

Declaration of Covenants, Conditions and Restrictions



018-23-1630

CANCELLATION OF EXISTING RESERVATIONS,
RESTRICTIONS AND MAINTENANCE PROVISIONS
AND IMPLEMENTATION OF NEW DECLARATION OF
COVENANTS, RESTRICTONS, EASEMENTS,
CHARGES AND LIENS
OF
HARBORWALK

Harborwalk Property Owners' Association, Inc.

March 21, 2003

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CANCELLATION OF EXISTING RESERVATIONS,
RESTRICTIONS AND MAINTENANCE PROVISIONS
AND IMPLEMENTATION OF NEW DECLARATION OF
COVENANTS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS OF
HARBORWALK

RECITALS

WHEREAS, Harborwalk Development, Ltd ("HWD"), is the sole owner of all of the tract of land containing 57 3825 acres, more or less, out of the R M Brackenridge Survey No 2, Abstract 38, Galveston County, Texas, which has heretofore been platted into a subdivision known as Fabulous Flamingo Isles, Section One, according to the replat of said Section dated December 21, 1965, filed for record in the office of the County Clerk of Galveston County, Texas, on January 4, 1966, and recorded in Volume 1616, Page 90 of the Real Property Records of Galveston County, Texas, and

WHEREAS, said tract of land is the same tract on which was imposed the "Reservations, Restrictions and Maintenance Provisions" dated December 21, 1965, and which were recorded in Book 1756, Page 673 of the Real Property Records of Galveston County, Texas; and

WHEREAS, HWD believes it is in the best interest of the current and future owners of land in the Fabulous Flamingo Isles, Section One subdivision, and that it is also in the best interest of the current and future owners of any other land which may be combined with the Fabulous Flamingo Isles, Section One subdivision in order to form a new subdivision, that said hereinabove referenced "Reservations, Restrictions and Maintenance Provisions" be canceled and removed,

WHEREAS, HWD is developing a new community known as Harborwalk (formerly known as Fabulous Flamingo Isles), a comprehensively planned real estate development affording well-planned residential, commercial, recreational, open space and institutional buildings, facilities and areas, currently projected to encompass a tract of land containing in excess of 800 acres located in Galveston County, Texas

WHEREAS, the final size and boundary of Harborwalk is subject to the discretion of HWD, and nothing contained in these Covenants shall be construed to represent or limit the final size, configuration or location of Harborwalk, nor shall it constitute or be construed as a representation as to what land or lands will or will not be subjected to the terms of these Covenants

WHEREAS, the Harborwalk Property Owners Association, Inc ("POA") has been formed by HWD as a non-profit community association to serve as the representative of the residents and property owners of lands made subject to these restrictive covenants, with respect to the assessment, collection and application of all charges imposed hereunder, the enforcement of all covenants, restrictions and liens contained herein or created hereby, and the creation, operation, management and maintenance of the facilities and services referred to herein. This instrument (the "Covenants") is the Covenants, Restrictions, Easements, Charges and Liens of Harborwalk referred to in the Articles of Incorporation of the POA

WHEREAS, HWD encumbers the lands described in attached Exhibit A with the covenants, restrictions, easements, charges and liens imposed hereby in order to

- (i) establish, impose and create a uniform plan and scheme of development for the Property,
- (ii) provide funds for the uses specified in Article IV below,
- (iii) grant rights and privileges relating to the use of certain facilities, subject to the conditions specified, and
- (iv) impose land use and design control criteria for the development of the Property

WHEREAS, HWD intends to cause the covenants, restrictions, easements, charges, liens and other provisions contained in these Covenants to burden, affect, bind and run with title to the lands encumbered by these Covenants, including the lands described in Exhibit A attached to these covenants and incorporated herein by reference (the "Property") and the lands annexed by HWD to the Property in the manner permitted by Article VI below, so as to cause the covenants, restrictions, easements, charges and liens herein set forth to be binding upon such land and those residing on or owning an interest therein, and to inure to the benefit of and be enforceable by the Owners, the POA, HWD and their successors and assigns

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

Harborwalk Development, Ltd, hereby cancels and removes the said "Reservations, Restrictions and Maintenance Provisions", and

Harborwalk Development, Ltd, declares that each contract, deed, lease or other conveyance which may be hereafter executed with regard to any portion of the Property shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration, and same shall run with the land and be binding upon all successive owners thereof regardless of whether or not the following covenants, restrictions, easements, charges and liens are set out in full or incorporated by reference in said conveyance

Covenants, including the lands described in Exhibit A attached to these covenants and incorporated herein by reference (the "Property") and the lands annexed by HWD to the Property in the manner permitted by Article VI below, so as to cause the covenants, restrictions, easements, charges and liens herein set forth to be binding upon such land and those residing on or owning an interest therein, and to inure to the benefit of and be enforceable by the Owners, the POA, HWD and their successors and assigns

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

That HWD and POA, upon the recording hereof, do hereby in accordance with Texas Prop Code §204.005 modify and amend the Existing Restrictions and in their place adopt, establish and impose the following covenants, restrictions, easements, charges and liens to apply to the use, improvement, occupancy and conveyance of the Property Each contract, deed, lease or other conveyance which may be hereafter executed with regard to any portion of the Property shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration, and same shall run with the land and be binding upon all successive owners thereof regardless of whether or not the following covenants, restrictions, easements, charges and liens are set out in full or incorporated by reference in said conveyance.

