

Stewart Title Company

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
AUDUBON VILLAGE SUBDIVISION

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

WHEREAS, AUDUBON VILLAGE-GILCHRIST, L.L.C., a Texas limited liability company (“Declarant”), is the owner of that certain land out of and part of the, Joseph Dunman 1/3rd League, Abstract No. 52, containing approximately 4 463 acres more or less (the “Land”), as more particularly described in the Plat described in the next paragraph; and

WHEREAS, Declarant has caused the Land to be subdivided and platted into an addition to Galveston County, Texas, known and to be known as “AUDUBON VILLAGE, SECTION ONE, an Addition to Galveston County, Texas” (herein referred to as the “Property”, or “Subdivision” or the “Addition”), in accordance with the Final Plat of said Addition prepared by Sidney Bouse, a registered professional Land Surveyor of the State of Texas, and recorded under Clerk’s File No 2006027272 of the Plat Records of Galveston County, Texas (the “Plat”), consisting of fourteen (14) residential lots and two (2) reserve areas, and

WHEREAS, Declarant desires to (a) dedicate the easements for utilities and drainage shown and reflected on the Plat, (b) reserve in favor of itself and/or the Association herein established certain easements on and across the Lots in the Addition; and (c) impose the protective and restrictive covenants set forth later herein on the Lots in the Addition and on the Common Area of the Addition,

AND WHEREAS, Declarant desires to create within the Subdivision a residential community with residential lots, open spaces, landscaping, private streets, common lighting, drives, cart paths, elevated observatory, community pool and other common improvements for the benefit of the community,

AND WHEREAS, Declarant desires to provide for, among other matters, the preservation of the values and amenities in said community and for the maintenance of said open spaces, landscaping, private streets, common lighting, drives, cart paths, elevated observatory, community pool and other common improvements, and, to this end, desires to subject the Property, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and for every owner of any part thereof,

AND WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an owners’ association to which would be delegated and assigned the powers of (i) maintaining and administering the common properties and facilities, (ii) administering and enforcing the covenants and restrictions contained herein and (iii) collecting and disbursing the assessments and charges hereinafter created,

AND WHEREAS, Declarant has caused or will cause a non-profit corporation to be incorporated under the laws of the State of Texas for the purpose of effecting the intents and objectives herein set forth;

AND WHEREAS, Declarant does hereby agree that the Property is to be subdivided into numbered lots according to said plat and that all of the lots of the Property shall be held, sold and conveyed subject to the covenants, conditions, stipulations and restrictions hereinafter set forth

NOW THEREFORE, for the purposes of creating and carrying out a uniform plan for the improvement and sale of the Property as a restricted subdivision, the following restrictions upon the use of the Property are hereby established and adopted, and shall henceforth be made a part by appropriate reference to this instrument, of each and every contract, deed and lease covering the numbered lots set forth on said map and same shall be considered a part of each contract, deed and lease, as though fully incorporated therein

And the restrictions hereinafter set forth, except as herein otherwise provided, shall be and are hereby imposed upon each numbered Lot in said subdivision, as shown by the plat and as referred to herein, and same shall constitute covenants running with the land and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof

ARTICLE I.

DEFINITIONS

1.01 “Association” shall mean and refer to **AUDUBON VILLAGE PROPERTY OWNERS ASSOCIATION**, its successors and assigns

1.02 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, or portion of a Lot, on which there is or will be built a detached single family dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation

1.03 “Property” shall mean and refer to that certain real property heretofore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association

1.04 “Common Area” and **“Common Properties”** shall mean all real property owned by the Association, regardless of when acquired, that is for the common use and enjoyment of the Owners, and shall include streets, roads, drives, cart paths, elevated observatory, community pool, lighting, drainage structures, drainage easements, access easements and other common improvements. The Common Area to be owned by the Association shall initially consist of all the streets, drives, drainage easements, elevated observatory, community pool, lighting, access easements and other common improvements. In certain circumstances, Common Area may not be owned by the Declarant or the Association in fee, but may, in some instances, be held as an easement, be leased or may simply be areas of land that are not owned or leased by Declarant or the Association but which are maintained by the Association or the Declarant for the use and benefit of the Owners.

1.05 “Lot” shall mean and refer to that portion of any of the plots of land shown upon the plat of the Property, as amended from time to time, on which there is or will be built single family dwellings

1.06 “Declarant” shall mean and refer to Audubon Village-Gilchrist, L L C , its successors and assigns

1.07 “Architectural Control Guidelines” shall mean the guidelines, rules and specifications established and set forth from time to time by the Architectural Control Committee defining requirements for construction, maintenance, alterations and repairs of any and all structures and improvements within the Property and setting forth all other applicable rules and regulations pertaining to any matter over which the Architectural Control Committee has been granted control under this Declaration. The Architectural Control Guidelines may be prepared and filed of record at any time by the Architectural Control Committee and may be amended and restated from time to time as determined in the discretion of the Architectural Control Committee. A copy of the initial Architectural Control Guidelines is attached hereto as Exhibit “A” and incorporated herein by reference.

ARTICLE II.

RESERVATIONS AND DEDICATION

2.01 Roads, Streets and Cart Paths. There is hereby reserved unto Declarant, its successors and assigns, perpetual easements and rights-of-way in, along, under, over, across and through roads, streets and cart paths of every type shown on the Plat or map of the Subdivision to construct, operate, maintain, inspect, reconstruct and repair roads, streets and cart paths, together with the right to connect such roads, streets and cart paths with other roads, streets and cart paths. The roads and streets are not dedicated to the public in any manner, but Declarant reserves for itself and its successors and assigns the right to dedicate such roads and streets to the public.

2.02 Utilities There is hereby reserved unto Declarant, its successors and assigns, the exclusive right and easement into the streets, shown on the recorded plat of the Property and also into any area designed as a utility easement on the recorded plat of the Property, to lay, construct, maintain, operate, repair, replace and remove utility lines (including but without limitation, water lines, sewer lines, gas lines, electric lines, telephone and communication lines, and cable television lines, whether located above or below ground), and, further Declarant reserves for itself and its successors and assigns the exclusive right and easement, without further assent or permit from any Owner, to grant franchises and easements to any public or private utility company, municipality or water company, to lay, construct, maintain, operate, repair, replace and remove utility lines in said roads, streets, easements and drives. For purposes hereof, Declarant and its successors and assigns shall have the right of access to and across each Lot in the Subdivision for the purpose of laying, constructing, maintaining, repairing and replacing the public and/or private utility lines. Any claims for damages, if any, by the construction, maintenance, repair thereon or replacement thereof on account of temporary or other inconvenience caused thereby against the Declarant or any public or private company or any other agent or servants, are hereby waived by any Owner and any Owner's heirs, successors and assigns.

2.03 Elevated Observatory. There is hereby reserved unto Declarant, its successors and assigns, the exclusive right and easement to lay, construct, maintain, repair and replace the elevated observatory located in and within the Subdivision, and, further Declarant reserves for itself and its successors and assigns the exclusive right and easement, without further assent or permit from any Owner, to grant franchises and easements to any public or private company to lay, construct, maintain, repair and replace such elevated observatory.

2.04 Community Pool. There is hereby reserved unto Declarant, its successors and assigns, the exclusive right and easement to lay, construct, maintain, repair and replace a community swimming pool located in and within the Subdivision, and, further Declarant reserves for itself and its successors and

assigns the exclusive right and easement, without further assent or permit from any Owner, to grant franchises and easements to any public or private company to lay, construct, maintain, repair and replace such community swimming pool.

2.05 Assignment and Transfer of Reservations. It is further reserved unto the Declarant, the exclusive right to transfer unto the Association or to any other person or company, by deed or other legal means, the Common Area, and the reservations as designated unto Declarant in this Article II

ARTICLE III.

USE RESTRICTIONS

The Property and each Lot situated thereon shall be constructed, developed, reconstructed, repaired, occupied and used as follows

3.01 Residential Purposes. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other Occupant shall use or occupy such Owner's Lot, or permit the same or any part, thereof to be used or occupied, for any purpose other than as a private single family detached residence for the Owner or such Owner's tenant and their families and domestic servants employed on the premises

3.02 Replatting. No Lot shall be replatted or resubdivided, provided, however, that Declarant shall have and reserves the right, at any time, or from time-to-time, upon compliance with applicable law, to file a replat of the Plat to effect a resubdivision or reconfiguration of any Lots then owned by Declarant. Owners shall not unreasonably withhold or delay any necessary joinder in or consent to the replat or amendments to the Plat. The privilege to replat Lots owned by the Declarant reserved in this section shall be exercisable only by Declarant

3.03 Minimum and Maximum Floor Space. Each and every dwelling and other improvements constructed on any Lot shall contain such minimum square feet and shall not exceed such maximum square feet as established and required by the Architectural Control Committee (as provided in Section 3.11 and Article VI hereof). In the absence of any determination by the Architectural Control Committee of the minimum and maximum square footage requirements, then each dwelling shall contain a minimum of 500 square feet and a maximum of 1,600 square feet of conditioned areas. Each dwelling shall also contain a mezzanine level under the first conditioned level and above the slab. The space enclosed by solid walls in the mezzanine level may be no greater than 20% of the total mezzanine area and may not be air-conditioned. All solid walls on this level must be constructed of break-away material and conform to current FEMA breakaway wall standards

3.04 Combining Lots. If approved by the Architectural Control Committee, any person owning two or more adjoining Lots may consolidate such Lots into a single building location for the purpose of constructing one (1) residential structure thereon (the plans and specifications therefore being approved as set forth in this Declaration) and such other improvements as are permitted herein, provided, however, any such consolidation must comply with the requirements and guidelines imposed by the Architectural Control Committee and the rules, ordinances and regulations of any governmental authority having jurisdiction over the Property. In the event of any such consolidation, the consolidated Lots shall be deemed to be a single Lot for purposes of applying the provisions of this Declaration; provided, however, such Owner shall continue to pay assessments on such Lots as if such Lots had not been consolidated and shall be entitled to one vote for each Lot (determined prior to such consolidation) owned by such Owner. Any such consolidation shall give consideration to easements as shown and provided for on the Plat and

any required abandonment or relocation of any such easements shall require the prior written approval of Declarant as well as the prior written approval of any utility company having the right to the use of such easements. Combining of portions of Lots into a single building site is prohibited.

