maintain policies of insurance on all of the Directors of the Board of Directors against any and all liability incurred by them in performance of their duties hereunder.

## **ARTICLE VIII Architectural Control**

Section 8.1 Designation of Architectural Review Committee. The Association shall have an Architectural Review Committee (also sometimes called the "Architectural Committee") which shall consist of three (3) members who shall be natural persons, and who need not be Members of the Association, and who may be directors of the Association. The initial members of the Architectural Committee shall be appointed by Declarant, and shall be and shall serve until their death or resignation. In the event of death or resignation of any member of said committee, the remaining member(s) shall have full authority to appoint successor member(s), who shall thereupon succeed to the powers and authority of the Architectural Committee Member(s) so replaced. Powers and duties of the named committee and any designated representative or successor member thereof shall, on the first to occur of January 1, 2029 or one (1) year following the date upon which Declarant no longer owns any Lot or Declarant Owned Acreage, pass to a committee of three Owners of Lots in the Properties, which shall be elected by majority vote of Board of Directors, provided, however, that until such election or appointment, as the case may be, is made, the persons constituting said committee on said date shall continue to exercise such powers and duties until such time as their successors are elected or appointed, as the case may be.

Section 8.2 Designation of Community Architect. The initial Community Architect shall be designated by the Declarant. Thereafter, the ARC shall have the right to designate from time to time a Community Architect as provided herein. In any event, the ARC shall have the right and authority to delegate to such Community Architect such powers and duties of the ARC as deemed appropriate by the ARC, subject to approval by the Board. Notwithstanding

the foregoing, any such designation and all such delegation of powers and duties shall also require the prior written approval of Declarant during the Appointment Period. The Board shall have the power to pay the Community Architect such reasonable fees and expenses as approved by the Board, and shall further have the power to establish architectural review fees which shall be payable by Lot Owners seeking approval under this Article VIII in any situation in which an Community Architect is involved. Any Community Architect may be removed by the ARC or by the unanimous approval of the Board, and, during the Appointment Period, shall also require the approval of Declarant.

Section 8.3 Approval of Plans. No Improvements, including but not limited to any building, structure, dune walkover, fence, wall, or other improvements shall be commenced, erected, constructed, placed, remodeled, repaired, replaced, or maintained upon a Lot, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications therefore shall have been submitted to and approved in writing as to compliance with minimum structural and mechanical standards, location and situation on the Lot, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building with respect to the Lot lines), and full compliance with the applicable Architectural Guidelines by the ARC. Before written approval for a proposed improvement and/or modification will be considered, all applications and other fees and materials and information required by the ARC or required under this Declaration or any applicable Annexation Agreement must be submitted, and all fees owed to the Association must be paid in full. In addition, the ARC may reasonably require structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, and location of the proposed improvements or alterations thereto which will insure compliance of any proposed improvement or alteration with the applicable Architectural Guidelines. Without limitation of the powers herein granted, the ARC shall have the right to specify requirements for each Lot as follows (but only to the extent not inconsistent with any such provision in this Declaration or the applicable Plat or Annexation Agreement): minimum setbacks; the location, height, and extent of fences, walls, or other screening devices; color schemes, and the orientation of structures with respect to garage access and major entry and frontage.

The ARC also shall have full power and authority to reject any plans and specifications that do not comply with the applicable Architectural Guidelines and the restrictions herein imposed or meet its minimum construction requirements, including that criteria adopted for building disaster resistant homes (i.e. the Institute for Business and Home Safety [IBHS]). THE ARC MAY REJECT ANY PLANS SUBMITTED FOR REVIEW THAT, IN ITS SOLE DISCRETION, DO NOT SATISFY THE ARCHITECTURAL GUIDELINES OR THAT MIGHT NOT BE COMPATIBLE WITH THE DESIGN OR OVERALL CHARACTER AND AESTHETICS OF THE SUBDIVISION.

The ARC may require a reasonable fee for performing the functions herein prescribed, and may disapprove plans, specifications, designs and plot plans for failure to pay such fee.

The primary goal of the ARC is to review applications, plans, specifications, materials and samples submitted by Owners in order to determine if the proposed improvement or modification

conforms in appearance and design with the standards and policies set forth. The Declarant, the Association, the ARC do not assume responsibility for the following:

1. The structural adequacy, capacity or safety features of the proposed improvement or structure
2. Soil erosion or unstable soil conditions.
3. Compliance with any or all building codes, safety requirements, or state laws, regulations or ordinances.
4. Performance or quality of construction performed by any applicant or his subcontractor(s).
5. Marketability or habitability of the product.
6. The financial solvency of any builder and/or product.
7. The approval of or satisfaction from any plans or designs submitted by a recommended builder and/or architect.
8. The accuracy of current base flood elevations or the possibility that base flood elevations may change in the future.

Section 8.4 Content of Plans. (a) Prior to commencement of work to accomplish any proposed improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Architectural Committee the written approval of the owner of the Lot upon which the proposed improvements are to be made (if the Applicant is not also the Owner), and one copy of such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Architectural Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement. The plans and specifications required by the Architectural Committee to be submitted and approved may include, without limitation, the following:

- i. A plot plan showing the location of all improvements, structures, distances (with dimension lines) of residence and garage from front and rear building lines, building setbacks, easements and R.O.W., utility service locations including air conditioning units, walks, patios, driveways, fences and walls. Trees and finished grades shall be shown as well as slab elevations for the proposed improvements. Lot drainage provisions shall be indicated as well as cut and fill details if any applicable change in the Lot contours is contemplated.
- ii. Exterior elevations.
- iii. Exterior materials, colors, textures, and shapes.
- iv. Structural design.
- v. Landscaping plans.
- vi. Plans for walkways, fences and walls and elevation in both the front and back yards. Watering systems, vegetation and ground cover for front yard and back yards.
- vii. Parking area and driveway plan.



(b) The Applicant shall be entitled upon written request to receive a receipt for the same from the Architectural Committee or its authorized agent. The Architectural Committee may require submission of additional plans, specifications or other information prior to approving (or deemed approval) or disapproving the proposed improvement to Property. Until receipt by the Architectural Committee of all required materials in connection with the proposed Improvement to Property, the Architectural Committee may postpone review of any materials submitted for approval.

Section 8.5 Criteria for Approval. The Architectural Committee shall approve any proposed Improvement to Property only if it deems in its sole discretion that the improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Properties as a whole; that the appearance of the proposed improvement to Property will be in harmony with the surrounding areas of the Properties, including, without limitation, adequacy of site dimensions, structural design, quality of materials, location, relation of finished grades and elevations to neighboring sites, conformity with all applicable provisions of this Declaration and the applicable Annexation Agreement, and all Rules and Regulations and Architectural Control Guidelines, topography and finished grade elevation; that the improvement to Property will comply with the provisions of this instrument, the applicable Annexation Agreement, the applicable Plat, all ordinances, governmental rules and regulations, and the Architectural Control Guidelines promulgated and amended from time to time by the Architectural Committee; that the improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by Owners, and that the upkeep and maintenance of the proposed Improvement to Property will not become an unreasonable burden on the Association. The Architectural Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Architectural Committee may deem appropriate.

Section 8.6 Decision of Committee. The Architectural Committee shall make a decision within sixty (60) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. The decision shall be in writing and, if the decision is not to approve a proposed improvement to Property, reasons therefor shall be stated. The decision of the Architectural Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Architectural Committee.

Section 8.7 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in strict conformity with the description of the proposed improvement to Property and any materials submitted to the Architectural Committee. Failure to complete the proposed Improvement to Property within one (1) year after the date of approval (or such later date as may be permitted in writing by the Architectural Committee or set forth in any deed of the Lot from Declarant to the Owner thereof, or in the Annexation respecting such Lot), subject to delays for non-financial condition related causes beyond the reasonable control of the Owner (provided that the Owner takes reasonable steps to minimize the effects of any circumstance causing such delay ["force majeure delays"]), or to complete the improvements to Property in strict conformity with the description and materials furnished to the Architectural Committee, shall operate automatically to revoke the approval of the proposed Improvement to Property.

Section 8.8 Inspection of Work. The Architectural Committee or its duly authorized representative shall have the right to inspect any Improvement prior to and/or after completion thereof.

Section 8.9 Notice of Non-compliance. If, as a result of inspections or otherwise, the Architectural Committee finds that any Improvement to Property has been done without obtaining the approval of the Architectural Committee or was not done in strict conformity with the plans, description and materials furnished by the Applicant to the Architectural Committee or was not completed within one (1) year after the date of approval by the Architectural Committee or such other period of time as provided for herein, the Architectural Committee shall notify the Applicant in writing of the noncompliance (the "Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as stated by the Architectural Committee as being necessary to remedy the noncompliance.

Section 8.10 Correction of Non-compliance. If the Architectural Committee determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the Notice of Noncompliance. If the Applicant does not comply within such period, the Architectural Committee shall so notify the Board, and the Board may, at its option, record in the Office of the County Clerk of Galveston County, Texas, a Notice of Noncompliance against the real property on which the noncompliance exists, and may remove or cause the removal of the noncomplying Improvement to Property and/or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association upon demand for all expenses incurred by the Association in connection therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Reimbursement Assessment against the owner of the Lot for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration.

Section 8.11 No Implied Waiver or Estoppel. No action or failure to act by the Architectural Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Architectural Committee or the Board of Directors with respect to any improvement to Property. Specifically, the approval by the Architectural Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property by such Person or otherwise.

Section 8.12 Changes to the Architectural Guidelines. Upon the recommendation of the ARC and the approval of Declarant, if during the Appointment Period, and thereafter, upon approval by a majority of the Board of Directors, any of the Architectural Guidelines may be amended. The applicable Architectural Guidelines in place (and all amendments thereto) at the time an Owner submits an application for construction review of an improvement to the ARC will be the version utilized in the architectural control process for such project. It is an Owner's responsibility to acquire the current version of the applicable Architectural Guidelines before

designing any improvement and/or modification and to provide same to an Owner's chosen architect. To facilitate this process, an Owner agrees to provide to the ARC the name and contact information for the Owner's chosen architect and builder before instigating the design process.

Section 8.13 Variances. Where circumstances, such as topography, location of property lines, location of trees, or other matters require and are unique to a particular Lot, the ARC may allow reasonable variances as to any requirement of the Architectural Guidelines on such terms and conditions as the ARC shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the property. The power to grant variances may not be delegated by the ARC to the Community Architect. The approval by the ARC of any plans and specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of same, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent. Any variance granted shall be applicable only to the factual basis and specific instance giving rise to it and may not be used by any Owner as a basis for a variance for a different Lot.

Section 8.14 Non-liability. Neither the ARC, the Community Architect, the Association, the Board of Directors, Declarant, nor any member, representative or counsel of any of same, shall be liable for any loss, damage or injury arising out of or in any way connected with the approval, disapproval, or failure to approve or disapprove of any plans or specifications or requests submitted or submittable under the terms hereof, or out of the performance or non-performance of the duties of the ARC or Community Architect, unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, neither the ARC nor the Community Architect shall not be responsible for reviewing, nor shall its approval of an improvement to Property be deemed approval of, the improvement from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations. Every person who submits plans or specifications to the ARC for approval agrees by submission of such plans and specifications, and every Owner agrees, that he will not bring any action or suit for damages against Declarant, the Association, Board of Directors, the ARC, the Community Architect, or any of the members thereof in connection therewith.