ARTICLE I DEFINITIONS

- Section 1.01: "Annual Assessment" has the meaning specified in Section 2.03 B of these Covenants
- Section 1.02: "Assessable Tract" means the fee estate in the surface of and aerial rights above any separately owned or described portion of the Property, except such part or parts thereof as may from time to time constitute "Exempt Property", as hereinafter defined
- Section 1.03: "Assessed Valuation" has the meaning specified in Section 2.03 G of these Covenants
- Section 1.04 "Assessment Rate" has the meaning specified in Section 2.03 B of these Covenants

- Section 1.05: "Base Valuation" means \$500,000 for 2003 Annual Assessments. The Base Valuation will increase each succeeding year by a percentage of the prior year's Base Valuation equal to the percentage increase (if any) in the CPI for the twelve month period ending on July 31 of the year during which the Annual Assessment is being determined and assessed by the Board.
- Section 1.06: "Board" means the Board of Directors of the POA.
- Section 1.07: "Covenants" means these Covenants, Restrictions, Easements, Charges and Liens, as the same may from time to time be supplemented or amended in the manner provided herein.
- Section 1.08: "CPI" means the Consumer Price Index - All Urban Consumers, U.S. City Average, All Items, 1982-1984 equals 100, published by the U.S. Department of Labor, Bureau of Labor Statistics. If the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish said index, then CPI shall mean such other index as the Board shall select which in its judgment reflects the range of economic factors represented in the Consumer Price Index - All Urban Consumers, U.S. City Average, All Items.
- Section 1.09: "Deed" means a deed, assignment, easement, lease or other instrument conveying legal title to any portion of or interest in the Property.
- Section 1.10: "Development Review Committee" (herein referred to as "DRC") has the meaning specified in Article IX of these Covenants.
- Section 1.11: "Easement Area" has the meaning specified in Section 11.02 of these Covenants.
- Section 1.12: "Exempt Property" means the following portions or parts of the Property:
- A all land and Taxable Improvements (as defined below) owned by the United States, the State of Texas or any political subdivision, instrumentality or agency of any such entity,
 - B all land and Taxable Improvements owned by the POA for so long as the POA shall be the owner thereof, and
 - C all land and Taxable Improvements exempt from both county and the State of Texas real property taxes by virtue of applicable law.
- Section 1.13: "Harborwalk" means a comprehensively planned real estate development by Harborwalk Development, Ltd. affording well-planned residential, commercial, recreational, open space and institutional buildings, facilities and areas. Harborwalk is currently projected to encompass a tract of land containing in excess of 800 acres located in Galveston County, Texas. The final size and boundary of Harborwalk is subject to the discretion of HWD. Nothing contained in these Covenants shall be construed to represent or limit the final size, configuration or location of Harborwalk, nor shall it constitute or be construed as a representation as to what land or lands will or will not be subjected to the terms of the Covenants.
- Section 1.14: "HWD" means Harborwalk Development, Ltd., any entity succeeding to the corporate powers of Harborwalk Development, Ltd. by merger, acquisition or otherwise, or an assignee of Harborwalk Development, Ltd. who is specifically assigned the rights, duties and obligations of Harborwalk Development, Ltd. under these Covenants.

- Section 1.15: "Improvement" means any physical change to a Tract or any Structure or improvement thereon, including by way of example, landscaping, grading, or changing the size, shape or appearance of a Structure or other improvement
- Section 1.16: "Member" means any person or entity who is an Owner. There are two classes of Members as described in Section 7.01 of these Covenants
- Section 1.17: "Owner" means every person or entity who holds
- A.
 - B a fee title in or to any Tract,
 - C a fee title in or to a condominium unit located on any portion of the Property, or
 - D any share, membership or other interest in any cooperative or other entity organized and operated for the purpose of providing residential dwelling to its shareholders, members or other beneficiaries, which share, membership or other interest entitles the owner thereof to possession of a residential dwelling unit within the Property,
- whether or not such person or entity actually resides on any part of the Property. "Owner" includes contract sellers, but excludes those owning an interest merely as security for the performance of an obligation
- Section 1.18: "POA" means the Harborwalk Property Owners' Association, Inc and any Successor Entity, as defined in Section 18.03 of these Covenants
- Section 1.19: "POA Covenant Lien" has the meaning given in Section 3.02 of these Covenants
- Section 1.20: "Property" means
- A All land described in Exhibit A attached to and incorporated in these Covenants for all purposes, together with all existing or subsequent Structures or improvements thereon, and any unit in a condominium located on any portion of the land described in this paragraph, and
 - B from and after the date of such annexation, each parcel of land which has been added to the land subject to these Covenants pursuant to the provisions of Section 6.02 hereof, together with all existing or subsequent Structures or improvements thereon, and any unit in a condominium located on any portion of the land described in this paragraph
- Section 1.21: "Residence" means a permanent structure or improvement that includes living quarters
- Section 1.22: "Resident" means each person domiciled on any part of the Property
- Section 1.23: "Structure" means
- A any man-made thing or device, including but not limited to any building, garage, porch, shed, greenhouse, bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall, sign, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent structure or improvement, and

B any excavation, fill, ditch, diversion dam or other thing or device which changes the grade of any Tract more than six (6) inches from that existing at the time of purchase by the Owner, or which affects or alters natural drainage flows or the flow of any waters in any natural or artificial stream, wash or drainage channel

Section 1.24: "Successor Entity" has the meaning given in Section 18 03 of these Covenants

Section 1.25: "Taxable Improvements" means all buildings, structures and other matters and things which, at the time of assessment pursuant to Article II of these Covenants, are defined as real property under applicable law for purposes of ad-valorem taxation by the State of Texas or the county in which same are located

Section 1.26: "Tract" means any portion of the Property which has been subdivided by plat, condominium declaration or survey description recorded in the Real Property Records of the county in which such land is located