3.05 Setback Requirements and Building Location. All front, side and rear setbacks must be approved by the Architectural Control Committee, and must meet the following minimum set back requirements: five feet set back from the north and south property lines. Lots 1 through 9 shall be set back five feet from the eastern property lines and fifteen feet from the western property lines. Lots 10 through 14 shall be set back 5 feet from the western property lines and 15 feet from the eastern property lines. The location of the main residence on each Lot shall be subject to the written approval of the Architectural Control Committee. No building or structure of any type shall be erected on any Lot nearer to the property lines than indicated by the minimum building setback requirements.

3.06 Height. No building or structure on any Lot shall exceed, in height, the maximum height allowed by the Architectural Control Committee.

3.07 Driveways. Each Lot must be accessible to the adjoining street by a driveway suitable for such purposes and approved in writing as to design, materials and location by the Architectural Control Committee before the residential structure located on such Lot may be occupied or used.

3.08 Access. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot except as expressly provided on the Plat, or otherwise approved in writing by the Architectural Control Committee.

3.09 Drainage. Neither the Declarant nor its successors or assigns shall be liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After the residence to be constructed on a Lot has been substantially completed, the Lot will be graded so that surface water will flow to streets, canals, drainage easements, or Common Properties, and in conformity with the general drainage plans for the subdivision.

3.10 Utilities. Each residence situated on a Lot shall be connected to the water and utility lines as soon as practicable after same are available at the Lot line. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except portable gas grills), shall require the prior written approval of the Architectural Control Committee, and, if so approved, the Architectural Control Committee may require that such tank, bottle or cylinder be installed underground. Without limiting the generality of the foregoing, each residence situated on a Lot shall be connected to the water and sewer lines providing water and sewer service to the Subdivision. Private water wells and private septic systems are prohibited and no Owner may elect to opt out of or refuse to use the water and sewer system that is available to the entire Subdivision. The Association shall have the power to enter into contracts with any person or public or private company to obtain sewer and wastewater service for the Subdivision and all of the Lots and the owners of the Lots shall be bound by the terms of such contracts. If the Association fails to enter into any such contracts, then each lot owner shall contract directly with the providers of water and sewer service. Each Owner shall be required to pay all applicable fees and charges relating to the use of the water and sewer systems as may be established and assessed from time to time. Any such fees and charges may be billed directly to the Owner or the Association may elect to contract to have the Association pay the total fees and charges to the provider of the system and in turn the Association may assess each Owner and Member his proportionate share of such fees and charges, which assessments shall become part of the annual maintenance assessments made upon the Members as provided in Article V of these Declarations. **Water shall be provided to the Subdivision by the Bolivar Special Utility District or its successor, or any other provider approved**

by the Association. Sewer service shall be provided to the Association by Bolivar Utility Services, L.L.C., a private company, or its successor, or any other provided approved by the Association. Each Owner shall be required to pay all applicable fees and charges relating to the use of the water and sewer systems as may be established and assessed from time to time, including but not limited to, a \$5,000 capacity utilization fee that will be due and payable to Bolivar Utility Services, L.L.C. upon the initial purchase of each Lot. Any such fees and charges may be billed directly to the Owner or the Association may elect to contract to have the Association pay the total fees and charges to the provider of the system and in turn the Association may assess each Owner and Member his proportionate share of such fees and charges, which assessments shall become part of the annual maintenance assessments made upon the Members as provided in Article V of these Declarations.

3.11 Construction Requirements.

(a) The building plans and exterior design, color and appearance of all dwellings and all other structures and improvements of any kind must be approved by the Architectural Control Committee prior to the start of construction. The exterior surface of all residential dwellings and all other structures and improvements of any kind shall be constructed of materials and shall be of an appearance and color approved by the Architectural Control Committee. The Architectural Control Committee will only approve building materials which are of a high grade and quality and which are consistent with the external design, color and appearance of other improvements within the subdivision. The roof pitch of any structure must be approved in writing by the Architectural Control Committee. Exterior paint and stain colors shall be subject to the written approval of the Architectural Control Committee.

(b) All improvements of any kind shall be constructed in accordance with the Architectural Control Guidelines adopted and approved by the Architectural Control Committee. All buildings and improvements of any kind must be constructed by a builder approved by the Architectural Control Committee. The Architectural Control Guidelines may be amended from time to time by the Architectural Control Committee. The Architectural Control Guidelines, as adopted and amended from time to time by the Architectural Control Committee, may prohibit or restrict the construction or installation of certain types of structures, facilities or other improvements, including but not limited to, swimming pools, spas, outbuildings, boat sheds, RV sheds, fences, and other improvements.

(c) Upon the sale of any residential Lot in the Subdivision by the Developer to any third party, the third party who purchases such Lot (the "Initial Purchaser") must start construction of the residence to be built on such Lot within two years from the date the Initial Purchaser acquired ownership of the Lot. Such construction must be completed in accordance with all of the requirements set forth in these restrictions and in strict compliance with the standards and specifications established by the Architectural Control Committee, as may be published and amended from time to time. Except as provided in the next sentence, if the Lot is sold by the Initial Purchaser, there shall be no extension of time granted to any subsequent buyer and owner to start construction of the residence and such construction must still start within two years from the date the Initial Purchaser acquired ownership of the Lot, provided, however, if the Lot is sold in an arms length transaction by the Initial Purchaser or any subsequent owner within the six month period preceding the expiration of the two years after the Lot was first acquired by the Initial Purchaser, then the time that construction of the residence on such Lot must be

started will be extended for six months. This six month extension shall be applicable one time only, regardless of any subsequent sales or change in ownership of the Lot. If the owner of the Lot fails to start construction of the residence within the time required by these restrictions, then the Developer or any assignee designated by the Developer shall have the option to repurchase the Lot from the then current owner for a cash purchase price equal to the original purchase price paid to the Developer by the Initial Owner, which option may be exercised by the Developer any time before construction of the residence has started on such Lot. If the owner of the Lot fails to diligently proceed with completion of construction of the residence on the Lot in accordance with these restrictions and the standards and specifications established by the Architectural Control Committee, then a special assessment shall be imposed on the owner and the Lot in the amount of FIFTY DOLLARS (\$50.00) per day for each day that the owner is in breach of these restrictions, which assessment shall be payable to **AUDUBON VILLAGE PROPERTY OWNERS ASSOCIATION, INC.**, and which assessment shall be secured by a lien on the Lot that is enforceable in the same manner as all other assessments provided for in Article V of these restrictions.

3.12 Landscaping. All Lots shall be landscaped in accordance with the landscaping requirements established by the Architectural Control Committee. The HOA shall assume the responsibility of landscaping and maintaining all yards, except for the five feet from the slab of the house in which the Lot Owner may landscape with personal plantings. Each Lot Owner shall be responsible for maintaining his own landscaping in a healthy condition and in accordance with the requirements established from time to time by the Architectural Control Committee.

3.13 Fences. No fence, wall or hedge shall be erected, placed or altered on any Lot unless otherwise approved and permitted by the Architectural Control Committee.

3.14 Trash Receptacles and Collection. Each Lot Owner shall make or cause to be made appropriate arrangements with a waste disposal company approved by the Association for collection and removal of garbage and trash on a regular basis. If the Owner fails to make such provisions, the Association may do so and assess the costs thereof to the Owner. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the Association in connection with the storage and removal of trash and garbage. Garbage cans and other receptacles shall (except when placed on a street or drive for regular collection purposes) be hidden or screened from public view. All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter, nor for the storage of any junk vehicles and nor for the repair of any motor vehicle, boat or marine vessel. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, or other containers approved by the Association, and which shall be maintained in a clean and sanitary condition. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which the materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot and no open fires or burning shall be permitted upon any Lot without the prior approval of the Association.

3.15 Exterior Lighting. No exterior light, including landscape lighting, shall be installed or maintained on any Lot without the prior written approval of the Architectural Control Committee. Further, and notwithstanding such prior written approval, upon being given notice by the Architectural

Control Committee that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or shield the same in such a way that it is no longer objectionable

3.16 Window Coolers and Window Treatments. No window or wall type air-conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any residential building on any part of the Subdivision without the prior written approval of the Architectural Control Committee. No aluminum foil, reflective film or similar treatment shall be placed on any windows or glass without the prior written approval of the Architectural Control Committee

3.17 Antennas Restrictions and Satellite Dishes. No radio or television aerial wires or antennas shall be maintained on the outside of any building nor shall any freestanding antennas of any style be permitted. All radio or television aerial wires or antennas must be built within the main structure and must not be visible from outside of such structure. **No satellite dish shall be permitted on any Lot or structure constructed on any Lot without the prior written approval of the Architectural Control Committee.**

3.18 Temporary Structures and Vehicles. No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residence to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no residence, house, garage or other structure appurtenant thereto shall be moved upon any Lot from another location, except for a sale, pre-sale or construction trailer, provided, however, that Declarant reserves the exclusive right to erect, place and maintain and to permit builders to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with the construction and sales operations on the Property, but in no event shall a builder have such right for a period in excess of one (1) year after the date of substantial completion of his last residence on the Property. Any truck, bus, recreational vehicle, boat, boat trailer, trailer, mobile home, camp mobile, camper or any vehicle other than conventional automobile shall, if brought within the Property, be stored, placed or parked within the garage of the appropriate Owner or concealed from view from adjoining Lots, Common Properties, or public streets, unless approved in writing by the Architectural Control Committee

3.19 Parking. On-street parking is restricted to approved deliveries, pick-up or short-time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Association. Parking in driveways is permitted

3.20 Signs. No signs or flags shall be displayed to the public view on any Lot without the prior written approval of the Architectural Control Committee. No "for rent" and no "for sale" signs shall be permitted and no such signs shall be displayed to the public view of any Lot. With the prior written approval of the Architectural Control Committee, a sign or signs identifying the owner, builder and any architect or designer may be displayed during construction, but no other signs will be allowed. Further, no fountains or other yard decorations shall be constructed, installed or placed on any Lot, nor shall any flags, banners or pennants be displayed on any Lot, without the prior written approval of the Architectural Control Committee.