Section 8.15 Builders Guild-Approved General Contractors. No construction of a building, structure, fence, wall, or other Improvement which is governed by the Sweetwater Cove Pattern Book shall be commenced on any lot unless the general contractor to perform such construction is named on the Builder's Guild list maintained by the ARC, or such general contractor shall have been approved in writing by the ARC. The Declarant shall establish the initial list of Builders Guild Approved General Contractors, and shall, during the Appointment Period, have the right in its sole discretion, to add and delete builders from such list. In addition, the ARC shall have the right to add and delete builders from such list, subject to Declarant's approval during the Appointment Period. In the event the ARC fails to approve or disapprove a general contractor who is not on the then existing Builders Guild Approved list within fifteen (15) working days after his name is submitted to it by an Owner for a particular project requested to be built for such Owner, approval will be deemed and the provisions of this Section 8.15 will be deemed to have been fully satisfied solely for such project.

Section 8.16 Remodeling, Renovation and Redecorating of Exterior Walls. No remodeling, renovation or redecoration of any exterior wall of any Improvement on a lot which in any manner changes the visual appearance of such exterior wall or other surface (including, but not limited to, changing the color, appearance, texture or reflective character of any exterior surface; the addition or alteration of shutters, awnings or other window coverings, or the addition of wall applications) shall be allowed until the plans and specifications describing the work to be performed have been approved in writing by the ARC as provided in this Article VIII. Such remodeling, renovation or redecoration shall, for the purposes hereof, be deemed to constitute an alteration of the improvements subject to the provisions of this Article VIII, and must comply with all applicable Architectural Guidelines.

## **ARTICLE IX Other Easements**

Section 9.1 The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer and water, electricity, telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, or telephone and cable television lines or drainage facilities are installed within the Property, which connection lines or facilities or any portion thereof, lie in or upon Lots owned by Declarant or the Association or any entity other than the owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one (1) Lot, the owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his Lot.

Section 9.2 Easements over the Lots and Common Property for the installation and maintenance of electric, telephone, cable television, water, sidewalks and pedestrian walkways, sanitary sewer lines and drainage facilities within the Easement Property are hereby reserved by Declarant, together with the right to grant and transfer same.

Section 9.3 Public Streets. All lots within the Subdivision shall have access to a public street. Public street rights-of-way are shown on the Subdivision Plat.

## **ARTICLE X Owner Obligations: Utility Bills, Taxes and Insurance, Maintenance and Repairs**

Section 10.1 (a) Each Owner shall have his separate electric, gas (if and when available) and water meter and shall directly pay at his own cost and expense for all electricity, gas (if and

when available), water, sanitary sewer service, telephone service, cable television and other utilities used or consumed by him on his Lot. Each Owner acknowledges that, during construction, a temporary electric box and water tap must be obtained from the appropriate service providers and that a fine, commensurate with the nature of the offense, will be imposed upon any Owner who uses water or electricity without setting up their own service. Each Owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations or requirements of any governmental agency or authority with respect to the occupancy and use of its Lot and with the provisions hereof, and the Rules and Regulations and the applicable Annexation Agreement.

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

(c) Each Owner shall be responsible at his own cost and expense for his own property insurance on the building and contents of his own residence, and his 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 Property. Nothing shall be done in or kept in or on any Lot that will increase the rate of insurance on the Subdivision or any other Lot over that applicable to residential Lots, or result in uninsurability of the Subdivision, or any part thereof, or the cancellation, suspension, modification or reduction of insurance in or on or covering the Subdivision or any part thereof. If, by reason of the occupancy of any Lot by an Owner in contravention of any restriction set forth herein, or in the By-Laws, the Rules and Regulations or the applicable Annexation Agreement, the rate of insurance on all or any portion of the Subdivision shall be increased, such Owner shall immediately cease any such use and shall be personally liable to the Association and each other Owner for such increase caused thereby and such sum shall be payable to the Association upon presentation to such Owner by the Association of a statement thereof.

Section 10.2 It shall be the duty, responsibility and the obligation of each Owner at his own cost and expense to care for, maintain and repair the exterior and interior of his residence house and improvements on his Lot and the fixtures, appliances, equipment and other appurtenances thereto and also including any private dune walkovers and the private driveways appurtenant to his residence house and situated on his Lot. The Association shall have no duty or obligation to any Owner in this regard, it shall be the duty, responsibility and the obligation, financial or otherwise, of each Owner at his own cost and expense to repair all Common Property and Universal Common Area, whether deemed by the Association to be public or private, for all damages to the Common Property and Universal Common Area, including common sidewalks which may be in part located on an Owner's Lot, caused by the Owner, any Related User, or any occupant of his Lot, or guest. No Owner may place anything on a sidewalk which obstructs egress or ingress and may not cover same. All fences erected by an Owner following architectural approval shall be located behind the sidewalk so that same is maintained as a common pedestrian thoroughfare.

**ARTICLE XI**  
**Protective Covenants and Use Restrictions**

Section 11.1 Single Family Residential Construction. With the exception of structures to be built upon Reserves (whether designated as commercial, parking or other) shown upon a Plat, and subject to the approval of the ARC, no building shall be erected, altered or permitted to remain on any Lot or Lots, other than one detached single-family residential dwelling and a garage as provided for in the Architectural Guidelines. No such residence shall be constructed on less than the equivalent of a full Lot as defined or shown on a Plat. With respect to the Reserves shown on a Plat, as created or amended, the owner of such Reserve may use such property for the uses provided for, and build any structure allowed, under Sections 29-100 of the Zoning Standards of the City of Galveston (1999), as it may be amended from time to time, if approved by the ARC and Declarant at their respective sole and absolute discretion.

Section 11.2 No Commercial Use. No Lot or other part of the Property, except that portion of the Property shown on a Plat, as originally created or later amended, as a Reserve (whether designated as commercial, parking or other), subject to the approval of the ARC and Declarant as provided in Section 11.1 above, shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes by an Owner, the Board of Directors, or the Association. The Declarant further reserves the unilateral right to replat any of the Reserves (whether originally designated as commercial, parking or other) for residential use,

No trade or business may be conducted in or from any Lot, except that an Owner or occupant may conduct business activities that are merely incidental to the Owner's residential Lot use within a lot so long as (a) the existence or operation of the business is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property; (c) there is no business invitees or door-to-door solicitation of the residents of the Subdivision and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security of other residents, as may be determined in the sole discretion of the Declarant, or the Board of Directors. By way of illustration but not limitation, a day-care facility, church, nursery, home day care facility, beauty parlor, barber shop, pre-school, or other similar facilities are expressly prohibited. This Section does not apply to any activity conducted by the Declarant with respect to its development and sale of the Property. It is provided further, however, that a Builder who owns a Lot and who has constructed thereon a Dwelling Unit as permitted under this Declaration may, for a period not in excess of sixty (60) months from the date of such Builder's acquisition of such Lot, cause the Dwelling Unit constructed thereon to be used as a model home or similar sales site for other Dwelling Units built or to be built by such Builder on other Lots owned or to be acquired by such Builder within the Properties, but such use shall be subject to such rules and regulations therefor as established from time to time by the Board of Directors of the Association.

Section 11.3 Number of Dwellings and Driveway. No more than one (1) single family dwelling and accompanying garage complying with all Architectural Guidelines and approved by the Community Architect, shall be built on any lot. Each single-family dwelling and accompanying

garage must be served by a private driveway off of a private roadway shown upon the applicable Plat.

Section 11.4 Prohibition of Offensive Activities. No noxious or offensive trade or activity shall be conducted, whether for profit or not, on any Lot or other portion of the Property. No activity which may become an annoyance or nuisance to the other Owners, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling Lot, or which shall in any way increase the rate of insurance, or which will degrade property values, or distract from the aesthetic beauty of the Subdivision, shall be conducted.

Section 11.5 Temporary Structures. (a) No structures of a temporary character, trailer, tent, shower, garage, barn, construction trailer, or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any Lot or any other portion of the Property at any time as a residence or other use, either temporarily or permanently.

(b) Temporary structures used as building offices and for other related purposes by a Builder during the construction period for the Dwelling Unit on a Lot must be inconspicuous and slightly, and there is hereby granted unto the Architectural Committee the sole power to determine what is inconspicuous and slightly in connection with such temporary construction structures. Builders in the Properties may use garages as sales offices for the time during which such builders are marketing houses within the Properties subject to the provisions of this Declaration. At the time of the closing of the sale of a residence by a Builder, any garage appurtenant to such residence used for sales or other purposes must have been reconverted to a garage.

Section 11.6 Animals. No animals of any kind shall be raised, bred or kept in the Properties except as hereinafter provided. A reasonable number of dogs, cats or other common household pets may be kept on a Lot, provided that (a) they are not kept, bred or maintained for commercial purposes, (b) they do not make objectionable noises, create any odor, or otherwise constitute a nuisance to other Owners, (c) they are kept within an enclosed yard on the Lot occupied by the owner of such pets or on a leash being held by a Person capable of controlling the animal, and (d) they are not in violation of any municipal code or ordinance or of any other provision of this Declaration or such limitations as may be set forth in the Rules and Regulations. A "reasonable number" as used in this Section 9.7 shall ordinarily mean no more than two (2) pets per Lot; provided, however, that the Board of Directors (or the Architectural Committee or such other Person as the Board may from time to time designate) may from time to time determine that a reasonable number in any instance may be more or less than two (2). The Association, acting through the Board, shall have the right to prohibit the keeping of any animal which, in the sole opinion of the Board, is not being maintained in accordance with the foregoing restrictions or any applicable Rules and Regulations. Each Owner and/or Related User maintaining any animal shall be liable in accordance with the laws of the State of Texas to each and all remaining Owners and Related Users of such Owners for any damage to person or property caused by any such animal; and it shall be the absolute duty and responsibility of each such Owner or Related User to clean up after such animals to the extent they have used any portion of any Lot, street, or any common Areas. If any such Owner or Related User fails to so do, the Association shall have the right to perform such duty on such Owner's behalf, and such Owner shall promptly reimburse the Association for the costs thereof (in addition to other rights and remedies of the Association). Such

cost shall be a Reimbursement Assessment following Notice and Hearing, and shall thus become a lien and personal obligation enforceable in the manner set forth in this Declaration.

Section 11.7 Parking or Storage of Automobiles. Boats. Trailers. Other Vehicles and Equipment. No motorcycle, moped, boat, boat and trailer, jet ski, trailer, house trailer, mobile home, recreational vehicle, camper or any other similar transportation vehicle or device shall be parked on any roadway overnight. No recreation vehicle, camper, camper not on a truck, boat, personal watercraft, mobile home, horse trailer, or other trailer, tractor, motor home or truck (other than a pickup truck or van) shall be stored or shall be parked for longer than twelve (12) hours on or about any Lot or Common Area, (including driveways) or on any public or private road or street in such a manner as to be visible from any other Lot or from any portion of the Common Area. Any such vehicle may be kept only within a garage, an enclosed or partially enclosed structure approved by the Architectural Committee or within a parking area designated by the Association for the storage and parking of such vehicles. No inoperable vehicle or vehicle kept stationary for a period in excess of forty-eight (48) hours shall be allowed to remain on any portion of the Properties or on any lot, street or road in such a manner as to be visible from any Lot (other than the Lot on which such vehicle is located), or from any street or portion of the Common Area. No vehicle, including, but not limited to, motorcycles, motorbikes, bicycles, automobiles, trucks, boats, personal watercrafts and trailers, may be kept or used anywhere within the Properties in violation of any applicable Rules and Regulations. Such Rules and Regulations, among other things, may prohibit the keeping or use of motorcycles, motorbikes, dune buggies, golf carts or other vehicles, or may limit their use, and may regulate places of parking of vehicles. Any vehicle found to be in violation of any of the provisions of this section 6.6 may be towed away by or on behalf of the Association at the expense of the owner of such vehicle or of the owner of the Lot, if any, at which such vehicle is located. Such cost shall be a Reimbursement Assessment and shall create a lien and personal obligation enforceable in the manner set forth in this Declaration.