ARTICLE II ANNUAL ASSESSMENTS AND USER FEES

Section 2.01: **Creation of the Lien and Personal Obligation of Assessments.** HWD, as owner of all Assessable Tracts, hereby covenants to pay, and each subsequent Owner of any Assessable Tract, by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the POA Annual Assessments with respect to each Assessable Tract. The payment of Annual Assessments, together with interest, court costs, reasonable attorney fees and other costs incurred in the collection of unpaid assessments, is secured by the POA Covenant Lien, a continuing lien upon each Assessable Tract

Each Owner of an Assessable Tract, by acceptance of a Deed to such tract, covenants for good and valuable consideration, the sufficiency and receipt of which are acknowledged thereby, to be personally liable for any and all Annual Assessments against that Assessable Tract subsequent to its acquisition by that Owner and prior to conveyance to another person or entity, together with all interest, court costs, reasonable attorney fees and other costs incurred in the collection of unpaid Annual Assessments

Section 2.02: **Purpose of Assessments.** The POA shall apply the Annual Assessments to the acquisition, construction, financing, improvement and maintenance of properties owned by the POA, for the payment of debts incurred by the POA, for the establishment of such reserve accounts as the Board may deem necessary, and for the other purposes and uses set out in Article IV of these Covenants

Section 2.03: **Annual Assessment.**

A Annual Assessments for any Assessable Tract shall commence to accrue on the earlier to occur of the date upon which HWD conveys to another person or entity record fee title to that Assessable Tract, or the date upon which HWD or its lessee, agent, contract purchaser, permittee or invitee commences the use or occupancy of any improvements constructed on said Assessable Tract, and shall accrue annually thereafter. Annual Assessments shall be calculated, assessed and billed to Owners or their agents or mortgagees prior to January 1 of the year for which same are due. Annual Assessments shall be payable upon receipt, and shall be delinquent if not paid within sixty (60) days following January 1 of the year for which same are due,

provided that the failure of the POA to provide a written statement of assessments due on or before January 1 shall not invalidate such Annual Assessment or any of the rights of the POA regarding the collection of delinquent Assessments, except that Annual Assessments billed after January 1 shall not become delinquent until sixty (60) days following the date the statement was mailed to the Owner

- B The Board shall assess against each Assessable Tract that is restricted to use for townhome, condominium or single family detached residential purposes, and includes a Residence, an assessment (the "Annual Assessment") for each calendar year equal to a specified number of cents for each One Hundred Dollars (the "Assessment Rate") times the Assessed Valuation of the Assessable Tract, less one-half of the product of the Assessment Rate times that portion of the Assessed Valuation of each dwelling unit in excess of the Base Valuation
- C The Board shall assess against each Assessable Tract that is restricted to use for townhome, condominium or single family detached residential purposes, but that does not contain a Residence, an assessment (the "Annual Assessment") for each calendar year equal to twice the specified number of cents for each One Hundred Dollars (the "Assessment Rate") times the Assessed Valuation of the Assessable Tract
- D The Board shall assess against each Assessable Tract restricted to use for any type of residential dwelling other than townhome, condominium or single family detached, an Annual Assessment equal to the Assessment Rate times the Assessed Valuation
- E The Board shall assess against each Assessable Tract restricted to uses other than residential dwelling purposes, an Annual Assessment for each calendar year equal to the Assessment Rate times the Assessed Valuation of the Assessable Tract, times sixty-seven percent (67%)
- F For calendar year 2003, the Assessment Rate shall not exceed 30 cents (\$0.30) for each One Hundred Dollars of Assessed Valuation. The Assessment Rate may be increased by the Board in any succeeding year to a rate not to exceed the Assessment Rate charged for the current year, increased by the Available Increase in the CPI, upon a determination by the Board that the proposed increase is necessary to meet the expenses, costs of operation, debt service obligations, reserve account deposits, capital additions and planned expansion of the POA. The Available Increase in the CPI shall be a percentage equal to the total percentage increase in the CPI from August 1, 2002 through July 31 of the year during which the Annual Assessment is determined by the Board, less the total of the annual percentage increases in the Annual Assessment since 2003. The Board shall not increase the Assessment Rate more than once in any calendar year or in violation of this Section 2.03
- G The "Assessed Valuation" of any Assessable Tract means
- (1) For any year when the value of all Taxable Improvements on an Assessable Tract is not shown on the tax rolls of the county in which the property is located, the Assessed Valuation of that tract means the fair market value of the Assessable Tract and all Taxable Improvements located thereon, as of September 1 of the year during which Annual Assessments for the following year are calculated. Fair market value may be determined from

sales price, bona fide appraisal or such other means as is satisfactory to the Board.