3.21 Removal of Dirt, Drilling and Mining Operations. The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon. No oil drilling, water drilling or development operations, oil

refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, water wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot.

3.22 Offensive Activities. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the other Owners. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential Lot, except that dogs, cats or other household pets [not to exceed two (2) adult animals] may be kept, provided that they are not kept, bred or maintained for commercial purposes. No radio, stereo, broadcast or loud speaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any building, without prior written approval and authorization of the Association. No garage sales, estate sales or similar activities or events shall be conducted on any residential lot. No open fires or burning shall be permitted on any Lot. Repairs and maintenance of vehicles, lawn equipment, appliances and other equipment on driveways and other areas open to view by the public is prohibited.

3.23 Renting and Timesharing. No Lot or residence or other improvement constructed thereon shall be rented to any third party except for rentals that are for a continuous rental period of not less than six months. However, vacation rentals for a shorter period of time shall be permissible if made on an Owner's behalf by a professional real estate company who has been approved by the Architectural Control Committee.

3.24 Duty of Maintenance.

(a) Owners and occupants (including lessees) of any Lot shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including buildings, improvements, grounds or drainage easements or other rights-of-way incident thereto, and vacant land, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (i) Prompt removal of all litter, trash, refuse and waste,
- (ii) Keeping parking areas, driveways, curbs and roads in good repair,
- (iii) Complying with all government health and police requirements and all requirements of the Association and the Architectural Control Committee,
- (iv) Repair of exterior damages to improvements,
- (v) Cleaning of landscaped areas lying up to five feet from the slab, and
- (vi) Repair of exterior damages to improvements,

(b) If, in the opinion of the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after

receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person.

(c) Notwithstanding the provisions above, yard maintenance, excluding plantings up to five feet from the slab of a home, is the responsibility of the HOA. As such, the HOA has the right to enter and maintain such lawns, trees, and plantings.

(d) The Owners and occupants (including lessees) of any Lot on which work is performed pursuant to this Section shall, jointly and severally, be liable for the cost of such work [such costs constituting a special individual assessment] and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all said persons, jointly and severally, and shall constitute a lien against that portion of the Property on which said work was performed. Such lien shall have the same attributes as the lien for Assessments and special assessments set forth in this Declaration, and the Association shall have the identical powers and rights in all respects, including but not limited to the right of foreclosure.

3.25 Maintenance of Common Area and Common Properties. All landscaping and improvements placed or erected on the Common Area or Common Properties by Declarant shall be owned and maintained by the Association. For purposes hereof, the Association may contract with Declarant, any person or company affiliated with or related to Declarant, and any other person or company to maintain the Common Area and Common Properties on behalf of the Association, which contracts may be for such term and on such conditions as the Board of Directors of the Association may approve.

3.26 Hunting and Firearms. No hunting and no use or discharge of firearms will be allowed from or in the Subdivision.

3.27 Exterior Christmas Lights. No exterior Christmas lights, nor any other exterior lighting or decorations of any kind shall be erected or displayed except in strict accordance with the Architectural Control Guidelines.

3.28 Minimum Set Back Lines. No dwelling structures, including attached or detached garage or other accessory building, shall be located nearer to the front Lot line or nearer to a side Lot line than the minimum building set back requirements as set forth in 3.05 and defined by the Architectural Control Committee. However, with the prior written approval of the Architectural Control Committee (as part of its plan approval), open and unenclosed terraces or porches and eave and roof overhangs may project across the front building set back line. Further, no dwelling structure, including any attached or detached garage or other accessory building, shall be located nearer the rear lot line than what is approved by the Architectural Control Committee. The Architectural Control Committee shall determine in which direction a dwelling or other building shall face on a Lot.

3.29 Utility Service and Meters; Mechanical Equipment Screening. All utility service lines between meter points and dedicated utility easements shall be underground unless otherwise approved in writing by the Architectural Control Committee. Meters for utilities shall be screened from

view from any street in the Subdivision unless otherwise approved in writing by the Architectural Control Committee. Air conditioning compressors and other external mechanical equipment must be screened from view from the streets in the Subdivision in a manner acceptable to the Architectural Control Committee unless otherwise approved in writing by the Architectural Control Committee.

3.30 Conflict Between Ordinances and Restrictions In the event of any conflict between the restrictions contained in this Declaration and any ordinances, laws, rules, or regulations of any municipal or other governmental authorities having jurisdiction over the Subdivision or the construction of improvements therein, then such ordinances, laws, rules and regulations, shall control, except however, that if these restrictions contained herein are in any respect more restrictive than such ordinances, laws, rules, or regulations, than the restrictions contained herein shall control.

3.31 Variations. The Board of Directors of the Association may, in its discretion, approve a variance of any of the use restrictions or other restrictions contained in this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the application of the restrictions set forth herein, provided that such variance will not be materially detrimental or injurious to the other Lots and the Subdivision.

ARTICLE IV.

PROPERTY OWNERS ASSOCIATION

4.01 Property Owners Association. Declarant will organize or cause to be organized an association which will be organized for the purposes hereinafter mentioned, and such Association shall be called "AUDUBON VILLAGE PROPERTY OWNERS ASSOCIATION". The Association shall have the right and obligation to maintain the Common Area and Common Properties once Declarant turns over and assigns such right and obligations to the Association. The Association shall administer the maintenance funds hereinafter provided within these restrictions. The Association shall have all of the powers and authority set forth in its Articles of Incorporation and Bylaws, together with the general powers of a nonprofit corporation, and together with the powers and authority set forth in this Declaration, and shall have the power and authority to do any and all lawful things which may be authorized, required or permitted to be done by applicable law.

4.02 Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a member of the Association. Except as provided in Section 4.05 below, each Lot owner shall be entitled to one (1) vote, which may be cast by the owner or co-owners of that Lot but in no event shall more than one (1) vote be cast with respect to any Lot, except as hereinafter stated in the Relative Factor shown in Exhibit "B". Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot.

4.03 Suspension of Voting Rights. The Association may suspend the voting rights of any Owner for any period during which any assessment against that owner's Lot remains unpaid.

4.04 Bylaws. The Association shall have Bylaws that set forth such other and further rules and regulations governing the Association and its operation.

4.05 Limitation on Voting Rights of Members Notwithstanding the provisions of Section 4.02, no Member and no owner of any Lot shall be entitled to exercise any voting rights with respect to the Association until Declarant transfers and assigns control of the Subdivision and the Association to the Board of Directors of the Association by written instrument executed by

Declarant and filed for record in the Office of the County Clerk of Galveston County, Texas. Until such time, Declarant shall retain all voting rights with respect to the Association and Declarant shall be in sole control of the Association and of the Association's Board of Directors and each owner of a Lot hereby irrevocably appoints and designates Declarant as its sole agent to exercise all voting rights on behalf of the owner with respect to the owner's membership interest in the Association. Declarant agrees that it will relinquish its control and transfer and assign control of the Subdivision and the Association to the Board of Directors and its members not later than 45 days after Declarant has sold all of the Lots within the Subdivision (including any additional lots that are added to and become subject to this Declaration pursuant to the provisions of Section 10.01 hereof).

ARTICLE V.

COVENANTS AND MAINTENANCE ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Each purchaser and Owner of any Lot, by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association) (1) annual maintenance assessments or charges (as specified in Section 5 04 hereof), such assessments to be fixed, established and collected from time to time as herein provided, (2) special assessments for capital improvements and other purposes (as specified in Section 5 05 hereof), such assessments to be fixed, established and collected from time to time as hereinafter provided, and (3) individual special assessments levied against one or more Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of such Owner or Owners, his Tenants (if applicable), and their respective family, agents, guests and invitees, and not caused by ordinary wear and tear (as specified in Section 5 05 hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance, special capital, and special individual assessments described in this Section 5 01 (hereinafter, the "Assessment" or the "Assessments") together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which any such Assessment is made. Each such Assessment, together with interest thereon, attorneys' fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such Lot at the time when the Assessment fell due. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his Lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due, provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

5.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for (i) the purpose of promotion of the recreation, comfort, health, safety and welfare of the Owners and/or the residents of the Subdivision, (ii) managing the Common Area and Common Properties, (iii) enhancing the quality of life in the Subdivision and the value of the Lots, (iv) improving and maintaining the Common Area and Common Properties, the properties, services, improvements and facilities devoted to or directly related to the use and enjoyment of the Common Area and Common

Properties, including, but not limited to, the payment of taxes on the Common Area and Common Properties and insurance in connection therewith and the repair, replacement and additions thereto, (v) paying the cost of labor, equipment (including, the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Area and Common Properties, (vi) carrying out the powers and duties of the Board of Directors of the Association as set forth in this Declaration and the Bylaws, (vii) paying the contractual obligations, debts and liabilities of the Association, (viii) carrying out the purposes of the Association as stated in its Articles of Incorporation, (ix) pay all costs associated with the operating the Common Areas, including but not limited to, utilities, landscaping and maintenance, and (x) carrying out the powers and duties relating to the Architectural Control Committee, after Declarant has delegated or assigned such powers and duties to the Association

5.03 Improvement and Maintenance of the Common Area and Common Properties Prior to Conveyance to the Association. Initially, all improvement of the Common Area and Common Properties shall be the responsibility of the Declarant and shall be undertaken by Declarant at its sole cost and expense with no right to reimbursement from the Association. After the initial improvements to the Common Area and Common Properties are substantially completed and until the date of the conveyance of the title to the Common Area and Common Properties to the Association, the Declarant, on behalf of the Association, shall have the responsibility and duty (but with right of Assessment against all Owners) of maintaining the Common Area and Common Properties, including, but not limited to, the payment of taxes on and insurance in connection with the Common Area and Common Properties and the cost of repairs, replacements and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Area and Common Properties. In this regard, and until such time as the Common Area and Common Properties are conveyed to the Association, all Assessments collected by the Association (less such amount required for the operation of the Association) shall be forthwith paid by the Association to Declarant, to the extent that such Assessments are required by Declarant to maintain the Common Area and Common Properties as set forth in this Paragraph. The Association may rely upon a certificate executed and delivered by the Declarant with respect to the amount required by Declarant to maintain the Common Area and Common Properties hereunder.