Section 11.8 Visual Screening on Lots. No clotheslines and no household fabrics or other articles may be hung, dried or aired on any Lot in such a way as to be visible from any other Lot or any street or Common Property. The drying of clothes in public view is prohibited. Similarly, all yard equipment, woodpiles or storage piles shall be kept screened from visibility from any other Lot or any street or Common Property by a service yard or other similar facility as may be approved by the Community Architect at its sole discretion.

Section 11.9 Lot Maintenance. All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupants of all improved Lots shall keep all weeds and grass thereon cut and shall in no event use any Lot for storage of material and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish except by use of an incinerator approved by Declarant, and then only during such condition as is permitted by law. The Association shall be responsible for mowing all unimproved Lots. The expense of such mowing shall be paid by the Association from the fee paid by the owner of each unimproved Lot pursuant to Article VI. In the event of default on the part of the Owner or occupant of any improved Lot in observing the above requirements, or any of them, such default continuing for ten (10) days after the mailing of written notice thereof to the Owner at the address for the Owner shown on the Association's records, the



Declarant, the Association, or its assignee or designee, may without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot, cut, or cause to be removed, such grass, weeds, garbage, trash and rubbish, or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant, as the case may be, for said services, and the Owner or occupant agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. TO secure the payment of such charges in the event of nonpayment by the Owner, a vendor's lien is herein and hereby retained against the Property in favor of Declarant or their assignee but inferior to purchase money liens or mortgages. Such vendor's lien shall be applicable and effective whether mentioned specifically in each deed or conveyance by Declarant or not.

Section 11.10 Removal of Dirt and Trees. The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such Lot which has been approved in advance by the Community Architect. No trees shall be cut, except to provide room for construction of improvements or to remove dead or unsightly trees, and then only upon approval of the Community Architect.

Section 11.11 Right of Inspection. During reasonable hours and after reasonable notice, the Association shall have the right to enter upon and inspect any Lot or any other portion of the Property and the exterior portions of improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reasons thereof.

Section 11.12 New Construction. All buildings and other structures and improvements on any Lot shall be constructed of new or like new materials. No pre-fabricated or manufactured structures or units shall be permitted.

Section 11.13 Commencement and Completion of Construction. The construction of all Improvements must commence within sixty days (60) days from the date of approval of the plans therefore by the Community Architect and must be completed within one (1) year of start of construction thereof, subject to force majeure. The "commencement of construction" for purpose of this paragraph is defined as an Owner of a Lot having in receipt from the Community Architect and all applicable governmental bodies of all written approvals required from same prior to beginning the construction of an improvement upon a Lot including, but not limited to, written architectural approval, and shall also require sufficient tangible physical evidence on the Lot that construction of a residence has begun, such as grading of the Lot or placement of forms for slabs or piers for the intended Improvements. In addition to the foregoing, all Improvements on a Lot must have begun their construction within one (1) year from the initial date of purchase from the Declarant of the Lot and/or Lots upon which the improvements shall be erected. Failure to begin construction of a residential improvement within one (1) year of the above designated dates will result in the imposition by the Association of a \$5,000 per Lot, per year fine (exclusive of the annual maintenance fee assessment) upon the Owner of the Lot and/or Lots until the construction of the approved residential improvements upon the Lot and/or Lots. Failure to begin construction of a residential improvement within two (2) years of the above required dates will result in an additional \$5,000 per Lot, per year fine (added to the prior accumulating fine, being a total of \$10,000, and exclusive of the annual maintenance fee assessment) until the construction of the

approved residential improvements upon the Lot and/or Lots. Failure to begin construction of the approved residential improvements within four (4) years of the above designated dates will result in the imposition of an additional \$5,000 per Lot, per year fine against the owner of a Lot and/or Lots (added to the prior accumulating fines, being a total of \$15,000, and exclusive of the annual maintenance fee assessment) until the construction of the approved residential improvements upon the Lot and/or Lots. Every year thereafter, an additional \$5,000 per Lot, per year fine shall be imposed (added to the prior accumulating fine, being a total of \$20,000 and exclusive of the annual maintenance fee assessment) until construction of the approved residential structure is initiated. The above noted fines imposed per Lot are cumulative and in addition to the annual maintenance fee assessed, are due and payable with the Common Assessments, and will be enforced in accordance with the procedures established in Article XII, Section 1, and are secured by the lien described in Article XII, Section 1. The Declarant shall be exempt from the fines and time requirements established herein. Prior to the completion of a building or structure on a Lot or Lots located within the Subdivision a fence must be erected on the Lot or Lots consistent with the requirements set forth in the Architectural Guidelines. The Contractor shall furnish trash containers and, at all times, keep the premises free from accumulation of trash and scrap caused by construction,

Section 11.14 Additional Requirements During Construction. (a) Prior to construction beginning on any Lot, the storage locations of any trash receptacles, portable toilets, and any building materials must be predetermined and approved by the Association and/or its agents. All trash receptacles, portable toilets, and any building materials to be utilized during the construction of an improvement upon a Lot must be located within the parameters of the Lot at the preapproved location. Should a Lot Owner and/or builder fail to keep the construction items noted above at the predetermined location, the Association may, without any penalty of trespass, enter and remove from the Lot or any location within the subdivision, all construction materials including, but not limited to, trash receptacles, portable toilets, and any building materials to be utilized in the construction of an improvement on a Lot. An Owner and the builder shall be solely responsible for any and all damage which occurs to existing sidewalks, lights and landscaping during the construction process and same shall repair and/or replace, or pay for the repair or replacement of, any common element damaged during the construction. Prior to construction, a builder must submit to the Association, the Community Architect, or any of its agents, all documentation required by the Association and, before beginning construction, a builder must obtain written approval from the Association. Construction activities shall not take place before noon on Saturdays, Sundays and Holidays. Radios and domestic animals are not allowed on construction sites.

(b) Additional Requirements During Construction. During the construction, repair and/or restoration of Improvements, each Owner or party constructing improvements for an Owner ("Contractor") shall remove and haul from the Lots all tree stumps, trees, limbs, branches, underbrush and all other trash or rubbish cleared from the Lot to permit construction of the improvements, including landscaping. No burning of trash or other debris is permitted on any Lot, and no materials or trash hauled from any Lot may be placed elsewhere within the Properties, unless approved in writing by the Architectural Committee. Additionally, each Owner or Contractor, during construction of improvements, shall continuously keep the Lot and adjacent street frontage in a reasonably clean and organized condition. Papers, rubbish, trash, scrap and

unusable building materials are to be kept, picked up and hauled from the Lot on a regular basis. Other useable building materials are to be kept stacked and organized in a reasonable manner. No trash, materials or dirt shall be placed in any street. Any such trash, materials or dirt inadvertently spilling or getting into the street or street gutter shall be removed, without delay, not less frequently than daily Owners will erect, and maintain at all times during the construction process, protective attractive visual barriers, at least six (6) feet high, as approved by the Architectural Committee, between the building site, on the one hand, the Common Area, and Streets, on the other hand. Owners will erect and maintain at all times during the construction process erosion barriers between their Lots, on the one hand, and other adjacent lots, the Common Area, Streets, Drainage Easements and the Detention Basins, on the other hand. All construction vehicles must be parked in designated areas only, as established by the Architectural Committee. Vehicles which do not conform to this rule will not be allowed again into the Properties and are subject to being towed at the direction of the Architectural Committee at the expense of the owner of the Lot. Each Lot Owner shall apply for and receive from all required governmental authorities a proper Building Permit before any construction is commenced. All applicable codes, laws and regulations will be complied with, and proof of such compliance will be provided to the Architectural Committee when requested by that committee. Construction shall halt when any regulation, code or law is violated, and shall not recommence until all required governmental approvals are secured. Foundation plans for Dwelling Units near any Detention Basin or Drainage Easement must have affixed a certificate of a Texas licensed engineer stating that the procedures outlined by the Architectural Committee have been followed and the foundation designed accordingly. All yards must slope down away from all Dwelling Units and other buildings so as to prevent water seepage under foundations.

Section 11.15 Rental of Dwellings. Dwellings may be rented, subject only to rules and regulations established by the Association. Rental of such dwellings will only be allowed if managed by a professional rental agency.

Section 11.16 Declarant's Use for Sales. Notwithstanding any other provisions of this Declaration, the Declarant may make such use of the Common Properties and Lots as is reasonably necessary in Declarant's opinion to facilitate and construct and complete any improvements to the Property in Declarant's sole discretion, the operation of Declarant's sales efforts and the showing of the Subdivision and any unsold Lots therein, providing space for the closing of sales transactions covering other unsold Lots owned by Declarant and the placing of signs or other advertising materials in or about such unsold Lots. The provisions of this subsection shall not prohibit the use by the Association of all Common Properties in any reasonable manner necessary in connection with the operation and maintenance of the Subdivision.

Section 11.17 Signage. No sign of any kind shall be displayed by any Owner (excluding Declarant) to the public view on any Lot without the prior approval from the Architectural Committee, and any such approval which is granted may be withdrawn by the Architectural Committee at any time, in which event, the parties granted such permission shall immediately remove such structures. Notwithstanding the foregoing, (i) unless otherwise directed in writing by the Architectural Committee, during the initial construction or any sales period, the Owner may place signs on such Lot to advertise the merits of the Lot for sale or rent, provided that prior approval from the Architectural Committee as to the size, wording, style and materials of any such

sign shall be required for any such sign (except for signage erected by Declarant) to be placed or maintained on any Lot, and (ii) political signs meeting the requirements of the laws of the State of Texas and the ordinances of the City of League City, each of a size not greater than 24 inches by 24 inches, and no more than one (1) in number per political office seeker or political issue, may be placed by an Owner on his Lot during a period of time commencing fourteen (14) days prior to the election for which the sign is intended, and must be removed within two (2) days following such election, but no political sign of a slanderous nature shall be permitted, and all political signs in violation hereof may be removed without notice or compensation to the Owner of a Lot or any other person, by the Association or any agent or designee of the Association, without such person being deemed to be in trespass on any Lot for such purpose. Except for signage erected by Declarant, no signage whatsoever shall be permitted in any Common Area or Reserve, without prior written approval of the Architectural Committee. Declarant or the Association shall have the right to remove any such sign in contravention hereof and in so doing shall not be subject to any liability of trespass or other sort in connection therewith or arising from such removal.