- (2) For any year when the value of all Taxable Improvements on the Assessable Tract is shown on the tax rolls of the county in which the property is located, Assessed Valuation will mean the value of the Assessable Tract and all Taxable Improvements thereon, on the assessed valuation rolls of the appraisal district or other governmental entity charged by law with the duty of determining assessed valuations for the purpose of county or state ad valorem taxation in the county in which the Assessable Tract is located. For purposes of determining Assessed Valuation, the Board shall use the most current valuation rolls available as of September 1 of the year during which Annual Assessments for the following year are being calculated. Adjustments made to the value of any tract by the appraisal district after September 1 shall not affect the Assessed Valuation used by the Board in calculating Annual Assessments for the following year. The Assessed Valuation shall not reflect any adjustment made to said value by the application of any assessment ratio then employed by the State, County or other governmental entity.
- (3) If both the State of Texas and the county in which the Assessable Tract is located shall cease to impose ad valorem or real property taxes, the Board may, by two thirds vote of the Directors casting votes at a duly called and held meeting of the Board, adopt an alternative method of determining assessed value which will provide a sufficient cash flow to meet the obligations of the POA, after a public hearing regarding such issue, notice of which hearing was given by publication in a newspaper of general circulation in the area subject to these Covenants.
- H The Owner of each Assessable Tract shall provide to the POA the name and address of each person or entity owning an interest in said tract and of the mortgage holder (or mortgage servicing company if different than the mortgage holder) holding a mortgage secured by all or a portion of the Assessable Tract or the Taxable Improvements thereon from time to time, within thirty (30) days following a change in such information.
- I The POA shall send a written statement of Annual Assessment to the Owner or his designee as shown in the most recent records of the POA, or, if the Owner or mortgage holder has notified the POA in writing that the Annual Assessment is to be paid by the mortgage holder, to the mortgage company or other lender holding a mortgage lien upon the Assessable Tract (or mortgage servicing company if different than the mortgage holder) as shown in the most recent records of the POA. The written statement shall set out (i) the Assessed Valuation of the Assessable Tract, (ii) the Assessment Rate for the year in question, (iii) the amount of the Annual Assessment assessed against that Assessable Tract, stated in terms of the total sum due and owing as the Annual Assessment, (iv) the date upon which the Annual Assessment shall be deemed delinquent, and (v) that delinquent Annual Assessments will bear interest from the date same became delinquent until paid at a rate four percent greater than the "Prime Rate" published in the Wall Street Journal (or such other comparable index selected by the Board if the Wall Street Journal should cease publication of the Prime Rate) on the first business day of September each year, but not to exceed the highest lawful rate.

J The Board shall have the right to grant an abatement of Annual Assessments with regard to any Assessable Tract to the extent and in accordance with the terms and conditions of the largest abatement granted by the county in which the Assessable Tract is located or any other governmental entity holding the power to levy and collect ad valorem taxes on said tract (a "Governmental Abatement") The Board shall have the right to grant an abatement of the Annual Assessment for a period of time and in an amount not exceeding the limits set out in the Governmental Abatement, and shall have the right to condition the grant of such abatement upon such terms as the Board shall deem proper, in addition to the conditions and limitations set out in the Governmental Abatement

Section 2.04: Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the POA may levy a Special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement in the Common Area or any unusual, infrequent expense benefiting the POA, provided that any such assessment shall require the affirmative vote of (i) a majority of the Class A Members eligible to vote and electing to vote either personally or by proxy, and (ii) one hundred percent (100%) of the Class B Members, if any, entitled to vote at a meeting duly called for this purpose. Such Special Assessments will be due and payable as set forth in the resolution authorizing such assessment and shall be levied only against those Owners subject to the Annual Assessment as set forth in Section 2.03 hereof and shall be pro rated in accordance therewith. The POA, if it so chooses, may levy a Special Assessment against only those Owners benefited by or using the capital improvement for which the Special Assessment is being levied. Special Assessments shall be due upon presentation of an invoice, or copy thereof, for the same to the last-known address of the Owner.

Section 2.05: User Fees. The Board, in addition to the Annual Assessment, may levy and collect charges and fees ("User Fees") for the operation and maintenance of facilities and the provision of services for the benefit of the Property or the Members and Residents. In establishing User Fees, the Board may formulate reasonable classifications of users. Fees and charges must be uniform within each class but need not be uniform from class to class. If a Member shall fail to pay a User Fee when due and payable, it shall become a personal debt of the Member upon written notice mailed to the Member by first class mail. Failure of any Member to pay a User Fee when due and payable shall also be a breach of these Covenants and shall result in the suspension of the Member's rights or privileges as set forth in Article V.

Section 2.06: Assessment by Board. The Board shall have the right to adopt procedures for the levy, imposition, billing and collection of Annual Assessments and User Fees, provided that the same are not inconsistent with the provisions of these Covenants.

Section 2.07: Annual Assessment Certificate and Transfer Fee. Upon written request by an Owner, the POA shall within a reasonable period of time, issue to an Owner a written certificate stating that all Annual Assessments (including interest and costs), and User Fees have been paid with respect to any specified Assessable Tract, and if all assessments and charges have not been paid, setting forth the amount of such assessments and charges (including interest and costs, if any) due and payable as of the date of the certificate. The POA may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the POA and any bona fide purchaser or lender on the Tract specified in such certificate. The POA shall have the right to charge any Owner selling or otherwise

transferring title to a Tract, a fee which is reasonable compensation, in the opinion of the Board, for the costs incurred by the POA in changing its records to reflect the transfer of ownership