5.04 Annual Maintenance Assessment. Each Lot and property owner shall be subject to an annual maintenance assessment an assessment for the maintenance, repair and replacement of all common areas ("General Maintenance Assessment"). Pursuant to Section 5.06 below, each Lot will be assessed an annual fee based upon a relative factor for the assessment. The General Maintenance Assessment shall be made based upon a relative factor for each Lot which factor shall approximate the total surface area of each Lot. Funds collected for the assessment shall be placed into a bank account (e.g. "General Maintenance Fund") and funds so deposited shall only be used for the purposes for which the assessment is made. A schedule of each Lot's relative factor for the assessment is attached hereto as **Exhibit "B"**. Further, the following provisions shall apply for maintenance assessments:

(a) Commencing with the year beginning January 1, 2006, and each year thereafter, each Member shall pay to the Association an annual maintenance assessment in such amount as set by the Board of Directors, at its annual meeting next preceding such January 1, 2007, and each successive January 1 thereafter, except that the meeting setting forth the first year's assessment may take place at any time during 2006.

(b) Subject to the provisions of Section 5.04(c) below, the rate of annual maintenance assessments may be increased by the Board. The Board may, after consideration of current maintenance, operational and other costs and the future needs of

the Association, fix the annual maintenance assessment for any year at a lesser amount than that of the previous year

(c) An increase in the rate of the annual maintenance assessment as authorized by Section 5.04(b) hereof in excess of twenty-five percent (25%) of the preceding year's annual maintenance assessments must be approved by the majority vote of the Members of the Association

(d) When the annual maintenance assessment is computed for Lots, all or a portion of such annual maintenance assessment shall be payable to the Association by the Member according to the status of the Lot owned by such Member as follows

(i) As to a Lot owned by any person or company other than Declarant, the full annual maintenance assessment shall be payable

(ii) As to a Lot owned by Declarant, one percent (1%) of the annual maintenance assessment shall be payable

(e) The Board of Directors may provide that annual maintenance assessments shall be paid monthly, quarter-annually, semi-annually or annually on a calendar year basis. No later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall (i) estimate the amount for the General Maintenance Fund the total common expenses to be incurred by the Association for the forthcoming fiscal year, (ii) determine, in a manner consistent with the terms and provisions of this Declaration, the amount of the annual maintenance assessments to be paid to each fund by each Member, and (iii) establish the date of commencement of the annual maintenance assessments. Written notice of the annual maintenance assessments to be paid by each Member and the date of commencement thereof shall be sent to every Member, but only to one (1) joint Owner. Each Member shall thereafter pay to the Association his annual maintenance assessments in such manner as determined by the Board of Directors

(f) The annual maintenance assessments shall include reasonable amounts, as determined by the Members or by the Board, collected as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Area and Common Properties. Assessments collected as reserves **shall not** be considered to be advance payments of regular annual maintenance assessments

5.05 Special Capital Assessments; Special Individual Assessments and Special Environmental Assessment.

(a) In addition to the annual maintenance assessments authorized in Section 5.04 hereof, the Board of Directors of the Association may levy in any calendar assessment year a special capital assessment for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Property or Common Area or Common Properties, including the necessary fixtures and personal property related thereto (ii) maintaining portions of the Common Area and Common Properties and improvements thereon, including but not limited to, maintaining, repairing and replacing streets, roads, lights, elevated observatory or (iii) carrying out other purposes of the Association, provided, however, that any such special capital assessment levied by the Association shall have the approval of a majority of the Members. Any special capital assessment levied by the Association shall be paid by the Members directly to the Association on such date or dates as

determined by the Board of Directors. All such amounts collected by the Association may only be used for the purposes set forth in this Section 5.05.

(b) The Board of Directors of the Association may levy special individual assessments against one or more Owners for (i) reimbursement to the Association of the costs for repairs to the Property or Common Area or Common Properties and improvements thereto occasioned by the willful or negligent acts of such Owner or Owners and not ordinary wear and tear, (ii) for payment of fines, penalties or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws of the Association or any rules or regulation promulgated hereunder, and (iii) to reimburse the Association for all reasonable expenses incurred to enforce these Restrictions, including but not limited to, attorney's fees and litigation expenses. Any special individual assessment levied by the Association shall be paid by the Owner or Owners directly to the Association. All amounts collected by the Association as special individual assessments under this Section 5.05 shall belong to and remain with the Association.

(c) Each Lot shall be subject to a special environmental assessment fee due and payable by the purchaser of the Lot at the time the Lot is purchased from the Developer and upon each subsequent sale of the Lot including any improvements thereon. The amount of the environmental special assessment fee shall be equal to ONE-HALF PERCENT(0.50%) of the gross sales price of the Lot, as improved, and the assessment fee shall be paid to one or more charitable trusts or similar nonprofit organizations designated from time to time by the Declarant that exist for the purpose of restoration and/or preservation of the Texas gulf coast region. The provisions of this Section 5.05(c) shall expire, terminate, and no longer be effective as of June 1, 2056.

5.06 Rate of Annual Maintenance Assessments and Special Capital Assessments. Both annual maintenance assessments and special capital assessments (excepting therefrom special individual assessments) shall be payable as set forth herein. In determining the rate for all Lots, the Board may determine to set and assess such rates in any way that is reasonable and uniform to all Lot owners, including a rate based on the Relative Factor of each Lot as shown in **Exhibit "B"**, or under any such other method as determined by the Board. Such rates may differ for different assessments. By way of example only, the Board may set a flat rate per lot for street maintenance and set a different rate for maintenance of another common amenity.

5.07 Date of Commencement of Assessments; Due Dates; No Offsets. The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors to be the date of commencement and, except as hereinafter provided, shall be payable monthly, quarterly, semi-annually or annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Board of Directors shall direct. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 5.04 hereof as the remaining number of months in that year bears to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the annual maintenance assessment for such month shall be prorated by the number of days remaining in the month. The due date or dates, if to

be paid in installments, of any special capital assessment or special individual assessment under Section 5.05 hereof shall be fixed in the respective resolution authorizing such assessment. Annual maintenance, special capital and special individual assessments may be established, collected and enforced by the Declarant at any time prior to the incorporation of the Association. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason. Notwithstanding anything contained herein to the contrary, the regular annual assessments provided for in this Declaration shall not attach to any Lot until the first to occur of the following: (i) the conveyance of a Lot by Declarant to an Owner (other than a Builder), (ii) thirty (30) days following the substantial completion of a residence upon a Lot owned by Declarant, or (iii) with respect to a Lot conveyed by Declarant to a Builder, the earlier of the substantial completion of a residence thereon, the conveyance by the Builder of such Lot (except for conveyance to Declarant), or two hundred seventy (270) days after the Builder has acquired title to such Lot. A Builder for purposes hereof shall be a person or entity who acquires a Lot for purposes of construction thereon a residence for sale for a profit and who is in the home construction business.

5.08 Duties of the Board of Directors with Respect to Assessments.

(a) The Board of Directors shall fix the date of commencement and the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of all assessments shall be delivered or mailed to every Owner subject thereto. Such notice shall be sent to each Owner at the last address provided by each Owner, in writing, to the Association.

(c) The omission of the Board of Directors to fix the assessments within the time period set forth above for any year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

(d) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment a certificate signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

5.09 Non-Payment of Assessment.

(a) Delinquency. Any Assessment, or installment thereof, which is not paid in full when due shall be delinquent on the day following the due date (herein, "delinquency date") as specified in the notice of such Assessment. The Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from and after the delinquency date until paid at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum lawful rate.

(b) The unpaid amount of any Assessment not paid by the delinquency date shall, together with the interest thereon as provided in Section 5.09(a) hereof and the cost of collection

thereof, including reasonable attorneys' fees, become a continuing lien and charge on the Lot of the non-paying Owner, which shall bind such Lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to and other liens and charges against the Lot, except only for tax liens and the lien of any bona fide first mortgage or first deed of trust now or hereafter placed upon such Lot. A subsequent sale or assignment of the Lot shall not relieve the Owner from liability for any Assessment made prior to the date of sale or assignment and thereafter becoming due nor from the lien of any such Assessment. The Board shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Board. As hereinbefore stated, the personal obligation of the Owner incurred at the time of such Assessment to pay such Assessment shall remain the personal obligation of such Owner and shall not pass to such Owner's successors in title unless expressly assumed by them in writing. Liens for unpaid Assessments shall not be affected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his lot.

To evidence any lien, the Association shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot covered by such lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the County Clerk of Galveston County, Texas.