Section 11.18 No Further Subdivision. No Lot or dwelling unit or garage thereon may be further subdivided nor may any easement or other interest therein less than the whole (including any timeshare estate) be conveyed by the owner thereof (including the Association but excluding Declarant), without the prior written approval of the Declarant. Nothing in this Section 11.17 shall be deemed to prevent an Owner from, or require the approval of the Declarant for, (a) selling or leasing of an entire Lot together with all Improvements thereon, or (b) transferring or selling any entire Lot together with all Improvements thereon to more than one Person to be held by them as tenants in common, joint tenants or tenants by the entirety.

Section 11.19 View Restrictions. No vegetation, landscaping or other improvements shall be planted, constructed or maintained upon any Lot in such location or of such heights as to unreasonably obstruct the view from any other Lot or any common Property in the vicinity thereof, or to create a condition deemed by the Board to be hazardous for the users of the sidewalks or streets within the Properties. In the event of a dispute between Owners as to the obstruction of a view from a Lot, street, sidewalk or Common Property, or the creation of a hazardous condition, such dispute shall be submitted to the Board, whose decision in such matters shall be final and binding and not subject to appeal of any kind. The Board may request an Owner to remove or otherwise alter any obstruction to the view from the Lot, street, sidewalk or Common Property, or any hazardous condition. Any such obstruction or hazardous condition shall, upon request of the Board, be removed or otherwise altered to the satisfaction of the Board, by the owner of the Lot upon which said obstruction is located, at Owner's sole cost; provided, however, in the event the Owner fails to promptly remove or otherwise alter such obstruction or hazardous condition, the Association shall have the right to remove such obstruction or hazardous condition, charging the entire cost thereof to the Owner. Such costs shall be a Reimbursement Assessment and shall create a lien and personal obligation enforceable in the manner set forth in this Declaration.

Section 11.20 Composite Lots. In the event that the Community Architect approves in writing, in its sole discretion, the consolidation of one (1) or more adjoining Lots into one Lot and the constructing of one (1) Dwelling Unit on such resulting Lot may be permitted, at which time the side set-back lines for such resulting Lot shall be measured from the resulting side property line of such resulting Lot rather than from the set-back line indicated on the Plat or

described in this Declaration or the applicable Annexation Agreement for the component Lots. The required building set-back line for the front property lines of such composite resulting Lot shall be the greater of the front property line set back lines as shown on the plat or Annexation Agreement for the Lots to be consolidated. Upon receipt of written approval of the Community Architect to consolidate one (1) or more full Lots into one (1) composite Lot, such composite Lot shall thereupon be regarded as one (1) Lot for all purposes under this Declaration.

Section 11.21 Landscaping. (a) No plant or vegetation may be installed on any Lot except in accordance with a plan for the landscaping for such Lot approved by the Architectural Committee. Within sixty (60) days after recordation of a deed of a lot to an Owner, such Owner shall install and shall thereafter maintain the landscaping on such Lot in a neat and attractive condition, including all landscaping and gardening necessary to properly maintain (including periodically replacing when necessary) any trees, plants, grass and other vegetation which may be originally placed on such Lot by Declarant or a Builder, or otherwise required by the Architectural Committee, Architectural Control Guidelines, or the Rules and Regulations.

(b) Without in any way limiting the generality of the foregoing, trees which are planted in satisfaction of the requirements of the Architectural Committee, Architectural Control Guidelines or the Rules and Regulations, and which tree or trees subsequently die or are uprooted for any reason, must be replaced by a tree of like type and of a size not less than that originally planted in compliance with the aforesaid requirements, within thirty (30) days after the occurrence of any such death or uprooting. In the event that any Owner shall fail to install and/or maintain landscaping in conformance with such rules and regulations promulgated by the Architectural Committee to regulate landscaping permitted and required on Lots, or other requirements of the Architectural Committee, or shall allow his landscaping to deteriorate to a condition which is, in the opinion of the Board or Architectural Committee, dangerous, unsafe, unsightly or unattractive, the Board, upon thirty (30) days prior written notice to such Owner, shall have the rights as hereinafter described; provided, however, in the event that any Owner shall fail to mow and keep trimmed and neat the lawn and grass areas on his Lot or otherwise permit any of said lawn and grass area to deteriorate to a condition deemed by the Board to be unsightly or unattractive, the Board upon ten (10) days prior written notice to such Owner, shall have the rights as hereinafter described. The Board shall have the right, upon the appropriate above-described written notice to an Owner, either (i) to seek any remedies at law or in equity which it may have to correct such conditions, or (ii) after ten (10) days written Notice to such Owner and an opportunity for Hearing in front of the Board (herein, "Notice and Hearing"), to enter upon such Owner's Lot for the purpose of correcting such condition, and such Owner shall promptly reimburse the Association for the costs thereof, or (iii) impose such fines and penalties as exist under this Declaration, the Bylaws, or the Rules and Regulations or the Association, and/or (iv) any combination of the foregoing. Such cost, as described in (ii) above, shall be a Reimbursement Assessment and shall create a lien and personal obligation enforceable in the manner set forth in this Declaration.

Section 11.22 Restriction on Exterior Lighting. Except as may be approved in advance in writing by the Architectural Committee, no exterior lighting shall be permitted on any Lot or otherwise anywhere within the Properties, including lighting to accent landscaping features, lights at entrance doors to structures, lights at entrances to any Lot, lights along paths or driveways and lights to illuminate permitted signs, Approval shall be given only if such lights shall be of attractive

design and shall be as small in size as is reasonably practical and shall be placed or located as directed or approved in writing by the Architectural Committee, and shall not allow light reflection or glare to be discernible at an unreasonable level from any place off the Lot where such lighting exists.

Section 11.23 Casualty Insurance for Improvements. Each Owner of a Lot shall be obligated to obtain and keep in full force and effect at all times casualty insurance with respect to all insurable Improvements on the Lot for the full replacement value thereof, including coverage for fire and extended coverage, vandalism and malicious mischief and, if reasonably available and if deemed appropriate by the Association as evidenced by resolution of the Board of Directors, flood, windstorm, fire, earthquake or war risk coverage. In the event of damage or destruction to any improvements, within thirty (30) days of such occurrence, either: (a) the proceeds of such insurance shall be applied by the Owner thereof, to the extent necessary, to cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Architectural Committee, or (b) the Owner shall cause the damaged or destroyed improvement to be demolished and the Lot to be suitably landscaped, as approved by the Architectural Committee, so as to present a pleasing and attractive appearance, and thereafter, shall cause the Lot to be well maintained, mowed, and edged to conform to occupied Lots in the immediate vicinity.

Section 11.24 Solar Energy installations. The Architectural Committee shall have the right of prior approval of the plans and specifications for the installation of all residential solar systems. Such plans and specifications shall demonstrate the exercise of reasonable measures to minimize the potential adverse aesthetic impact of the installation of such Improvements on other portions of the Properties. Any such Architectural Committee approval shall have no effect upon the enforceability of any other use restriction in this Declaration. The Architectural Committee shall have the right to promulgate reasonable standards and guidelines against which to examine any such plans and specifications.

Section 11.25 Drilling or Mining. No mineral drilling, development, refining or mining operations of any kind shall be permitted upon any Lot, street or Common Area within the Properties, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot, street or Common Area within the Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot, street or Common Area within the Properties.

Section 11.26 Building Set-Back Lines. (a) No Improvements shall be located on any Lot nearer to the front property line of such Lot than the building set back lines shown on the recorded Plat for such Lot. No Improvement shall be located nearer than ten (10) feet to the rear property line of such Lot or such greater distance as shown on the recorded Plat or Annexation Agreement applicable to such Lot. No Improvement shall be located nearer to any street side property line than the setback line therefor shown on the recorded plat for such Lot. For purposes of this Section 11.26 and other provisions of this Declaration, the "front property line" is the common boundary of any Lot with a street, and in the case of a corner lot (with a common boundary on two streets or one street and a cul-de-sac) the boundary from which the improvement set-back distance is larger. All Dwelling Units shall face the front line of the Lot on which each

such Dwelling Unit is built, unless a deviation from this provision is approved in advance in writing by the Architectural Committee. The term "improvements" solely as used in this Section 9.14 shall not include concrete drives, walks, landscaping, air conditioning units, fences, eaves, ducts, Bulkhead, and unroofed terraces; provided, however, in no event shall any portion of any Improvements on a Lot, including those excluded for the limited purpose set forth in this Section 9.14, encroach upon another Lot.

(b) The Architectural Committee shall have the right to grant exceptions or variances to the building set-back lines provided herein or shown on any Plat or Annexation Agreement, or from any other construction related restriction, when doing so will not be inconsistent with the overall plans for development of the Properties, and such exceptions or variances are not prohibited by law.

(c) Notwithstanding any language herein to the contrary, the building set-back lines provided herein shall not in any way restrict Lot 1 of Block 2 in Sweetwater Cove Section One.

Section 11.27 Walls and Fences. No fence or wall may be built on any Lot except as may be expressly required by, or permitted from time to time by written approval of the Architectural Committee with any approval to be at its sole and absolute discretion. Provided, however, the Architectural Committee shall not permit nor approve (i) any fence or wall constructed of chain link or any other material which is not in the sole opinion of the Architectural Committee, aesthetically compatible with structures, fences or walls located on or adjacent to or visible from the particular Lot; nor (ii) any fence or wall to be located nearer to the front property line than the front building set back line; nor (iii) any fence or wall which, in the sole opinion of the Architectural Committee, is, by design or construction, aesthetically or architecturally incompatible with any fence, wall or structure located on adjoining lots or visible from the particular Lot. No Owner shall construct a fence so as to enclose any portion of any Platted Reserve as shown on any Plat. Authorization of the construction of any one or more fences or walls pursuant to this section shall not in any way obligate the Architectural Committee to authorize the construction of any other fence or wall. The Architectural Committee is hereby authorized to draft, publish and amend, from time to time, at its sole and absolute discretion, fence and wall requirements for Lots.

Section 11.28 Required Fencing and Fence Easement. In addition to, and without limiting the generality of Section 9.16 above, Owners of Lots may be required by the Architectural Committee to construct, at the time of construction of the Dwelling Unit on such Lot, and thereafter to repair and maintain in good condition, a fence along designated property lines. Such fence shall be of such type, style, size, design, materials and construction as required by the Architectural Committee. As to all Lots where fences are so required, there is reserved to the Association a fence easement five (5) feet wide on the lot along the applicable property line for the purpose of constructing, repairing and maintaining a fence system along and over such easements, if the Association should so elect, in the event any Owner of any such Lot should be required but fails so to do. The Association shall further have a reasonable right of ingress and egress across each Lot adjacent to any fence easement and all fence easements shown on any Plat or referred to herein or in any annexation agreement, for the purposes of installing, maintaining, constructing and repairing any fence in the fence easement where the owner of the particular Lot is required, but

fails to so do. Neither the Declarant nor the Association or their successors or assigns shall be liable to the Owners for any damage done to any shrubbery, trees, flowers or other property of any such Owner situated on any portion of a Lot covered by any fence or access easement.