**ARTICLE III
IMPOSITION OF CHARGE AND LIEN UPON PROPERTY**

- Section 3.01** **Covenant to Pay Assessment.** HWD and each subsequent Owner of any Assessable Tract, by acceptance of a Deed therefor, whether or not it shall be expressed in such Deed, hereby covenant and agree to pay to the POA and be personally liable for the Annual Assessment assessed by the POA against said Assessable Tract during the period in which they hold title to said Assessable Tract, together with all interest, attorneys fees and costs of collection of past due Annual Assessments
- Section 3.02:** **POA Covenant Lien.** HWD and each subsequent Owner of any Assessable Tract, by acceptance of a Deed therefor, whether or not it shall be expressed in such Deed, hereby covenant and agree to grant, and do hereby grant to Joe Barlow, as Trustee (hereinafter the "Trustee") a continuing lien on each Assessable Tract and all Structures thereon, for the benefit of the POA, to secure payment of delinquent Annual Assessments against the Assessable Tract for this and future years, together with all interest, attorneys fees and costs incurred in the collection of past due Annual Assessments (the "POA Covenant Lien") The POA shall have the right to appoint one or more substitute or successor trustees to act instead of the trustee named herein without other formality than the recordation in the Real Property Records of the county in which the Tract is located, of a designation in writing of such substitute or successor. The authority hereby conferred on Trustee shall extend to any substitute or successor trustees appointed in accordance with this paragraph. The POA Covenant Lien shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Assessable Tract (or the Exempt Property to the extent that the same may later become an Assessable Tract) whether arising from or imposed by judgment or decree, or by any agreement, contract, mortgage or other instrument, excepting only mortgage liens made or insured by the Federal Housing Administration, the Veterans Administration or any successor to said agencies (unless said agency has agreed by recorded document to subordinate its lien) and such liens for taxes or other public charges as are made superior by applicable law. HWD and each subsequent Owner of any Assessable Tract, by acceptance of a Deed therefor, further agree that the POA Covenant Lien shall be a covenant running with the title to each Assessable Tract and all Structures thereon. Sale or transfer of any Tract at foreclosure or in lieu of foreclosure shall not relieve said Tract from liability for any Annual Assessment thereafter becoming due.
- Section 3.03:** **Remedies of POA.** If any Annual Assessments or other sums secured by the POA Covenant Lien remain unpaid beyond the date same become delinquent, the Board shall have the right to pursue any and all remedies available to the POA, at law or in equity, to enforce payment of said sums, including without limitation the following
- A bring an action at law against the Owner or Owners personally obligated to pay the Annual Assessments or other sums secured by the POA Covenant Lien to collect such delinquent sums together with penalties, interest, costs of collection, court costs and reasonable attorneys fees incurred in the collection of delinquent sums,

- B furnish to any mortgage holder and file in the Real Property Records of the county in which the Tract is located, a notice of sums owing under the POA Covenant Lien,
- C authorize and direct the foreclosure of the POA Covenant Lien against the Tract and all Structures thereon for which Annual Assessments or other charges are delinquent, by public sale conducted in accordance with the notice, posting and other requirements of the statutes of the State of Texas for the foreclosure of deed of trust liens upon real property, and
- D bring an action for judicial foreclosure of the POA Covenant Lien in the manner prescribed by law

The election by the POA to exercise any of the remedies permitted shall not be construed to constitute an election to waive the right to exercise any other remedy available. The POA is hereby authorized by all Owners to use any and all of such remedies as often as may be required to collect payment of sums secured by the POA Covenant Lien.

Section 3.04: Notice to Mortgagees. Notwithstanding any provisions of these Covenants to the contrary, the POA shall provide to each holder of a loan secured by a mortgage on an Assessable Tract, which is subordinate to the POA Covenant Lien, sixty (60) days prior notice of its intention to take any action to foreclose its first lien on that Assessable Tract if the mortgage holder has notified the POA of its mortgage interest, and provided to the POA its current mailing address.

ARTICLE IV USE OF FUNDS

Section 4.01: Purposes for Which Funds May Be Used. The POA shall apply all funds received by it pursuant to these Covenants and all other funds and property received by it from any source, to the following pro tanto and in the order stated:

- A the payment of all principal and interest when due, on all loans made to the POA, to the extent required under any agreement with note holders,
- B the operating costs and expenses of the POA, and
- C for the benefit of the Property devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation, financing and subsidizing of and establishment of reserve accounts for such of the following as the Board, in its discretion, may from time to time establish or provide any or all projects, services, facilities, studies, programs, systems and properties relating to parks, recreational facilities and services, drainage systems, streets, canal and channel dredging, common area bulkheads, roads, highways, walkways, curbing, gutters, sidewalks, trees, landscaping, wetlands and naturalized areas, fountains, benches, shelters, directional and informational signs, access control gate, walkways, bridges, streets, road and highway lighting facilities, facilities and services for the collection, treatment and disposal of garbage and refuse, facilities and services for fire suppression and prevention, facilities and services for security and/or law enforcement, public utility systems, communication systems and facilities including all buildings, systems, facilities and services used or useful in connection with the operation of

communication networks and facilities, towers, stations, cables, lines, ducts, equipment and appurtenances, all properties, rights, easements and franchises relating thereto, office buildings, buildings, storage and maintenance yards, garages and other buildings and facilities deemed necessary or desirable by the Board in connection with the administration, management, control and operation of the POA, traffic engineering programs and parking facilities, and other related or unrelated recreational facilities, and any and all other improvements, facilities and services that the Board shall find to be necessary, desirable or beneficial for the advancement and in the best interest of the Property

Section 4.02: Handling of Funds. In order to secure the repayment of any and all sums borrowed by it from time to time, the Board is hereby granted the right and power:

- A to assign and pledge revenues received and to be received by the POA under any provision of these Covenants, including, but not limited to, the proceeds of the Annual Assessments payable hereunder,
- B to enter into agreements with lenders with respect to the collection and disbursement of funds, including but not limited to, agreements wherein the POA covenants
 - (1) to assess the Annual Assessments on a given day in each year and, subject to the limitation on amount specified in Article II, to assess the same at a particular rate or rates,
 - (2) to establish sinking funds and/or other security deposits,
 - (3) to apply funds received by the POA to the payment of all principal and interest due on such loans,
 - (4) to establish such procedures as may be required by lenders, but not inconsistent with these Covenants, and
 - (5) to provide for the custody and safeguarding of all funds received by the POA

The amount, terms and rates of all borrowings, and the provisions of all agreements with lenders shall be subject to the decision of the Board

Section 4.03: Accumulation of Funds Permitted. The POA shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Assessments or otherwise, and may carry forward as surplus any balances remaining, nor shall the POA be obligated to apply any such surpluses to the reduction of the amount of the Annual Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board may determine to be desirable for the greater financial security of the POA, and the effectuation of its purposes

Section 4.04. Bonding. The Board may require that all persons or entities who handle POA funds or moneys post bonds sufficient in amount to indemnify the POA for any loss