(c) Remedies The lien securing the payment of the Assessments shall attach to the Lot belonging to such non-paying Owner with the priority set forth in this Section. Subsequent to the recording of a notice of the lien, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien. In any foreclosure proceeding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Assessment there shall be added to the amount of any such Assessment

- (i) the interest provided in this Section,
- (ii) the costs of preparing and filing the complaint in such action,
- (iii) the reasonable attorneys' fees incurred in connection with such action, and
- (iv) any other costs of collection,

and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents or trustees the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also

suspend the Association membership and voting rights of any Owner who is in default in payment of any Assessment in accordance with this Declaration and/or the Bylaws. To secure and enforce the payment of all assessments provided for in this Declaration, together with all interest accrued or accruing thereon and attorney's fees and other costs reasonably incurred by the Association in collecting the same, and for the auxiliary and cumulative enforcement of said lien, and in consideration of the sum of \$1 00 to Declarant in hand paid by the Trustee hereinafter named, and for the further consideration of the uses, purposes and trusts hereinafter set forth, Declarant has granted, sold, and conveyed, and by these presents does grant, sell, and convey unto Lance Fox, Trustee, of Jefferson County, Texas, whose mailing address is P O Box 1751, Beaumont, Texas 77704, and any substitute or successor trustee appointed hereunder by Declarant or the Association (each of whom shall have the power to appoint a successor trustee), each of the Lots in the Subdivision, to have and to hold the said Lots unto the said Trustee, and to his substitutes or successors forever. Declarant does hereby bind itself, its successors and assigns, to warrant and forever defend the Lots unto the said Trustee, his substitutes, successors and assigns forever, against the claim or claims of all persons claiming or to claim the same, or any part thereof by, through, or under Declarant, and so subject to any superior liens and all items of record in the office of the County Clerk of Galveston County, Texas on the date hereof affecting the Lots, for and upon the following trusts, terms, covenants, and agreements, to-wit:

(i) This conveyance, however, is made in trust to secure the payment of all assessments provided for in this Declaration (whether now owed or hereafter ever accruing to the Association). Should Declarant, its successors and assigns, make full payment of the assessments hereby secured as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect.

(ii) In the event, however, of default in the payment of any assessment hereby secured, in accordance with the terms of this Declaration, it shall thereupon, or at any time thereafter, be the duty of the Trustee or his successor or substitute, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust against the Lot against which the assessment is due and owing in the manner provided in §51 002 of the Texas Property Code, as then amended, and after giving notice and advertising the sale as provided in said §51 002 (but without any other action than is required by said §51 002 as then amended) and otherwise complying with that statute, the Trustee shall sell the Lot (including any improvements thereon) at public sale as provided in said §51 002 and make due conveyance to the purchaser or purchasers thereof, with covenants of general warranty binding upon the then Owner of such Lot and such Owner's heirs, executors, administrators and successors.

(iii) Out of the money arising from such sale, the Trustee acting shall first pay all expenses of advertising said sale and making the conveyance (including a Trustee's fee of 5% of the gross sales proceeds), and then to the Association the full amount of assessments owing, together with interest thereon and reasonable attorneys' fees and expenses, rendering the balance of the sale price, if any, to the Owner of said Lot prior to such sale, his heirs or assigns, or to such other person or persons as may be legally entitled thereto. The recitals in the conveyance to the purchaser or purchasers of such Lot shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner of such Lot prior to such sale, his heirs, executors, administrators, successors and assigns.

(iv) It is agreed that in the event foreclosure should be commenced by the Trustee, or his substitute or successor, the Association, as beneficiary hereunder, may at any

time before the sale of the Lot direct the abandonment of the sale and may then institute suit for the collection of the assessments, interest and collection costs then owing to the Association, and, at the election of the Association, for judicial foreclosure of the assessment lien. It is further agreed that if the Association should institute suit for collection and for judicial foreclosure of the assessment lien, the Association may, at any time prior to the entry of a final judgment in said suit, dismiss the same and require the Trustee, or his substitute or successor, to sell the Lot against which the assessment is then owing in accordance with the provisions of this Section 5.09(c).

(v) In case of the absence, resignation, death, inability, failure or refusal of the Trustee herein named or of any substitute trustee appointed hereunder to act, or in the event that the Association shall deem it desirable to remove without cause the Trustee or any substitute trustee and appoint another to execute this trust, then in any of such events, the Association shall have the right and is hereby authorized and empowered to appoint a successor and substitute without any formality other than an appointment and designation in writing, and this appointment shall vest in him, as substitute or successor trustee, the estate and title in and to all said Lots, and he shall thereupon hold, possess, and execute all the rights, title, powers and duties herein conferred upon the Trustee named herein. The right to appoint a successor substitute trustee shall exist as often and whenever from any of said causes any trustee, original or substitute, cannot or will not act, resigns, or has been removed with or without cause.

(vi) The exercise or attempted exercise of the power of sale herein contained shall not exhaust the power of sale and shall not prevent and subsequent exercise thereof.

(vii) The Association, as beneficiary hereunder, if it is the highest bidder, shall have the right to purchase at any sale of a Lot pursuant hereto and to have the amount for which such Lot is sold credited against the indebtedness then owing on such Lot to the Association.

(viii) It is especially agreed that in the event of a foreclosure under the powers granted herein, the person in possession of the Lot sold shall thereupon become a tenant at will of the purchaser or purchasers at the foreclosure sale. Should such tenant then refuse to surrender possession of the Lot upon demand, the purchaser or purchasers shall be entitled to institute and maintain a statutory action for forcible detainer of said Lot in the justice of the peace court for the justice precinct in which the Lot is situated. The bringing of an action for forcible detainer shall not preclude the bringing of any other action for the possession of said Lot, and the bringing of one character of action shall not preclude the other and same may be exercised separately or simultaneously.

(d) Notice to Mortgages The Association may, and upon the written request of any mortgagee holding a prior lien on any part of the Property, shall report to said mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the delinquency date of such Assessment.

5.10 Subordination of the Lien to Mortgages. The lien securing the payment of the Assessments shall be subordinate and inferior to the lien of any perfected First Mortgage granted by an Owner in good faith now or hereafter recorded against any Lot. A First Mortgage is defined as (a) a mortgage or deed of trust which has first and paramount priority under applicable law, (b) a mortgage or deed of trust securing an "equity loan" pursuant to §50(a)(6) of Article XVI of the Texas Constitution, or (c) a mortgage or deed of trust securing a "reverse mortgage" pursuant to §50(a)(7) of Article XVI of the Texas Constitution, provided, however, that such subordination shall apply only to the Assessments.

which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve the new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent assessment.

5.11 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created in Section 5.04 and Section 5.05(a) hereof:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use, and
- (b) All Common Properties

5.12 Estoppel Information from Board with Respect to Assessments. The Board shall upon demand at any time furnish to any Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board of Directors of the Association for the issuance of such certificates. Within ten (10) days after the date a written request for subdivision information is received from an Owner, Owner's agent, or a title insurance company or its agent acting on behalf of an Owner, the Association shall deliver to the Owners, Owner's agent, or the title insurance company or its agents, (i) a current copy of the Declaration applying to the Addition, (ii) a current copy of the By-laws and rules of the Association, and (c) a resale certificate that complies with §207.003(b) of the Texas Property Code, as amended. The Association may establish and collect a reasonable charge to assemble, copy, and deliver the information required by §207.003 of the Texas Property Code, as amended.

ARTICLE VI.

ARCHITECTURAL REVIEW

6.01 Approval Required by Architectural Control Committee. No building, structure or improvement of any kind may be erected or constructed, and no exterior addition to or change in any structure may be made (including repainting or re-roofing involving a change in exterior color scheme), and no building, outbuilding, fence, wall, room addition, residence, structure, antenna or other projection from a structure (whether of a temporary or permanent nature, and whether or not such structure shall be affixed to the ground) nor any other improvement may be constructed, commenced, erected, maintained, improved or altered, nor may any grading, excavation, tree removal, planting, change or exterior color or other work which in any way alters the exterior color or other work which in any way alters the exterior appearance of any Lot or improvement be done on any Lot, until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted in writing and approved in writing by the Architectural Control Committee (hereinafter sometimes called the "Committee" or "ACC" regarding (a) the harmony of its exterior design and location in relation to, and its effect upon surrounding structures, vegetation, topography, and the overall community design of the Property, (b) the type and quality of the exterior materials, (c) the quality of the exterior workmanship, (d) the location of the planned improvements with respect to topography and in relation to other existing or planned structures in the Subdivision, and (e) compliance with the terms of this Declaration and guidelines adopted by the Architectural Control Committee. The plans submitted to the Committee shall at a minimum show the (a) kind, shape, size, height and exterior color scheme, (b) the locations of all improvements, including driveways, and off-street parking, (c) utility installations, (d) the kind, nature,

and quality of materials, (e) finished grade, topography, and elevation, and (f) site landscaping **No residence shall be occupied and no permanent utilities shall be connected, until the Committee has issued a Certificate of Architectural Compliance, certifying that the residence has been constructed in compliance with the Architectural Control Guidelines and procedures.**

6.02 Appointment of Committee. The Committee shall be composed of at least three (3) members. The initial members of the Committee shall be appointed by Declarant. The Declarant shall have the right, in its sole discretion, to remove any existing member of the Committee and to increase the number of members of the Committee and to appoint such additional member(s) as may be required to fill the vacancy or vacancies resulting from the increase in the number of the members thereof, such action to be taken and effected by Declarant's (or its successor's) executing a written instrument reflecting such action and filing it for record in the office of the County Clerk of Galveston County, Texas. Upon the failure to appoint an Architectural Control Committee, the Board of Directors of the Association shall serve as the Architectural Control Committee. No member of the Board of Directors serving on the Committee shall be entitled to compensation for services performed on the Committee. However, the Board of Directors, may employ one or more architects, engineers, attorneys, or other consultants to serve on the Committee and or otherwise assist the Committee in carrying out its duties hereunder. The Association shall pay such consultants for serving on the Committee or for such other services as they render to the Committee.