Section 11.29 Access Easement for Owners. A non-exclusive easement is hereby granted to each Owner in and to all Lots adjacent or contiguous with such Owner's Lot ("adjacent Lot") for the purpose of reasonable and necessary access to such Owner's Lot for construction, maintenance and repair of Improvements thereon, provided that the Owner using an adjacent Lot for access purposes (the "Easement Site") shall keep such Easement Site free of any trash, rubbish and/or any other materials at all times during and after construction on the Owner's Lot. Prior to any exercise of the access easement granted in this Section 11.29, the Owner or Contractor of the Lot intending to exercise such easement upon, over or across the Easement Site shall give notice of such intent to the Owner (or occupant) of the adjacent Lot. Unless otherwise authorized in writing by the owner of the adjacent Lot, such access easement may be utilized only between the hours, local time, of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 7:00 p.m., Saturday, (subject to the League City noise ordinance), and may be utilized only if the Owner intending to use such access easement gives at least twenty-four (24) hours notice (oral or written) to the Owner (or occupant) of the adjacent Lot (except in the case of an emergency or in the event that no Improvements have been constructed on the adjacent Lot, in which case no notice need be given). In all events, the use of the Easement Site shall be exercised in such manner as to avoid any unreasonable or unnecessary interference with the possession, use or enjoyment of the Easement Site by the Owner (or occupant) of the adjacent Lot. The user of such Easement Site shall immediately repair all damage done to the Easement Site and all Improvements thereon to the condition in which it existed before such use of the Easement Site.

Section 11.30 Utility Easements. Easements for installation and maintenance of utilities and drainage facilities shall be as reserved as shown on the Plats recorded from time to time in the Office of the County Clerk of Galveston County, Texas affecting the Properties, and/or as created in any other instrument filed in the real property records of Galveston County, Texas. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damage done by them or their assigns, their agents, employees or servants, to shrubbery, trees or flowers or other property of the Owners situated on any land covered by said easements. No Improvements shall be constructed over any such easement without prior approval of the Architectural Committee.

Section 11.31 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be stored or done thereon which may be or may become an annoyance or nuisance to any of the Properties. No repair work, dismantling or assembling of motor vehicles, boats, trailers or any other machinery or equipment shall be permitted in any street, or in any driveway or yard of any Lot adjacent to any street within the Properties.

Section 11.32 Restrictions on Antennae, Pipes and Utility Lines. Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antennae of any type



shall be erected or maintained in the Properties unless the Architectural Committee gives its consent to the erection of such antenna in accordance with the provisions of this Declaration.

Section 11.33 Sewage, Garbage and Refuse Disposal. No Lot or Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No private sewage treatment.

Section 11.34 Infringement. An Owner shall do no act nor do any work that will impair the structural soundness or integrity of another Lot or Common Area or any Improvements located thereon, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect any Common Area, other Lot, Improvements thereon, the Association, or other Owners.

Section 11.35 Lot Drainage. All drainage of water from any lot and the improvements thereof shall drain or flow as set forth below:

(a) Any such water shall drain or flow from the rear Lot line to the front Lot line into adjacent streets, and shall not be allowed to drain or flow upon adjoining lots or Common Areas unless an easement for such purpose is expressly granted by the Association in writing. The Owner shall provide drains or swales to affect such drainage upon construction of the Dwelling Unit and garage on the Lot.

(b) All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining Lots, Common Area or other property including the Detention Basins and Drainage Easements.

(c) No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken, on any Lot within the Properties or any portion thereof which might damage or interfere with established slope ratios or interfere with established drainage functions or facilities on any other Lot, Common Area, street, Detention Basin or Drainage Easement.

Section 11.36 Maintenance of Property.

(a) No real property or Improvements within the Properties shall be permitted to fall into disrepair, and all real property and Improvements within the Properties, including any improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair.

(b) Maintenance, repair and upkeep of all Association Properties, Detention Basins, Drainage Easement, and Common Area shall be the responsibility of the Association.

(c) Maintenance, repair and upkeep of each Lot and its Improvements and landscaping shall be the responsibility of the owner of the Lot. Each Owner shall maintain and keep in good order and repair and in neat and attractive condition the following improvements, equipment and other items located upon such Owner's Lot: (i) the exterior of each Lot and the improvements

thereon, including without limitation paint, repair, replace (even in the event of a windstorm, fire or other casualty loss) and care for roofs, gutters and downspouts, exterior building and other Improvement surfaces, fences, walkways, driveways, mailboxes and other improvements, and trim, prune, mow, water and care for trees, shrubs, and grass, and (ii) air conditioning compressors, condensers, including pipes and electrical lines connecting same to the Dwelling Unit, sanitary sewer lines connecting the Dwelling Unit to the sanitary sewer collection system, electric power service conductors from the exterior of the building to the point of connecting to the electric utility company's junction box or transformer, electric circuit breakers, any portion of natural gas, cable television and/or telephone service lines located on the lot but not maintained by the gas, cable television and/or telephone companies, and water service lines from connection at the community line to and throughout the Dwelling Unit.

(d) In the event of the failure of any Owner to observe its obligations imposed under this Section, then the Association shall send written notice to such Owner setting out the particular failure or failures of the Owner to maintain the property as herein required, and the Owner shall have thirty (30) days after receipt of such notice within which to remedy and cure its breach thereunder. If the owner has not, within such thirty (30) day period, cured the default in full, then the Association shall have the right to perform the maintenance work for the Owner's behalf, and any sums expended by the Association in this regard shall be due and payable by such Owner to the Association upon demand, and if not paid when due, such sums shall be a charge under this Declaration as a Reimbursement Assessment, secured by a lien on the Lot of the Owner and any improvements thereon, and shall bear interest and be enforceable, all as provided for in this Declaration.

(e) The Association shall have a non-exclusive right and easement of access to each Owner's Lot and improvements thereon at all reasonable times for the purposes of determining whether or not such Owner is in compliance with this Declaration, including without limitation the maintenance obligations imposed in this Section, and if such Owner is not in compliance, to perform the required maintenance or otherwise cure the Owner's non-compliance, on the Owner's behalf. Violation of these provisions by an Owner (or any person occupying such Lot through such Owner) shall permit the Association to enter onto the Lot of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the owner or occupant thereof unless a clear emergency exists.

Section 11.37 Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Properties which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no horns, whistles, bells or other sound devices, (other than security devices used exclusively for security purposes, and intercoms), shall be located or used on any Lot except with the prior written approval of the Architectural Committee or as permitted by the Rules and Regulations.

Section 11.38 No Unsightliness. No unsightliness shall be permitted on any Lot which is visible from any other Lot or from any of the Common Areas. Without limiting the generality of the foregoing, all unsightly conditions, structures, facilities, equipment, and objects and conditions

(including but not limited to garden or maintenance equipment except when in actual use) shall be enclosed with a structure. Determinations of unsightliness shall be made at the sole discretion of the Architectural Committee.

Section 11.39 Exterior Materials. No exterior materials (including but not limited to paint) of any Improvement may be used or altered or replaced unless approved by the Architectural Committee. The Architectural Committee has the sole authority to approve color, texture, size, appearance, etc., of all exterior materials. The Architectural Committee has the sole authority to designate certain materials to be used exclusively in all or certain groups of Dwelling Units or other improvements. A range of exterior material color selection may be approved by the Architectural Committee so that compatible variety is attained. All structures, improvements, landscaping, fountains, stationary mailboxes, house numbers, sidewalks, lighting, or other improvements on any Lot which are not concealed from view from the Common Area and Streets, must be harmonious and in keeping with the overall character and aesthetics of the Properties and must be of high quality workmanship and materials, as determined in the sole discretion of the Architectural Committee.

## **ARTICLE XII General Provisions**

Section 12.1 Enforcement. The Association and each and every Owner shall each have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or 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 or easement herein contained shall in no event be deemed a waiver of the right to do so thereafter.

A. Fines. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner enforceable and collectable in the manner established in Article VII of this Declaration and to suspend an Owner's right to vote or any person's right to use the Common Area, for violation of any duty imposed under the Declaration, the By-Laws, or any rules and regulations duly adopted hereunder. In the event that any occupant, guest or invitee of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant, guest, or invitee; provided, however, if the fine is not paid by the occupant, guest or invitee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, ByLaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(1) **Notice.** Prior to imposition of a fine hereunder, the Board or its delegate shall serve the alleged violator with written notice, sent by certified mail, describing (a) the nature of the alleged violation, (b) the proposed fine to be imposed, (c) a period of not less than thirty (30) days within which the alleged violator may present a written request to the Board of Directors for a hearing and (d) a statement that the proposed fine shall be imposed as contained in the notice unless a challenge is begun within thirty (30) days of the notice. If a timely challenge is not made, the fine stated in the notice shall be imposed,

(2) **Hearing.** If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held in an executive session of the Board of Directors of the Association affording the alleged violator a reasonable opportunity to be heard. Proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the fine, if any, imposed. The Board of Directors may, but shall not be obligated to, suspend any proposed fine if the violation is cured within the thirty (30) day period. Such suspension shall not constitute a waiver of the right to fine future violations of the same or other provisions and rules by any Owner, occupant, guest or invitee.

(3) **Appeal.** Following a hearing before the Board of Directors, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager of the Subdivision retained by the Board, or by the President or Secretary of the Association within thirty (30) days after the hearing date.

**B. Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, By-Laws, or the rules and regulations of the Association by suspending an Owner's right to vote or any person's right to use the Common Areas, or by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Section 12.2 Severability. Invalidation of any one of these covenants or restrictions shall be deemed independent and the invalidity or partial invalidity in no way may affect any other provision, which shall remain in full force and effect.

Section 12.3 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Subject to the provisions of Section 12.4 hereof, this Declaration may be amended by a vote or an agreement memorialized in an instrument signed by no less than sixty-seven percent (67%) of the Owners and, during the Appointment Period, shall also require the approval of Declarant. Any written amendment to this Declaration must be signed and certified by the duly authorized officers of the Association, attesting to the proper adoption of such amendment and containing the text thereof, and then be recorded with the Official Public Records of Real Property of Galveston County, Texas to be effective.

An action to challenge the validity of an amendment to the Declaration adopted by the Association under this Section must be brought before the first anniversary of the date the amendment is recorded.

Section 12.4 Amendments by Declarant.

(a) Notwithstanding the foregoing, the Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, to bring into compliance with any applicable governmental statute, rule or regulation, or judicial determination, to enable any reputable title insurance company to issue title insurance coverage on the Lots, if required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots, or if necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidence by the Declaration, and shall not impair or affect any vested property rights of any Owner or his mortgagee unless the Owner shall consent thereto in writing.

(b) Notwithstanding anything to the contrary in this Declaration, the Declarant further reserves the unilateral right to amend this Declaration at any time during the Appointment Period.

Section 12.5 Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member, The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any Member or Members will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association where copies may be purchased at reasonable cost.

Section 12.6 Conflict Between Provisions. In the event of any conflict among the terms and provisions of this Declaration, the Articles of Incorporation of the Association, the By-Laws, or between any of them, the Articles of Incorporation shall control over the By-Laws, this Declaration shall control over the Articles of Incorporation, and the applicable law shall control over all of the foregoing.

Section 12.7 Declarant's Restriction on Sale of Residence Lots. During the first five (5) after the sale of the first Lot by Declarant, the Declarant hereby reserves the right to restrict the sale of said Lot by an Owner, such that said Lot offered by an Owner shall not be offered for sale at a price below the current purchase price established by Declarant for similar Lots owned by Declarant.

## **A. Right of First Refusal.**

**(1) Notice of Lot Owner.** Any Lot Owner who receives a bona fide offer for the purchase of his Lot during the first five (5) years after the sale of the first lot by Declarant at a price below the current purchase price established by Declarant for Lots owned by Declarant (hereinafter called "Outside Offer") which he intends to accept, shall give written notice to the Declarant of such offer and of such intention, the name and address of the proposed grantee and such other information as the Declarant may reasonably require.