- Section 4.05: **Mortgages of POA Property.** The Board shall have the right to mortgage the properties of the POA as may be deemed necessary by the Board to secure payment of any sum borrowed by the POA from time to time
- Section 4.06: **POA Budget.** The POA shall cause to be prepared annual capital and operating budgets in accordance with the provisions of the By-Laws of the POA

**ARTICLE V
RIGHTS OF ENJOYMENT IN COMMUNITY FACILITIES**

- Section 5.01: **Establishment and Use of Community Facilities.** All Owners and Residents shall have a nontransferable privilege to use and enjoy all parks and other community facilities made available by the POA for use by Owners and Residents from time to time, for so long as they are Owners or Residents. All such rights are subject to the right of the POA to adopt and promulgate reasonable rules and regulations pertaining to the use of community facilities which enhance the preservation of such facilities or the safety and convenience of the users, or which, in the discretion of the Board, promote the best interests of the Owners or Residents, including making certain community facilities available to school children or other users with or without charge. The POA shall have the right to borrow money for the purpose of developing or improving any community facility, to mortgage community facilities to secure payment of such loans, and to grant to such lender rights superior to the rights of Owners and Residents
- Section 5.02: **Suspension of Rights.** The POA shall have the right to suspend the rights of any Owner or Resident under this Article V, for any reasonable period during which the Annual Assessments or User Fees assessed under Article H of these Covenants remain delinquent, or may suspend said rights in connection with the enforcement of any rules and regulations relating to community facilities
- Section 5.03: **Guests or Invitees.** Any employee, guest or invitee of a Member shall be entitled to a right or privilege of enjoyment of community facilities subject to such regulations as may be promulgated by the Board
- Section 5.04: **Right to Convey Property.** The Board shall have the right to convey to a third party a portion of any POA tract restricted to use for park or open space purposes, by a vote of two-thirds (2/3rds) of the Board if in the determination of the Board same is necessary to correct a good faith surveying error, building encroachment or other like matter and if the Board determines that the conveyance will not materially adversely impact the use of the remainder of the Tract for its intended purposes. A conveyance of POA land which is restricted to use for park or open space purposes for any purpose other than that stated in the preceding sentence requires the affirmative vote of a majority of those Owners voting in an election held for that purpose. Prior to any such election, the Board shall hold two public hearings at least thirty days apart

Notice of each public hearing and of the election shall be published in a newspaper of general circulation in Hitchcock once each week in the two week period preceding the date of each hearing and the election. The Board may, by majority vote, convey other property owned by the POA if the Board determines that the conveyance is in the best interest of the POA. No such conveyance shall be made in violation of any restrictions affecting the property so conveyed

**ARTICLE VI
PROPERTY SUBJECT TO THESE COVENANTS;
ANNEXATION OF ADDITIONAL LANDS**

- Section 6.01: Covenants of Property.** The Property encumbered by these Covenants is a portion of a larger area of land owned by HWD (and described generally as Tract II on Exhibit B) HWD intends to annex certain portions of such larger area of land, and other lands now owned or hereafter acquired, to the lands encumbered by these Covenants, and subject the annexed property to substantially the same terms of these Covenants, plus any additional covenants and restrictions HWD deems, in its sole discretion, necessary in the manner prescribed in Section 6.02 hereof. Each Owner or Resident, by the act of becoming such, shall be taken to have acknowledged and agreed that:
- A the Property described in this Declaration and such property as may be annexed pursuant to Section 6.02, hereof shall be the only Property subject to the Covenants,
 - B nothing contained in the Covenants or in any other recorded or unrecorded plat, map, picture, drawing, brochure or other representation or scheme of development shall be construed as subjecting or requiring HWD or any successor or assignee to subject to the Covenants any portion of the land described on attached Exhibit B or any other property or land now or hereafter owned by HWD, other than that land described in Exhibit A attached to these Covenants,
 - C the only manner in which any additional land can be subjected to the Covenants shall be in accordance with the procedure set forth in Section 6.02 hereof, and
 - D the final size and boundary of Harborwalk and the annexed property, if any, is subject to the discretion of HWD and nothing contained herein or in the covenants shall be construed to limit the final size, configuration or location of Harborwalk and the annexed property, if any, nor shall it constitute or be construed as a representation as to what lands will or will not be subject to the terms of the Covenants

Section 6.02: Annexation of Additional Land. HWD may, from time to time, annex additional lands to the Property, including without limitation all or portions of those lands described in Exhibit B, and other lands lying within ten (10) miles of lands described in Exhibit B, or lands subject to these Covenants, and thereby subject the same to the Covenants by the execution and filing for record in the Real Property Records of the county in which said land is located, of an instrument expressly stating the intention of HWD to so annex, and describing such additional lands to be so annexed.

**ARTICLE VII
HARBORWALK ASSOCIATION**

- Section 7.01: Members.** The POA shall have two classes of Members, Class A and Class B. Class A Members shall be all Owners (other than HWD). The Class B Member shall be HWD, and its successors or assigns.
- Section 7.02: Voting Rights.** Each Class A Member's voting rights shall be based on acreage within the Tract of land owned as to commercial property, and based on the number of townhomes, condominiums, or single family lots owned as to residential property. Ten (10) votes shall be granted per acre of Commercial Property owned, rounded to the nearest whole acre. One (1)

vote shall be granted per townhome, condominium, or single family lot owned Any Class A Member who is in violation of these Covenants, as determined by a majority of the Board, shall not be entitled to vote during any period in which such violation continues Any Member who is delinquent in the payment of any Annual Assessment, User Fee (except those for services or facilities whose use is voluntary), or other fees or charges levied pursuant to the provisions of these Covenants, shall not be entitled to vote during any period in which any such fees or assessments are delinquent The Class B Member (HWD) shall have the same voting rights as the Class A Members described above and based on acreage within the Tract of land owned as to commercial property, and based on the number of townhomes, condominiums, or single family lots owned as to residential property