6.03 Regulation. The Architectural Control Committee shall regulate the external design, appearance and location of the Property and of improvements thereon in such a manner as (a) to comply with the terms and restrictions set forth in this Declaration, (b) to promote those qualities in the environment which bring value to the Property, and (c) to foster the attractiveness and functional utility of the community as a place to live, including a harmonious relationship among structures, vegetation and topography.

6.04 Failure to Respond. In the event that the Architectural Control Committee fails to respond in writing to an application within thirty (30) days after the plans and specifications in writing have been submitted to the secretary, in accordance with adopted procedures, approval will be deemed granted.

6.05 Guidelines. The Architectural Control Committee shall develop and promulgate policy Architectural Control Guidelines for the application of the architectural review provisions in this Declaration. The policy guidelines shall include (a) review procedures, (b) aspects and objectives of review, and (c) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design objectives. The policy guidelines may also include specific design practices that, though optional, are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered in the Property. The Policy guidelines are intended to assist the Architectural Control Committee and the Owners of Lots in the ongoing process of community design. They may be modified and supplemented from time to time by the Committee with approval of the Board of Directors.

6.06 Approval of Builders, Architects and Designers. All residences shall only be constructed and designed by approved builders, architects and home designers. The Committee shall set forth procedures and standards for approval of all builders, architects and home designers and shall provide a list to Lot owners of all so approved.

6.07 Manner of Approval. Approval or disapproval by the Committee of plans as submitted, and approval or disapproval of builders, architects and home designers as required by Section 6.06 above, shall be approved by at least a majority of the members of the Committee, be in writing and be signed by at least one (1) member of the Committee. Approval of Plans (whether actual or deemed) shall not be

valid or effective for a period of more than one hundred twenty (180) days from date of approval, and if, within one hundred twenty (180) days after plan approval, the construction, reconstruction, addition, change, or alteration for which plan approval was obtained has not commenced, then plans must be resubmitted and approved by the Committee before any such construction, reconstruction, addition, change, or alteration may be commenced. There shall be no review of any action of the Committee, except by procedures for injunctive relief when such action is patently arbitrary or capricious, and under no circumstances shall the Committee, any member of the Committee, or any representative of the Committee be subject to any suit by anyone for damages for any action or failure to act on the part of the Committee, any member of the Committee or any representative of the Committee.

6.08 Liability Neither the Committee, nor any member of the Committee or any representative thereof shall be liable to any person or entity under any theory or under any circumstance in connection with the Committee's approval (whether actual or deemed) of any plans submitted to the Committee for approval, including without limitation, any liability based upon the soundness of construction or adequacy of plans and specifications, mistake of judgment, negligence or nonfeasance, or for any other reason. Neither the Committee nor any member or representative thereof shall have any liability to any person or entity by reason of the construction of buildings or the making of other improvements which shall depart from or be at variance with the plans approved by the Committee.

6.09 Fees and Assessments. The Committee, with the approval of the Board of Directors, may assess fees for the review, processing and approval of plans and the enforcement of the Architectural Control Guidelines.

ARTICLE VII.

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

7.01 Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors. Prior to the incorporation of the Association, the Declarant shall select and appoint the Board of Directors. From and after the effective date of the Association's incorporation, the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association, subject, however, to the provisions of Section 4.05 hereof. The Board, for the benefit of the Property, the Common Properties and the Owners, shall provide, and pay for, out of the funds(s) collected by the Association pursuant to Article V above, the following:

(a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from the reserve fund as specifically provided in Section 7.05 herein.

(b) Care and maintenance of the private streets, elevated observatory, landscaping, screening walls and entry features which may be constructed by Declarant on the Common Properties or on private property. Maintenance includes a repair, rebuilding or cleaning deemed necessary by the Board of Directors.

(c) Should the Board so elect, maintenance of exterior grounds, drives, parkways, private streets and access areas, including care of trees, shrubs and grass, the exact scope of which shall be further specified by the Board from time to time. In

particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, trees, shrubs, grass and like improvements which are located on the Common Properties and/or the Lots, except for landscaping, and other like improvements which are located within rear yards or side yards enclosed by solid fence, which shall be maintained by the individual Lot Owner. Maintenance services contracted or by the Board in accordance with this paragraph shall be paid for out of Association funds.

(d) The Association shall have the right to control access to and prevent persons from coming onto the Property. The Association may in its discretion, but shall not be required to, maintain an access control facility located at the entrance of the subdivision and may retain a private security service for the subdivision for the purpose of preventing persons from entering onto the Subdivision without the prior approval of an Owner or Declarant. The access control facility may be operated by the Association, its employee or agent, at such hours and times as the Board may determine from time to time. Nothing contained herein shall be construed so as to hold Declarant or the Association, or any of their employees or agents, responsible for the prevention, nor liable for any loss or losses due to theft, burglary, or damage, or any injury to persons or property caused by persons gaining access to the subdivision. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT NOR ANY OF THEIR RESPECTIVE PARTNERS, OWNERS, EMPLOYEES, AGENTS, MEMBERS OR OFFICERS SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND RESIDENTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE ARCHITECTURAL CONTROL COMMITTEE DO NOT MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO ANY SECURITY SYSTEM, FIRE PROTECTION SYSTEM, OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO ARCHITECTURAL STANDARDS BULLENNS AND DESIGN GUIDELINES ESTABLISHED BY THE DECLAPANT OR THE ARCHITECTURAL CONTROL COMMITTEE. EACH OWNER AND RESIDENT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE, BOARD OF DIRECTORS, THE ARCHITECTURAL CONTROL COMMITTEE, THE DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND RESIDENT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE ARCHITECTURAL CONTROL COMMITTEE, THE DECLARANT, OR ANY SUCCESSOR DF,CLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, RESIDENT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE,

RELATIVE TO SECURITY SYSTEM OR ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY Controlled access services may be installed which will require maintenance of the controlled access system (including, but not limited to, a guard house, guard service and controlled access gates) which may be constructed by Declarant on the Common Properties or on private property Maintenance may include, but not be limited to, all repairs, rebuilding and cleaning as required The exact scope of security services shall be further specified by the Board from time to time In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the operation and maintenance of the controlled access system, including guard service Controlled access services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds

(e) The services of a person or firm to manage and/or provide consultation to the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager

(g) A policy or policies of insurance ensuring the Association, its officers and directors against any liability to the public or to the Owners (and/or their invitees or tenants) incident to the operation of the Association, including, without limitation, officers' and directors' liability insurance

(h) Workers' compensation insurance to the extent necessary to comply with any applicable laws

(i) Such Fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable

(j) Any other materials, supplies, insurance or property owned by the Association, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration

(k) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Properties and any other property of the Association

(l) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on one or more Lots with respect to (i) taxes on the Common Properties and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned in this Declaration

(m) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit

(n) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management

of the Association and the Common Properties, expressly including the power to enter into management and maintenance contracts

(o) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements

(p) To make reasonable rules and regulations for the operation and use of the Common Properties and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Property, by a majority of the Members in the portions affected

(q) Subsequent to incorporation, to make available to each Owner, one hundred twenty (120) days after the end of each year, an unaudited annual report

(r) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency

(s) If, as and when the Board, in its sole discretion, deems necessary, it may take action to enforce the provisions of this Declaration, the provisions of any Supplementary Declaration, the provisions of any additional restrictive covenants placed upon all or any part of the Property, and any rules made hereunder, and to enjoin and/or seek damages from any Owner for violation of such provisions or rules

7.02 Board Powers. From and after the date on which the title to the Common Properties has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein

7.03 Maintenance Contracts and Other Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with the Declarant, any person or company related to or affiliated with Declarant, and any Owner for the performance by the Association of services for and on behalf of the Board and the Association, with such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association. The Board shall also have the power and authority to enter into any contract that that the Board determines will benefit the Association, the Owners or the Subdivision, with such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association. Without limiting the generality of the foregoing, the Board shall have the power to enter into a contract with any public or private person, company or entity to obtain water service, sewer service, waste disposal service and any other service for the Owners and the Subdivision

7.04 Liability Limitations. No Member, officer of the Association or member of the Board of Directors shall be personally liable for debts contracted for, or other-wise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor any of their respective partners, directors, officers,

agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same

The Common Properties may be subject to storm water overflow, natural bank erosion and other natural or man-made events or occurrences to extents which cannot be defined or controlled. Under no circumstances shall Declarant nor the Association nor any of their respective partners, members, employees, officers, directors, or agents ever be held liable for any damages or injuries of any kind or character or nature whatsoever resulting from (i) the occurrence of any natural phenomena, (ii) the failure or defect of any structure or structures situated on or within the Common Properties, and (iii) any act, conduct, omission or behavior of any individual, group of individuals, entity or enterprise occurring on, within or related to the Common Properties

7.05 Reserve Funds. The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the subdivision, and maintaining the subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors. Capital expenditures from this fund may include by way of example, but not be limited to, private street and street light repair, drainage improvements and improvements to bodies of water or other repair of major damage to the Common Properties not covered by insurance

ARTICLE VIII.

INSURANCE; REPAIR AND RESTORATION

8.01 Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, the improvements thereon and appurtenant thereto, for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the subject property. Such insurance may include, but need not be limited to

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier
- (b) Public liability and property damage insurance on a broad form basis
- (c) Fidelity bond for all directors, officers and employees of the Association having control over the receipt or the disbursement of funds in such penal sums as shall b-c determined by the Association in accordance with its Bylaws
- (d) Officers and directors liability insurance

8.02 Insurance Proceeds. Proceeds of insurance shall be disbursed by the insurance carrier to the Association or contractors designated by the Association as the Board of Directors may direct. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

8.03 Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article V of this Declaration to cover the deficiency. If the insurance proceeds are insufficient to repair or replace any loss or damage for which an Owner is bound hereunder, such Owner shall, as such Owner's undivided responsibility, pay any excess costs of repair or replacement.