**(2) Offer to Declarant.** The Owner shall thereupon offer to sell such Lot to the Declarant or its designee, corporate or otherwise, on behalf of the Owners of all other Lots in the Property, on the same terms and conditions as contained in such outside offer; however, if the terms and conditions provide for a mortgage at the time of transfer, the Declarant may, at its option, pay for the Lot in cash, The time for closing by the Declarant may be extended up to fifteen (15) days beyond the election of the Declarant to so purchase the Lot.

**(3) Representation by Owner.** The giving of such notice shall constitute a warranty and representation by the owner who has received such offer, to the Declarant on behalf of the other Owners, that such Owner believes the outside offer to be bona fide in all respects and that he intends to accept it.

**(4) Election by Declarant.** Within fifteen (15) days after the receipt of such notice, the Declarant may elect, by notice to such Owner, to purchase such Lot or to cause the same to be purchased by its designee, on the same terms and conditions as contained in the outside offer.

**B. Failure to Accept Offer.** In the event the Declarant shall fail to accept such offer within the above-described fifteen (15) day period, as foresaid, the offering Lot Owner shall be free to contract to sell such Lot to the outside offeror, on the terms and conditions set forth in the notice of such outside offer. Declarant's right of first refusal extends to each and every offer to purchase a Lot and/or Lots which is bona fide and memorialized in a written contract. Each bona fide written offer to purchase a Lot and/or Lots, whether same arises between parties to an earlier failed or terminated outside offer, is a counter offer, or is the result of an amended or supplemental outside offer, shall be subject to Declarant's right of first refusal.

**C. Violation.** Any purported sale of any Lot in violation of this provision shall be voidable within five (5) years from date of recording the document evidencing such sale at the election of the Declarant, and the Declarant may take such other action against the parties to such transaction as permitted by law.

**Section 12.8 Notice. OWNERS OF LOTS ARE ADVISED THAT DECLARANT OWNS LAND ADJACENT TO THE PROPERTY. OWNERS OF LOTS HEREBY AGREE TO HOLD HARMLESS THE DECLARANT AND THE ASSOCIATION (AS DEFINED HEREIN), AND THEIR SUCCESSORS AND ASSIGNS, AND RELEASE THEM FROM ANY LIABILITY FOR THE PLACEMENT, CONSTRUCTION, DESIGN, OPERATION, MAINTENANCE AND REPLACEMENT OF ANY IMPROVEMENT AND/OR ANY USE**

**DECLARANT MAY CHOOSE FOR SAID ADJACENT PROPERTY. OWNERS FURTHER GRANT AN EASEMENT TO THE DECLARANT AND THE ASSOCIATION FOR ANY INCIDENTAL NOTICE, LIGHTING, ODORS, PARKING AND/OR TRAFFIC WHICH MAY OCCUR IN THE NORMAL OPERATION OF ANY IMPROVEMENT AND/OR USE WHICH MAY BE PLACED UPON SAID ADJACENT PROPERTY. OWNERS FURTHER GRANT AN EASEMENT TO THE DECLARANT AND THE ASSOCIATION FOR ACCESS TO SAID ADJACENT PROPERTY OWNERS HEREBY ACKNOWLEDGE THAT DECLARANT HAS MADE NO REPRESENTATIONS, WARRANTIES, CEINENTS. STATEMENTS, OR EXPRESSIONS OF OPINION, ORAL OR WRITTEN, NOR HAS OWNER RECEIVED FROM ANY PERSON OR ENTITY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DECLARANT, ANY REAL ESTATE AGENT OR BROKER, PROPERTY MANAGER, TENANT, GOVERNMENTAL OFFICIAL, OR SELLER, ITS FIDUCIARIES, AGENTS, ATTORNEYS, PRINCIPALS OR PERSONAL REPRESENTATIVES ANY REPRESENTATIONS, WARRANTIES, AGREEMENTS, STATEMENTS, OR EXPRESSIONS OF OPINION, ORAL OR WRITTEN, AS TO ANY UTURE USE OF SAID ADJACENT PROPERTY UPON WHICH ANY OWNER HAS RELIED TO BASE THE DECISION TO PURCHASE A LOT. OWNERS FURTHER ACKNOWLEDGE THAT DECLARANT HAS NO DEFINITIVE PLAN(S) AS TO ANY EXPECTED USE OF SAID ADJACENT PROPERTY, AND OWNERS ARE PURCHASING A LOT WITH THE UNDERSTANDING THAT SAID ADJACENT PROPERTY MAY BE USED IN ANY NUMBER OF WAYS, INCLUDING WITHOUT LIMITATION, A USE THAT IS NOT PRESENTLY CONTEMPLATED BY DECLARANT ON THE DATE THIS DECLARATION IS RECORDED IN THE REAL PROPERTY RECORDS OF GALVESTON COUNTY, TEXAS.**

**Section 12.9 Wetlands, Lagoons and Nature Reserves. USE OF AND ACCESS TO THE WETLANDS, LAGOONS AND NATURE RESERVES IS RESTRICTED. NO MEMBER OR INDIVIDUAL MAY ACCESS OR USE THE WETLANDS AND LAGOONS EXCEPT THROUGH THE MEANS AND ACCESS PROVIDED BY THE ASSOCIATION, IF ANY.**

(a) The Property contains a number of manmade, natural, and environmentally sensitive areas, including the wetlands, lagoons, and Nature Reserves (the "Natural Areas"), that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes and other reptiles, alligators, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and Occupant of any Lot, and every person entering the Subdivision: (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within or through the Subdivision; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Subdivision.

(b) The Nature Reserves, as defined on Plat(s) for the Subdivision, described in subsection (a) above may also contain creeks, lagoons, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. The Association shall have the right to

impose rules and regulations governing the use of the Natural Areas. No Owner of a Lot shall enter upon, or permit their guests or any other person acting on their behalf to enter upon the Wetlands and Lagoons in any way without the Association's or Declarant's prior written approval or in accordance with the Association's rules and regulations. Any Owner who violates the foregoing restrictive covenants shall be responsible for the cost of restoring the affected Natural Area to the satisfaction of the Association, Declarant, and any Governmental Authority having jurisdiction thereof, and the Association shall have the right to prohibit the offending party from further use or enjoyment of the Natural Areas, if any is allowed, after prior notice and hearing before the Board.

(c) Declarant, acting in its discretion, retains the right, but not the obligation, to engage in wildlife and fishery management plans, coastal management plans, mitigation plans, and practices within the Property to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and not limitation, this includes the right to manage and control any populations of wildlife through a variety of techniques. Declarant may, in its discretion, commission environmental studies and reports relating to the Property and the wildlife habitats located thereon, and may elect to follow or disregard any recommendations resulting from such studies. Declarant may assign these management rights to the Association in which event the expenses of such activities shall be funded by the Association.

**(d) BECAUSE THESE AREAS ARE TO BE RETAINED IN THEIR NATURAL STATE, SUCH AREAS SHOULD BE CONSIDERED HAZARDOUS FOR RECREATIONAL ACTIVITIES, OTHER THAN BIRD WATCHING, HIKING, FISHING AND OTHER PASSIVE, ZERO-IMPACT ACIVITIES, IF ANY IS ALLOWED BY THE ASSOCIATION.**

**IF ACCESS INTO THE WETLAND AND LAGOON AREAS ARE ALLOWED, NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY OF THEIR AFFILIATES, HAS ANY OBLIGATION TO PROVIDE SECURITY OR SUPERVISION FOR ANY PERSON USING A NATURAL AREA AND ALL PERSONS USING A NATURAL AREA DO SO AT THEIR OWN RISK.**

**NEITHER THE ASSOCIATION NOR DECLARANT, DECLARANT'S AFFILIATES NOR ANY PREDECESSOR DECLARANT, SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CONDITION OF A NATURAL AREA OR ANY INJURY OR DEATH OCCURRING THEREON.**

**IF ANY NATURAL AREA, OR THE TREES OR VEGETATION THEREON, ARE DAMAGED OR DESTROYED BY FIRE, WINDSTORM, FLOOD, DISEASE, OR OTHER NATURAL OR MANMADE EVENT, NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY DECLARANT AFFILIATE, SHALL HAVE ANY OBLIGATION TO REPAIR OR RESTORE THE DAMAGE OR DESTRUCTION, OR TO REMOVE ANY DEAD OR DAMAGED TREES OR OTHER VEGETATION.**

**IF ACCESS INTO THE NATURAL AREAS IS ALLOWED, AN OWNER AGREES TO ASSUME ANY AND ALL RISK INVOLVED IN ACCESSING THE NATURAL AREA INCLUDING, BUT NOT LIMITED TO, INJURY, ILLNESS, DAMAGE TO PERSONAL**



**PROPERTY, EMOTIONAL TRAUMA, AND DEATH ARISING FROM THE NATIVE PLANTS, WILDLIFE, AND NATURAL OR MAN MADE TERRAIN AND WATERWAYS, OWNER ACKNOWLEDGES THE RISKS, HAZARDS, OR DANGERS INVOLVED AND AGREES TO RELEASE FULLY THE ASSOCIATION, DECLARANT, AND ANY OF ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, SUCCESSORS AND ASSOCIATES FROM ANY AND ALL CLAIMS, DEMANDS OR ACTIONS THAT MAY ARISE IN CONNECTION WITH ENTRY INTO THE NATURAL AREAS.**

**ARTICLE XIII  
Reservation of Minerals**

There is hereby excepted from the land encompassed by the boundaries of this Subdivision, and Declarant will hereafter except from all its sales and conveyances of said land, or any part thereof, including the Common Property, all oil, gas and other minerals, provided that Declarant hereby retains and reserves and by each conveyance will retain and reserve the right, if any, to pool the land with other lands; however, Declarant hereby waives the right to use the surface of the Property, or any part thereof, for development of oil, gas and other minerals. Such exceptions and such retained rights and reservations, if any, shall inure to the benefit of Declarant and their heirs, executors, administrators, successors, and assigns and this waiver of surface rights by Declarant shall be effective even if Declarant fails to so state in any instrument or deed conveying an interest in the Property.

[Remainder of page intentionally left blank. Signature page to follow.]