Section 7.03: Board of Directors. The Board will be comprised of Class A Directors and Class B Directors Each Class A Director will be elected by the Class A Members Class B Directors will be appointed by the Class B Member

The affairs of the POA will be managed by a board of three (3) Class B Directors until the first annual meeting of Members Beginning with such meeting the Board will consist of five (5) Class B Directors and three (3) Class A Directors

From and after the earlier to occur of:

- A the delivery to the Board of written notice from the President of HWD announcing the election by HWD to reduce the number of Class B Directors to one or less, or
- B the delivery to the Board of written notice from the President of HWD announcing the election by HWD to not add additional land to the Property,

the Board shall consist of seven (7) Class A Directors and one (1) Class B Director HWD shall have the right to terminate its right to appoint one or more Class B Directors at any time and from time to time by written notice recorded in the Real Property Records of Galveston County, Texas

Section 7.04: Term of Directors. Directors shall be elected or appointed for two (2) year terms of office (except where a one (1) year term may be required for the first term of one or more newly created positions to permit one half (1/2) of all director positions to expire each year) and shall serve until their successors are elected and qualified Class B Directors need not be Members

Section 7.05: Vacancies. Any vacancy in a Class A Director position by reason of death, resignation, removal or otherwise shall be filled by a vote of the Members Any vacancy in a Class B Director position shall be filled by appointment by the Class B Member Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he was elected to fill

Section 7.06: Election Notice. In addition to any other election notice required by the by-laws or resolutions of the POA, the Board, no later than 15 days prior to the deadline for candidacy filing shall publish at least two times in a newspaper having general circulation in Hitchcock, Texas, a notice stating the number of Directors to be elected by Class A Members and the number of Directors to be appointed by the Class B Member

Section 7.07: Annual Election. The Board shall conduct an annual election of Class A Directors on a date determined by the Board, and may make such regulations, consistent with the terms of

the Covenants and the by-laws of the POA, as it deems advisable for any election of Class A Directors, in regard to proof of membership in the POA, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, number of votes required to elect a Director and such other matters concerning the conduct of the election as it shall deem reasonable and necessary

**ARTICLE VIII
COVENANTS FOR MAINTENANCE**

Section 8.01: Maintenance Required by Owner. Each Owner and Resident shall keep all Tracts owned or occupied by him, and all Structures and Improvements thereon, in good order and repair, including but not limited to, the seeding watering and mowing of all lawns, the pruning of all trees and shrubbery, maintenance of the bulkhead system, and the painting (or other appropriate external care) of all Structures and Improvements, all in a manner and with such frequency as is consistent with safety and good property management

If the Owner or Resident of a Tract upon which a violation of this Section exists has not taken reasonable steps to extinguish the violation within fifteen (15) days following the mailing of written notice to the Owner or Resident specifying the violation, the POA or the DRC shall have the right, but not the obligation, through their agents or employees, to enter upon such Tract during regular business hours and to take such steps as were specified in the notice to extinguish the violation of these Covenants. The cost thereof shall be a binding personal obligation of the Owner, payment of which is secured by the POA Covenant Lien in the same manner as if amounts owing under this Section were Annual Assessments

Section 8.02: Obligation to Complete Improvements in a Timely Manner. Each Owner shall be responsible for completing Improvements in a timely manner once construction begins. Construction of Improvements shall not be allowed to cease for more than ninety (90) continuous calendar days, or for more than five months within any twelve month period without the prior written approval of the DRC

If the Owner Tract upon which a violation of this Section exists has not taken reasonable steps to extinguish the violation within fifteen (15) days following the mailing of written notice to the Owner specifying the violation, the POA or the DRC shall have the right, but not the obligation, through their agents or employees, to enter upon such Tract during regular business hours and to take such steps as were specified in the notice to extinguish the violation of these Covenants and complete the Improvements. The cost thereof shall be a binding personal obligation of the Owner, payment of which is secured by the POA Covenant Lien in the same manner as if amounts owing under this Section were Annual Assessments

**ARTICLE IX
DEVELOPMENT REVIEW COMMITTEE**

Section 9.01: Organization of the Development Review Committee ("DRC"). The DRC shall be comprised of five (5) individuals. The POA shall pay all costs incurred by the DRC. The members of the DRC shall be appointed from time to time by HWD, and the DRC shall be a function of HWD. Following the date written notice from HWD is recorded in the Real Property Records of Galveston County, Texas that HWD desires to transfer the authority of the DRC to the POA, the members of the DRC shall be appointed from time to time by the POA, and the DRC shall be a function of the POA

Section 9.02: Establishment and Amendment of Rules and Policies. The DRC shall promulgate standards, rules and regulations governing the improvement of Tracts including, but not limited to, the form and content of plans and specifications for specific Structures or Improvements. The DRC may also promulgate standards or issue statements of policy with respect to the approval or disapproval of the architectural style, details of construction or other aspects of Structures or Improvements which may be presented for approval. Such standards, rules, regulations and statements of policy may be amended or revoked by the DRC from time to time. The initial standards, rules, regulations and statements of policy are included in the form of the Harborwalk Architectural Controls and Builder Guidelines ("Builder Guidelines"), and shall be filed of record under separate document.