8.04 Mortgage Protection. There may be attached to all policies of insurance against loss or damage by fire and other hazards, a mortgagee's or lender's loss payable clause, provided, however, that amounts payable under such clause to the mortgagee may be paid to the Association to hold for the payment of costs of repair or replacement, subject to the provisions of Section 8.02 hereof. The Association shall be responsible to hold said monies or to collect additional monies if the proceeds are insufficient to pay for the cost of all repairs or replacements and shall ensure that all mechanics', materialmen's and similar liens which may result from said repairs or replacements are satisfied.

8.05 Destruction of Improvements on Individual Lots. In the event of destruction (total or partial) to the improvements on any individual Lot due to fire or any other cause each Owner covenants and agrees to clear and remove any and all debris resulting from such damage within two (2) months after the date that the damage occurs and to complete all necessary repairs or reconstruction of the damaged improvements within one (1) year after the date that the damage occurs.

ARTICLE IX.

USE OF COMMON PROPERTIES

The Common Properties may be occupied and used as follows:

9.01 Restricted Actions by Owners. No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increasing of any insurance carried by the Association. No waste shall be committed in or on the Common Properties.

9.02 Damage to the Common Properties. Each Owner shall be liable to the Association for any damage to the Common Properties caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, pets, tenants or invitees.

9.03 Rules of the Board. All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees, incurred by the Association in connection therewith.

ARTICLE X.

ADDITIONS TO PROPERTY SUBJECT TO THIS DECLARATION

10.01 Additions to Property. Additional land(s) may become subject to this Declaration in any of the following manners

(a) The Declarant may add or annex additional real property to the scheme of this Declaration by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions ("Supplemental Declaration") which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property, provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration (including without limitations modification and amendment of Exhibit "B") as may be necessary to reflect the different character, if any, of the added properties and as are not materially inconsistent with this Declaration in a manner which adversely affects the plan of development of this Declaration

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association

(c) Any addition's made pursuant to Paragraphs (a) and (b) of this Section 10 01, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added

(d) The Declarant shall have the right and option, without the joinder, approval or consent of any person(s) or entity(ies), to cause the Association to merge or consolidate with any similar association then having jurisdiction over real property located (in whole or in part) within one mile of any real property then subject to the jurisdiction of the Association Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme

ARTICLE XI.

GENERAL PROVISIONS

11.01 Enforcement. The Association, the Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including the right of the Association to recover reasonable attorney's fees in connection with the enforcement hereof Failure by the Association, by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter

The Association, the Declarant or the Owner seeking to enforce these Restrictions shall first notify the Owner, in writing, of the violation of this Declaration, which has occurred and provide said Owner a reasonable opportunity to remove or correct such violation. If, after being provided adequate notice and a reasonable time to cure the violation, the Owner shall fail or refuse to do so, the Association, the Declarant or the Owner seeking to enforce these Restrictions may proceed with appropriate legal action. If the violation is cured voluntarily or mandatorily after the Association, the Declarant or the Owner seeking to enforce these Restrictions has incurred any reasonable expenses for attorney's fees or other costs of pursuing the matter to completion, such fees or other costs of pursuing the matter to completion, such expenses as are reasonably related to the resolution of the dispute including but not limited to fees for consultation, counseling, inspection and correspondence, shall become a charge against the property to attach as a lien in the same manner as provided in Article V hereof unless paid by the Owner on demand.

The delay, forbearance or failure of enforcement of any restriction herein contained for any violation or proposed or attempted violation of any restriction herein contained shall not constitute a waiver of the right of Declarant, the Association or any Owner to thereafter enforce such restriction as to any subsequent violation or proposed or attempted violation.

11.02 Invalidity. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

11.03 Term, Duration and Amendments. The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant, or the Owner of any Lot subject to this Declaration, his respective legal representatives, heirs, successors, and assigns, for a term of seventy-five (75) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this declaration may be amended or terminated at any time and from time to time by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment or termination must be properly recorded in Galveston County, Texas.

11.04 Use of Terms. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.05 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

11.06 Notices to Member/Owner. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

11.07 Notices to Mortgagees. If a holder of a mortgage on a Lot shall notify the Association of its address and the identity of the Lot and Owner covered by and granting such mortgage, then such holder(s) shall be entitled to receive, written notification from the Association of any default by the respective Owner in the performance of such Owner's obligations as established by this Declaration.

11.08 Disputes. Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Bylaws of the Association shall be determined by the Board of Directors, whose determination shall be final and binding upon all Owners.

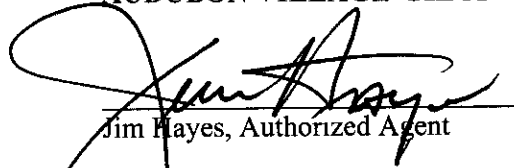
11.09 Termination of and Responsibility of Declarant. If Declarant shall convey all of its right, title and interest in and to the Properties and assign all its rights, benefits and obligations as Declarant hereunder to any partnership or partnerships, individual or individuals, corporation or corporations, limited liability company or limited liability companies, or other entity or entities, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant

11.10 Joinder of Lienholder Wachovia National Bank ("Lienholder"), being the holder of a lien on the Property, joins with Declarant in the execution of this Declaration for the purposes of (a) consenting to and adopting the Plat of the Subdivision, (b) consenting to the grant or dedication by Declarant of all streets and utility and other easements shown and reflected on the Plat, together with all other easements granted or reserved by Declarant in this Declaration, (c) subordinating its lien to all of the aforementioned easements and easement rights, and (d) subordinating its lien to the restrictions, covenants, and conditions imposed by Declarant on the Subdivision by this Declaration. However, Lienholder joins herein solely as a lienholder and only for the purposes set forth above in this Section, and it does not assume any of the liabilities, duties, covenants, warranties or obligations of Declarant, if any, nor does Lienholder make any warranties, representations, or guaranties, whether express or implied, by execution of this Declaration

EXECUTED this 19~~th~~ day of June, 2006

Declarant

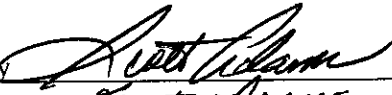
AUDUBON VILLAGE-GILCHRIST, LLC.



Jim Hayes, Authorized Agent

LIENHOLDER

Wachovia National Bank

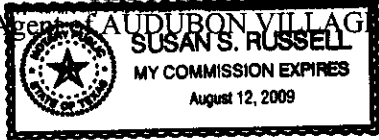
By 

Name Scott Adams
Title Vice President

STATE OF TEXAS §

COUNTY OF JEFFERSON §

This instrument was acknowledged before me on June 20, 2006, by Jim Hayes, Authorized Agent of AUDUBON VILLAGE-GILCHIRST, LLC, a Texas limited partnership



Susan S. Russell
Notary Public, State of Texas

My Commission Expires

08-12-09

SUSAN S. RUSSELL
(Printed or Typed Name of Notary)

STATE OF TEXAS §

COUNTY OF JEFFERSON §

This instrument was acknowledged before me on June 23, 2006, by Scott Adams, Vice President of Wachovia National Bank, on behalf of said entity



Laura Courville
Notary Public, State of Texas

Laura Courville
(Printed or Typed Name of Notary)



EXHIBIT "A"

INITIAL ARCHITECTURAL CONTROL GUIDELINES

**SEE ATTACHED. THE ATTACHED INITIAL GUIDELINES
ARE SUBJECT TO CHANGE AND MAY BE SUPPLEMENTED
AND AMENDED FROM TIME TO TIME.**

EXHIBIT "A"
TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
AUDUBON VILLAGE SUBDIVISION

ARCHITECTURAL CONTROL GUIDELINES

Notes:

The following functional areas are subject to these architectural guidelines with respect to the established intent, character and quality

- Vehicular Traffic and Motor Courts
- Main Structure
- Site Amenities (patios, pools, courtyards, decks, etc)

Variances to the Architectural Guidelines may be granted on the basis of architectural merit and/or approval of the Architectural Control Committee (ACC)

These guidelines are aesthetic in their intent. In cases of contradiction with local safety codes, these guidelines shall be overruled, with written notification given to the ACC. The guidelines do not exempt any structures from compliance to applicable codes.

These guidelines are applicable as of the date below and will be updated periodically. All subsequent changes will apply to all buildings which have yet to complete the schematic design phase.

Effective June 19, 2006

I. MINIMUM & MAXIMUM BUILDING AREA GUIDELINES

PHASE I:

Lots 1 - 14: Minimum 500 sq. feet to Maximum 1,600 sq. feet

Areas indicated refer to heated / cooled / conditioned space

The first conditioned space is to be located twenty above the slab

All construction of residences shall be completed within 12 months from start of construction

These Guidelines may be altered based upon architectural merit and the approval of the Architectural Control Committee

II. ELEMENTS

MATERIALS

All standing structures are required to use materials and products that are tested and approved for a minimum 130 mph peak gust wind speed Exposure C and for large object impact, as well as other *Fortified...for safer living*® standards as promulgated by the Institute for Business and Home Safety (IBHS) on the date in which building plans are submitted to the ACC

Piers and Arches shall be masonry or concrete with stucco or painted; wood or fiber-cement cladding is allowed with a masonry or stuccoed base 36" min. in height

Porch Railings shall be made of wood while Porch Floors and Posts may be wood or masonry Porches may be enclosed Porch ceilings may be enclosed with painted wood; exposed joists shall be painted or stained

Stoops shall be made of wood, brick or concrete If concrete, a stoop shall have brick, tile or stucco walls

Metal Elements shall be natural-colored galvanized steel, anodized or ESP aluminum, or manne-grade aluminum

CONFIGURATION & TECHNIQUES

All standing structures must be constructed in conformance with *Fortified...for safer living*® construction requirements from IBHS, as promulgated on the date in which building plans are submitted to the ACC

Piers or pilings shall be no less than 12" x 12" painted or stuccoed concrete. Wood or fiber-cement Siding is allowed with a masonry or stuccoed base 36" min. in height.