## EXHIBIT A

### **DECLARANT OWNED ACREAGE**

All of that certain 28.04 acres (1,221,302 square feet) tract or parcel of land out of Lot Four hundred ninety-three (493), Section One and Lots Nine (9), Twelve (12), Twenty-nine (29), and Thirty-two (32), Section Two of the **TRIMBLE AND LINDSEY SURVEY OF GALVESTON**, Galveston County, Texas, according to the map or plat thereof now in common and accepted use and available at the Texas General Land Office, said 28.04 acres tract being out of and a part of the tract described in that certain Special Warranty Deed and Assignment recorded in Clerk's File Number 2001066013 of the Official Public Records of Real Property of Galveston County, Texas; being out of and a part of **SWEETWATER COVE, SECTION ONE**, a Subdivision in Galveston County, Texas according to the map or plat thereof recorded under Plat Record 2006A, Map Numbers 203-204 in the Map Records of Galveston County, Texas; and being all of a called 3.80 acres tract, called Tract 5, described in that certain Deed in Lieu of Foreclosure from Preserve Sweetwater Partners, LP to Sweetwater Eight Mile, Ltd. recorded in Clerk's File Number 2014067364 of the Official Public Records of Galveston County, Texas, said 28.04 acres tract being more particularly described by metes and bounds as follows (bearings are oriented to the bearing base of said **TRIMBLE AND LINDSEY SURVEY**):

**BEGINNING** at the most Southerly corner of said **SWEETWATER COVE, SECTION ONE**, said point also being the South corner of a cut-back curve at the intersection of the Northeasterly line of Eight Mile Road (a.k.a. Anderson Way), a 50 feet wide roadway right-of-way, with the Southeasterly line of Sweetwater Cove Boulevard, a variable width roadway right-of-way set forth in the plat of said **SWEETWATER COVE, SECTION ONE**, and being at the Southwesterly line of said Lot 32; **THENCE**, N 25°00'00" W, along the Northeasterly line of said Eight Mile Road and the Southwesterly line of said Lot 32, at 120.00 feet passing the most Southerly West corner of said Tract 5, at 904.50 feet passing the most Westerly corner of said Tract 5, said point also being the most Southerly corner of Lot One (1), Block Three (3) of said **SWEETWATER COVE, SECTION ONE**, and continuing for a total distance of 1170.18 feet to a point for the most Westerly corner of both the herein described tract and of Lot One (1), Block One (1) of said **SWEETWATER COVE, SECTION ONE**, said point being at the shoreline of West Galveston Bay; **THENCE**, Northeasterly, along the Northwesterly line of said **SWEETWATER COVE, SECTION ONE** and the shoreline of said West Galveston Bay, the following courses and distances:

N 08°08'12" E, a distance of 60.06 feet to a point for corner, said point being the most Northerly corner of said Lot 1, Block 1;

S 84°32'56" E, a distance of 168.74 feet to a point for angle to the left;

and N 68°25'01" E, a distance of 16.03 feet to a point for the most Northerly corner of Reserve "A" and the most Westerly corner of Lot One (1), Block Two (2), both of said **SWEETWATER COVE, SECTION ONE**;

**THENCE**, S 25°00'00" E, along the Southwesterly line of said Lot 1, Block 2, a distance of 47.90 feet to a point of curvature of a tangent curve to the left, said curve having a radius of 20.00 feet and a central angle of 90°00'00";

**THENCE**, Southeasterly, along the arc of said tangent curve to the left, a distance of 31.42 feet, the chord of which bears S 70°00'00" E, 28.28 feet, to a point of tangency, said point being at the Northwesterly line of White Ibis Way, a 32.00 feet wide roadway right-of-way;

**THENCE**, N 65°00'00" E, along the Southeasterly line of said Lot 1, Block 2 and the Northwesterly line of said White Ibis Way, a distance of 47.71 feet to a point for corner;

**THENCE**, S 25°00'00" E, along the Southeasterly line of said Lot 1, Block 2, a distance of 3.29 feet to a point for corner;

**THENCE**, N 65°00'00" E, along the Southeasterly line of said Lot 1, Block 2, a distance of 1.33 feet to a point for corner, said point being at the shoreline of said West Galveston Bay;

**THENCE**, S 23°53'09" E, along said shoreline, a distance of 86.76 feet to a point for corner, said point being the most Easterly corner of Lot Four (4), Block Three (3) of said **SWEETWATER COVE, SECTION ONE**;

**THENCE**, S 54°49'21" W, along said shoreline, a distance of 150.87 feet to a point for angle to the left;

**THENCE**, S 19°35'12" W, along said shoreline, a distance of 63.04 feet to a point for angle to the left, said point being the most Southerly East corner of said Lot 1, Block 3 and the most Northerly corner of said Tract 5;

**THENCE**, Southeasterly, along the meanders of the shoreline of said West Galveston Bay and the Easterly and Northwesterly lines of said Tract 5, the following courses and distances:

S 22°29'11" E, a distance of 356.87 feet to a point for angle to the left;

S 47°10'02" E, a distance of 110.79 feet to a point for angle to the left;

S 80°53'16" E, a distance of 44.45 feet to a point for angle to the left;

N 73°31'36" E, a distance of 126.11 feet to a point for angle to the left;

and N 54°07'23" E, at 115.52 feet passing the most Northerly East corner of said Tract 5, said point also being the most Westerly corner of Lot One (1), Block Four (4) of said **SWEETWATER COVE, SECTION ONE**, and continuing for a total distance of 172.33 feet to a point for angle to the left;

**THENCE**, Northwesterly, along the meanders of the shoreline of said West Galveston Bay and the Westerly line of said **SWEETWATER COVE, SECTION ONE**, the following courses and distances:

N 43°34'48" E, a distance of 128.72 feet to a point for angle to the left;

N 05°22'15" W, a distance of 40.12 feet to a point for angle to the left;

N 42°43'48" W, a distance of 73.12 feet to a point for angle to the left;

N 85°47'16" W, a distance of 61.37 feet to a point for angle to the left;

S 46°17'09" W, a distance of 85.51 feet to a point for angle to the right;

N 61°55'46" W, a distance of 68.35 feet to a point for angle to the right;

N 16°29'40" W, a distance of 67.15 feet to a point for angle to the right;

N 14°14'55" E, a distance of 175.64 feet to a point for corner;

S 35°04'18" E, a distance of 199.10 feet to a point for corner;

N 22°58'16" E, a distance of 22.87 feet to a point for angle to the left;

N 28°05'59" W, a distance of 248.31 feet to a point for angle to the left;

N 08°48'04" W, a distance of 186.14 feet to a point for angle to the left;

and N 03°59'50" E, at 107.14 feet passing the Northwest corner of Lot Fifteen, Block Four (4) of said **SWEETWATER COVE, SECTION ONE**, a distance of 127.21 feet to a point for corner;

**THENCE**, Northeasterly, along the meanders of the shoreline of said West Galveston Bay, the following courses and distances:

N 60°51'44" W, a distance of 101.78 feet to a point for corner;

N 53°58'16" E, a distance of 98.22 feet to a point for angle to the left;

N 39°00'18" E, a distance of 114.69 feet to a point for angle to the right;

N 84°42'15" E, a distance of 108.03 feet to a point for angle to the left;

N 35°52'35" E, a distance of 44.71 feet to a point for angle to the left;

and N 19°46'24" W, a distance of 66.46 feet to a point for angle point to the right, said point being the most Westerly corner of Lot One (1), Block Ten (10) of said **SWEETWATER COVE, SECTION ONE**;

**THENCE**, Northeasterly, along the meanders of the shoreline of said West Galveston Bay and the Northwesterly line of said **SWEETWATER COVE, SECTION ONE**, the following courses and distances:

N 22°11'39" E, a distance of 88.65 feet to a point for angle point to the right;

N 45°53'37" E, a distance of 83.73 feet to a point for angle point to the left;

N 05°36'01" W, a distance of 64.20 feet to a point for corner;

S 48°42'04" E, a distance of 58.64 feet to a point for angle point to the left;

and N 73°35'03" E, at 287.22 feet passing the most Northerly corner of Lot Five (5), Block Ten (10) and continuing for a total distance of 360.10 feet to a point for angle to the left;

**THENCE**, N 37°19'32" E, along said shoreline, a distance of 64.75 feet to a point for angle to the right;

**THENCE**, N 53°18'48" E, along said shoreline, a distance of 231.41 feet to a point for the most Northerly corner of the herein described tract, said point being at the Northeasterly line of said Lot 493;

**THENCE**, S 25°00'00" E, along the Northeasterly line of said Lot 493, a distance of 139.84 feet to a point for angle point to the right;

**THENCE**, S 25°19'23" W, a distance of 27.96 feet to a point for corner, said point being at the beginning of a non-tangent curve to the right, said curve having a radius of 50.00 feet, the initial radial of which bears N 25°19'23" E;

**THENCE**, Southwesterly, along the arc of said non-tangent curve to the right, passing through a central angle of 167°28'44", a distance of 146.15 feet, the chord of which bears S 19°03'45" W, 99.40 feet, to a point of reverse curvature, said curve having a radius of 25.00 feet and a central angle of 48°11'23";

**THENCE**, Southwesterly, along the arc of said reverse curve, a distance of 21.03 feet, the chord of which bears S 78°42'26" W, 20.41 feet, to a point of tangency;

**THENCE**, S 54°36'45" W, a distance of 157.84 feet to a point of curvature of a tangent curve to the right, said curve having a radius of 250.00 and a central angle of 16°05'34";

**THENCE**, Southwesterly, along the arc of said tangent curve to the right, a distance of 70.22 feet, the chord of which bears S 62°39'32" W, 69.99 feet, to a point of tangency;

**THENCE**, S 70°42'19" W, a distance of 85.12 feet to a point of curvature of a tangent curve to the left, said curve having a radius of 25.00 and a central angle of 48°11'23";

**THENCE**, Southwesterly, along the arc of said tangent curve to the left, a distance of 21.03 feet, the chord of which bears S 46°36'37" W, 20.41 feet, to a point of reverse curvature, said curve having a radius of 50.00 and a central angle of 08°30'01";

**THENCE**, Southwesterly, along the arc of said reverse curve and of a cul-de-sac at the Easterly terminus of Bay Pointe Drive, a 50.00 feet wide roadway right-of-way set forth in the plat of said **SWEETWATER COVE, SECTION ONE**, a distance of 7.42 feet, the chord of which bears S 26°45'56" W, 7.41 feet, to a point for corner;

**THENCE**, S 19°17'41" E, a distance of 107.82 feet to a point for corner;

**THENCE**, S 70°42'19" W, a distance of 74.65 feet to a point for angle to the left;

**THENCE**, S 57°52'08" W, a distance of 114.98 feet to a point for angle to the left;

**THENCE**, S 41°19'55" W, a distance of 114.98 feet to a point for angle to the left;

**THENCE**, S 24°48'16" W, a distance of 114.98 feet to a point for angle to the left;

**THENCE**, S 11°27'30" W, a distance of 132.16 feet to a point for angle to the left, said point being the Northeasterly corner of Lot Six (6), Block Six (6) of said **SWEETWATER COVE, SECTION ONE**;

**THENCE**, Southeasterly, along the Northeasterly line of said **SWEETWATER COVE, SECTION ONE**, the following courses and distances:

S 06°19'08" E, a distance of 59.08 feet to a point for angle to the left;

S 15°39'03" E, a distance of 74.32 feet to a point for corner;

N 61°08'25" E, a distance of 71.03 feet to a point of curvature of a tangent curve to the right, said curve having a radius of 266.00 feet and a central angle of 19°32'07";

Northeasterly, along the arc of said tangent curve to the right, a distance of 90.69 feet, the chord of which bears N 70°54'28" E, 90.25 feet, to a point for corner;

S 09°19'29" E, a distance of 120.00 feet to a point for corner, said point being at the beginning of a non-tangent curve to the right, said curve having a radius of 146.00 feet, the initial radial of which bears N 09°19'29" W;

Southeasterly, along the arc of said non-tangent curve to the right, passing through a central angle of 48°41'54", a distance of 124.09 feet, the chord of which bears S 74°58'32" E, 120.39 feet, to a point of tangency;

S 50°37'34" E, a distance of 195.82 feet to a point for corner;

N 39°22'26" E, a distance of 120.00 feet to a point for corner;

S 50°37'34" E, a distance of 14.98 feet to a point of curvature of a tangent curve to the left, said curve having a radius of 180.00 feet and a central angle of 10°23'00";