Arcades and Breezeways shall have vertically proportioned openings.

Screened Porches shall have screens framed in wood installed behind framed railings.

Posts shall be no less than 6" x 6"

Railings shall have top and bottom rails. Wood top rails shall be eased and bottom rails shall have a vertical section. Top and bottom rails shall be centered on the boards or pickets.

Balconies shall be structurally supported by brackets or tapered beams.

Awnings shall be rectangular in shape with straight edges. Awnings may have side panels but shall not have a bottom soffit panel. Awnings shall not be back lit.

Wood Elements must be painted or sealed with an opaque or semisolid stain, except walking surfaces which may be left natural.

Exterior Lighting shall include the following (min), activated by photovoltaic cells: one 40 watt maximum incandescent light at each exterior door and garage door.

III. MEZZANINE

The mezzanine concept is strongly encouraged as a unifying component for the development.

GENERAL

The mezzanine shall exist as a level between the slab and first conditioned floor. This level may be open air, screened, or louvered. **No more than 20% of the mezzanine area may be enclosed. Any enclosure shall be constructed to current building code standards for "breakaway walls" as if such enclosure were constructed below the Base Flood Elevation. This level may not be air conditioned and any enclosure will be recessed away from the exteriors of this level.**

IV. LANDSCAPING

GENERAL

The HOA shall be responsible for mowing and maintaining the yards on each lot, except for the area five feet from the slab of the house, in which the lot owner may landscape.

Further, to produce a high quality, environmentally sound coastal community, which preserves and enhances the setting, the site design and landscape of each Lot shall be carefully planned in accordance with the following building envelopes and relative site design objectives

- ❖ Maintain efficient and effective drainage patterns
- ❖ Minimize grading to avoid erosion
- ❖ Optimize views and protect view corridors
- ❖ Utilize distinctive natural features
- ❖ Blend man-made improvements into landscaping

New plantings are to be used to help define use areas on the lot and screen outdoor service areas and equipment from adjacent lots and off-site views

Landscape improvements shall utilize indigenous species and minimize areas of intensive irrigation

A list of proposed plants, shrubs, flowers and trees shall be submitted for ACC approval prior to installation

V. OPENINGS

MATERIALS

Windows shall be made of wood (painted, stained or vinyl clad), lifetime vinyl, or other quality materials conducive to the environment and climate of the Southeast Texas / Gulf Coast region, and shall be glazed with clear glass or tinting approved by the ACC. No mirrored tinting will be allowed

Doors (including garage doors) shall be wood or other materials that are approved by the ACC and conducive to the vernacular conditions and climate of the Southeast Texas / Gulf Coast region. Doors shall be painted or stained.

Shutters shall be operable and wood or pre-finished polycarbonate wood fiber and shall be proportional to size and shape of windows

Security Doors and Window Grilles must be approved by the ACC

CONFIGURATION & TECHNIQUES

Windows shall be rectangular or arched, vertically proportioned and operable. Transoms may be oriented horizontally with panes which match other opening configurations. Multiple windows in the same rough opening shall be separated by a 4" min. post. The window sash shall be located interior to the centerline of the wall. Window sills in masonry construction shall project a minimum of 1" from the face of the building

Window Muttons are encouraged and shall be true divided light or fixed on the interior and exterior surfaces, and shall create panels of square or vertical proportion

Storm Windows and Screens shall be integral with the window Screens shall be made of brass, bronze, stainless steel or black vinyl.

Paired main entry doors shall be a maximum of 4' finished opening.

Doors shall be hinged Doors, except garage doors, shall be constructed of planks or raised panels (not flush with applied trim), which express the construction technique

Garage Doors shall be a maximum of 10' in width Garage doors facing a side yard shall have a cantilevered light fixture centered above the door with an incandescent bulb activated by a photocell Garage doors shall be painted or stained Overhead garage doors will be allowed but shall be clad with planks to resemble swinging doors

Shutters shall be operable, sized and shaped to match the openings Plank shutters are encouraged. Louvers shall be slanted in proper position to deflect light and rain when shut

VI. WATER FEATURES

GENERAL

All pools, spas, fountains and other water features shall be constructed of concrete or other masonry materials approved by the ACC No above ground pools shall be permitted Plans and specification for each water feature shall be approved by the ACC prior to installation. All pumps, filters and other equipment shall be screened and shall not be visible from canals, street or adjoining property

Non-masonry spas will only be permitted if installed on decks located above the base flood elevation, where such decks are part of the primary residence Proper screening shall be required for privacy

VII. ROOFS

MATERIALS

Roofs shall be clad in one of the following materials, wood shingles, galvanized steel (in its natural color, no colored roofs permitted, corrugated preferred, 5 V crimp or standing seam also allowed), copper or other architectural grade roofing material approved by the ACC and suitable for the Texas Gulf Coastal Region

Gutters and Downspouts, when used, shall be made of galvanized steel, copper (not copper-coated), anodized or ESP aluminum Metal chains may be used in lieu of downspouts

Downspouts shall be placed at the corner(s) of the building in the least visible locations from the street. Splash blocks shall be made of concrete, brick or gravel.

Flashing shall be copper, lead or anodized aluminum.

Copper roofs, flashing, gutters and downspouts shall be allowed to age naturally (not painted or sealed).

CONFIGURATION & TECHNIQUES

Principal Roofs on all freestanding buildings shall be a symmetrical hip with a slope of 6/12 to 10/12. Also allowed are gabled hips, hipped gables, and flared hips.

Ancillary Roofs (attached to walls or roofs) may be sheds sloped no less than 3/12.

Flat Roofs shall be permitted only when designed to be occupied and accessible from an interior room no less than 100 SF in size.

Eaves shall be continuous, unless overhanging a balcony or porch. A broken pitch roof (a roof which becomes shallower in slope at one-third of the distance from the eave to the peak) is encouraged. Eaves on the main building shall have an overhang that is deep (recommended 30" - 40"). Eaves on outbuildings shall match the eaves of the main building, or shall be approximately half the size of the eaves of the main building in proper proportion.

Gutters shall be half-round. Downspouts shall be round.

Roof Penetrations shall be placed so as not to be easily visible from streets or paths, and shall be painted to match the color of the roof, except those of certain metal (lead, copper, architectural iron, etc.) which may be left unpainted.

VIII. WALLS

MATERIALS

Building Walls shall be finished in stucco, cedar or fiber-cement shingles, wood or fiber-cement clapboard, board and batten, or board on board, and then sealed with paint or stain. Rough Siding is preferred. Encouragement is given to designs reflecting masonry and / or stucco ground floors with wood framed second floors.

Foundation Walls, Piers and Pilings shall be parged block or smooth-finished, painted / stained concrete. Retaining Walls shall be masonry with stucco.

Undercrofts shall be skirted. Horizontal wood boards or framed wood may be installed, with spaces between members not larger than 1 5/8" or smaller than 3/4". Lattice (horizontal and

vertical only) may be installed between piers and pilings, and brick screens may be installed between concrete piers and pilings

Walls and Fences shall generally be constructed of the same material as the first floor of the primary building. Masonry piers with wood pickets may replace solid masonry walls. Masonry walls shall be made of stuccoed concrete while gates shall be wood. Walls may be perforated. Fences shall be made of brick, stuccoed concrete, fiber-cement boards, smooth cedar, or pressure treated wood and may have masonry or stucco piers.

Pickets, Pales and Boards shall be made of smooth cedar, fiber-cement boards or pressure treated wood.

CONFIGURATION & TECHNIQUES

Building Walls may be built of no more than two materials and shall only change material along a horizontal line, except for protrusion or other element accents i.e. cedar shingles may be combined with wood siding when the material change occurs horizontally, (typically at a floor line), with the heavier material below the lighter. Walls of a single building must be built in a consistent configuration. Wood clapboard and shingles shall be horizontal.

Siding shall be horizontal, maximum 8" to the weather.

Shingles shall be maximum 8" to the weather. Decorative shingles shall not be permitted. Shingles shall be machine cut with bottom edges aligned or staggered.

Exposed Corner Joints are encouraged and shall be mitered.

Stucco or plaster coating may be applied to concrete block or poured concrete. Stucco shall be steel troweled.

Trim shall be minimum grade "B" trim lumber or fiber-cement and shall not exceed 6" in width at corners and around openings, except at the front door where it may be any size or configuration. Exceptions may be granted for shingle structures and for classical detailing.

Fences on adjacent lots shall have different designs, subject to approval by the ACC. Where a wall or fence on one property meets a taller or shorter wall or fence on another property, it is the responsibility of the latter designer to transition their wall or fence to the height of the former.

These Guidelines may be altered based upon architectural merit and the approval of the Architectural Control Committee

EXHIBIT "B"

RELATIVE FACTORS

**SEE ATTACHED. THE ATTACHED RELATIVE FACTORS
ARE SUBJECT TO CHANGE.**

EXHIBIT "B"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AUDUBON-VILLAGE-GILCHRIST

Phase I	Relative Factor
Lot 1	34
Lot 2	56
Lot 3	34
Lot 4	56
Lot 5	60
Lot 6	56
Lot 7	56
Lot 8	60
Lot 9	34
Lot 10	60
Lot 11	56
Lot 12	34
Lot 13	60
Lot 14	48
Totals	704

After filing return to:

Mr Jim Hayes
Growth Team Texas, LLC
P. O. Box 22896
Beaumont, Texas 77720

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

Mary Ann Daigle

2006 JUN 26 04:39 PM 2006042601
MAYCUM_S \$180.00
Mary Ann Daigle, COUNTY CLERK
GALVESTON, TEXAS