Southeasterly, along the arc of said tangent curve to the left, a distance of 32.62 feet, the chord of which bears S 55°49'04" E, 32.58 feet, to a point of tangency;

S 61°00'34" E, a distance of 50.61 feet to a point of corner;

and S 37°18'53" W, a distance of 121.28 feet to a point for corner, said point being the point of intersection of the Northeasterly line Brown Pelican Bend, a 46.00 feet roadway right-of-way, with the Southeasterly line of said Sweetwater Cove Boulevard;

**THENCE**, S 61°00'34" E, a distance of 54.09 feet to a point for corner, said point being at the Northwesterly line of a called 40.00 acres tract described in that certain Special Warranty Deed from Sweetwater 8 Mile, Ltd. to MIG Land Company, LLC recorded in Clerk's File Number 2015001281 of the Official Public Records of Galveston County, Texas;

**THENCE**, Southwesterly, along the Northwesterly line of said 40.00 acres tract, the following courses and distances:

S 30°29'18" W, a distance of 46.02 feet to an angle point to the left;

S 28°59'26" W, a distance of 140.17 feet to a point for corner, said point being at the beginning of a non-tangent curve to the left, said curve having a radius of 984.00 feet, the initial radial of which bears N 27°46'40" E;

Northwesterly, along the arc of said non-tangent curve to the left, passing through a central angle of 01°41'23", a distance of 29.02 feet, the chord of which bears N 63°04'01" W, 29.02 feet, to a point for corner;

S 28°59'26" W, a distance of 104.94 feet to a point for angle point to the left;

S 00°52'15" E, a distance of 80.36 feet to a point for angle point to the right;

S 33°00'06" W, a distance of 60.15 feet to a point of curvature of a tangent curve to the right, said curve having a radius of 1305.00 and a central angle of 24°25'41";

Southwesterly, along the arc of said tangent curve to the right, a distance of 556.38 feet, the chord of which bears S 45°12'56" W, 552.18 feet, to a point for corner;

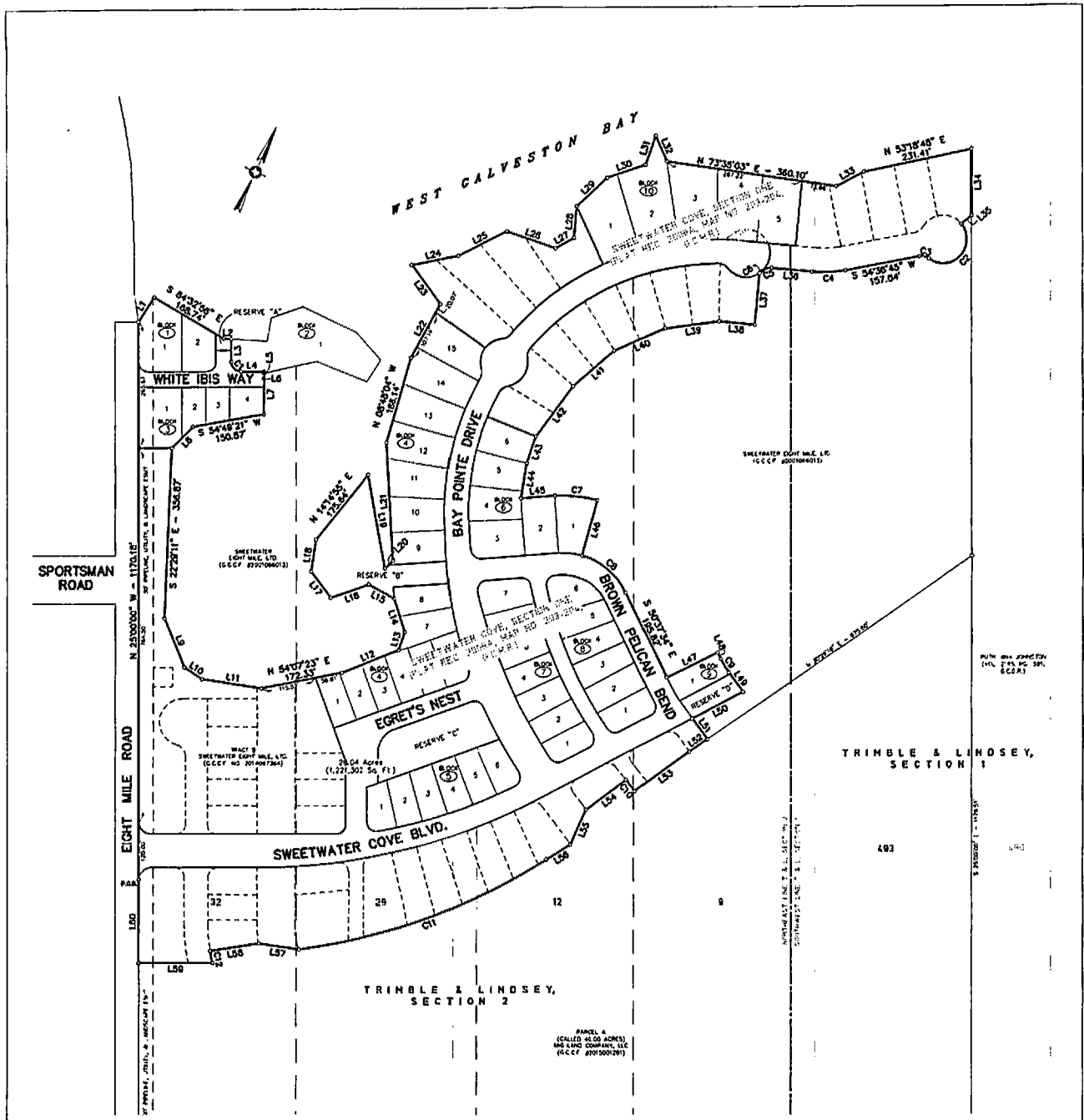
S 73°24'32" W, a distance of 85.50 feet to a point for angle to the left;

S 56°11'49" W, a distance of 103.00 feet to a point for corner, said point being at the beginning of a non-tangent curve to the left, said curve having a radius of 375.00 feet, the initial radial of which bears S 56°11'49" W;

Southeasterly, along the arc of said non-tangent curve to the left, passing through a central angle of 03°51'33", a distance of 25.26 feet, the chord of which bears S 35°43'57" E, 25.25 feet, to a point for corner;

and S 65°00'00" W, a distance of 154.10 feet to a point for the most Southerly corner of the herein described tract, said point being the most Westerly corner of said 40.00 acres tract and being at the Northeasterly line of said Eight Mile Road and the Southwesterly line of said Lot 32;

**THENCE**, N 25°00'00" W, along the Northeasterly line of said Eight Mile Road and the Southwesterly line of said Lot 32, a distance of 174.12 feet to the **POINT OF BEGINNING** and containing within said boundaries a calculated area of 28.04 acres (1,221,302 square feet) of land.



LINE	DISTANCE	BEARING	LINE	DISTANCE	BEARING
L1	85.06	N 02°16'17" E	L31	84.20	N 05°36'01" W
L2	184.07	N 88°23'00" E	L32	84.84	S 46°42'04" E
L3	47.97	S 23°02'00" E	L33	84.29	N 37°18'27" E
L4	47.71	N 63°00'00" E	L34	128.84	S 23°02'00" E
L5	3.29	S 23°02'00" E	L35	77.96	S 23°18'12" W
L6	1.17	N 45°00'00" E	L36	85.17	S 20°47'18" W
L7	88.38	S 23°02'00" E	L37	103.07	S 18°07'00" E
L8	83.04	S 18°55'21" W	L38	73.45	S 20°47'18" W
L9	116.79	S 47°02'00" E	L39	81.86	S 8°52'00" E
L10	144.27	S 80°25'18" E	L40	81.86	S 41°48'30" E
L11	126.11	N 72°33'36" E	L41	114.88	S 24°48'18" W
L12	138.77	N 43°42'48" E	L42	123.18	S 11°37'30" E
L13	40.17	N 02°21'15" E	L43	26.06	S 20°47'18" E
L14	73.17	N 47°24'48" E	L44	74.72	S 12°38'00" E
L15	41.37	N 82°47'36" E	L45	75.03	S 41°08'21" E
L16	65.51	S 44°37'00" W	L46	120.07	S 09°18'21" E
L17	88.38	N 47°55'48" E	L47	100.00	N 34°51'00" E
L18	87.80	N 18°29'40" E	L48	18.90	S 30°37'30" E
L19	184.07	S 35°04'18" E	L49	50.81	S 41°00'30" E
L20	22.87	N 77°54'18" E	L50	120.28	S 37°48'30" E
L21	148.87	N 22°55'30" E	L51	84.00	S 41°00'30" E
L22	127.21	N 03°24'30" E	L52	44.07	S 32°29'18" W
L23	109.78	N 40°11'44" E	L53	140.17	S 28°38'00" E
L24	88.38	N 87°48'18" E	L54	100.00	S 28°38'00" E
L25	114.88	N 38°02'18" E	L55	80.36	S 00°21'15" E
L26	108.07	N 84°23'15" E	L56	60.15	S 33°08'00" E
L27	46.71	N 20°23'30" E	L57	85.50	S 23°11'30" E
L28	68.80	N 87°48'24" E	L58	103.07	S 34°51'00" E
L29	86.63	N 27°11'30" E	L59	194.10	S 45°00'00" E
L30	43.17	N 41°53'30" E	L60	174.12	N 25°02'00" W

CURVE	RADIUS	DELTA	ARC	BEARING	CHORD
C1	26.07	80°02'00"	31.42	S 20°02'00" E	24.28
C2	84.07	147°08'45"	144.15	S 19°07'45" W	88.07
C3	23.07	48°11'21"	21.03	S 16°12'24" W	20.41
C4	750.07	18°03'34"	70.37	S 42°38'30" W	68.89
C5	23.07	48°11'21"	21.03	S 44°31'30" W	20.41
C6	30.07	80°02'00"	31.42	S 20°19'36" W	24.28
C7	248.07	18°21'07"	60.86	N 20°34'28" E	60.25
C8	148.07	48°47'54"	124.06	N 24°58'21" E	120.30
C9	180.07	125°00'00"	324.72	S 20°30'00" E	324.72
C10	884.07	0°41'21"	29.07	S 43°04'30" E	28.02
C11	1305.07	24°29'47"	534.36	S 45°13'34" E	532.18
C12	378.07	03°31'30"	25.24	S 20°43'30" E	25.25

EXHIBIT DEPICTING A  
 28.04 ACRES TRACT  
 OUT OF AND A PART OF  
**LOT 493 OF THE  
 TRIMBLE AND LINDSEY SURVEY,  
 SECTION 1 &  
 LOTS 9, 12, 29, AND 32 OF THE  
 TRIMBLE AND LINDSEY SURVEY,  
 SECTION 2**  
 CITY OF GALVESTON,  
 GALVESTON COUNTY, TEXAS





## FILED AND RECORDED

Instrument Number: 2019017134

Recording Fee: 278.00

Number Of Pages:65

Filing and Recording Date: 04/04/2019 3:04PM

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Galveston County, Texas.



A handwritten signature in cursive script that reads "Dwight D. Sullivan".

---

Dwight D. Sullivan, County Clerk  
Galveston County, Texas

**DO NOT DESTROY** - *Warning, this document is part of the Official Public Record.*