It shall be the responsibility of each applicant to inform himself of the current standards, rules, regulations and statements of policy promulgated by the DRC and all amendments thereto and revocations thereof, as of the date of application for DRC consideration. Failure by the applicant to so inform himself shall not bind the DRC to approve or disapprove any feature or matter submitted to it, or to waive the exercise of the DRC's discretion as to any such matter. No change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Tract of any plans or specifications shall not be deemed a waiver of the DRC's right to disapprove such plans or specifications, or any of the features or elements included therein, if such plans, specifications, features, or elements are subsequently submitted for use on any other Tract or Tracts. Approval of any such plans and specifications relating to any Tract, however, shall be final as to that Tract and such approval may not be revoked or rescinded thereafter, provided:

- A that the Structures, Improvements or uses shown or described on or in such plans and specifications do not violate any prohibition contained in these Covenants, and
- B that the approved plans and specifications and any condition attached to such approval have been adhered to and complied with in regard to all Structures or Improvements on, and uses of, the Tract, and
- C that construction of the Structures, Improvements or uses shown or described on or in such plans and specifications begins within six months of the date the DRC issues approval. Improvements not begun within six months of DRC approval must be re-submitted to the DRC for re-approval.

All such standards, rules and regulations and statements of policy shall be in the best interest of the Property. Copies of rules, regulations and statements of policy shall be made available to Members and other interested parties.

Section 9.03: Operations of the DRC. Meetings of the DRC shall be held at such time and at such place as the members of the DRC shall specify. The DRC shall maintain minutes of its meetings, and may adopt rules and regulations containing such provisions not inconsistent with these Covenants as may be necessary to regulate the affairs and conduct of the DRC. Except as hereinafter provided, the affirmative vote of a majority of the DRC members present and voting shall be required to (1) adopt or promulgate any standard, rule or regulation, (2) make any finding, determination, ruling or order, (3) issue any permit, authorization or approval, or (4) act upon any other business properly before the DRC.

The DRC shall have the authority to delegate to any member of the DRC the right to exercise the full authority of the DRC regarding the review of plans and specifications for matters relating to Tracts restricted to single family detached residential use, so long as such

authority does not conflict with any standards, rules, regulations or directions promulgated by the DRC. Each member of the DRC exercising the full authority of the DRC shall cause complete and accurate records of his exercise of this authority to be inserted as soon as reasonably practicable into the official minutes and records of the DRC. The granting of any approval, permit or authorization by one DRC member in accordance with the terms hereof, shall be final and binding. Any disapproval or approval based upon specified conditions by one such member shall also be final and binding, provided however, that in any such case, the applicant for such approval, permit or authorization may, within ten (10) days after receipt of notice of any such adverse decision, modification or specified conditions, file a written request to have the matter in question reviewed by the entire DRC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to and reviewed by the entire DRC at the next regularly scheduled meeting. Thereafter, the decision of a majority of the members of the DRC with respect to such matter shall be final and binding.

- Section 9.04: Land Use Designation.** Prior to the sale by HWD of any tract of land subject to these Covenants or the construction of any building thereon, HWD shall designate the land use for such parcel. There shall be no change in the land use designation for such parcel except with the mutual consent of HWD and the Owner thereof. In designating the land use for portions of the Property that have been or will subsequently be subdivided, developed and sold as a part of a common scheme relative to the designated land use (a "Development Tract"), HWD may create reciprocal easement rights binding upon and benefitting each subsequent Owner of such Development Tract. The land use designated to a Development Tract may be changed with the consent of HWD and the Owners of 2/3rd of the lots within such Development Tract, provided that the designated land use may not be changed as to a particular lot without the consent of the Owner of such lot. Each land use designation and all changes thereto shall be made by instrument recorded in the official public records of real property of the county in which the land is located.
- Section 9.05: Construction or Alteration.** No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Tract, nor shall any existing Structure upon any Tract be remodeled, enlarged or otherwise altered, nor shall any Improvement be undertaken or conducted on any Tract, nor shall any new use be commenced on any Tract, unless complete plans, specifications and descriptions of the proposed Structure, Improvement and use shall have been submitted to and approved in writing by the DRC. Such plans and specifications shall be in the form and contain the information required by the DRC, as set forth in the Builder Guidelines.
- Section 9.06: Improvements to Existing Residential Structures.** No Structure shall be commenced, erected, placed, moved onto or permitted to remain on, and no Improvement shall be made on any Tract on which there is a completed residential dwelling unit unless a complete set of plans and specifications in the form prescribed by the DRC pursuant to Section 9.05 of this Article, shall have been submitted to and approved in writing by the DRC.
- Section 9.07: Disapproval of Plans.** The DRC shall have the right to disapprove any plans and specifications submitted pursuant to this Article IX for the following reasons, among others:
- A. failure of such plans or specifications to comply with any of the restrictions or provisions of these Covenants,
 - B. failure to include such information as may reasonably have been requested by the DRC,

- C failure to comply with any of the standards, codes, rules or regulations promulgated pursuant to this Article,
- D objection to the exterior design, appearance or materials of any proposed Structure or Improvement,
- E incompatibility of any proposed Structure, Improvement or use with existing Structures, Improvements or uses upon other Tracts in the Property,
- F objection to the location of any proposed Structure or Improvement upon any Tract or with reference to other Tracts in the Property,
- G. objection to the grading plan for any Tract,
- H. objection to the color scheme, finish, proportion, style of architecture, height, bulk, safety or appropriateness of any proposed Structure or Improvement,
- I objection to the parking areas proposed for any Tract on the grounds of incompatibility with proposed uses and Structures on the Tract or insufficiency of the size of the parking area in relation to the proposed use of the Tract,
- J any matter which in the judgment of the DRC would render the proposed Structure, Improvement or use incompatible with the general plan of improvement of the Property or with Structures or uses upon other Tracts in the vicinity, or
- K any matter not included in the DRC standards, rules or regulations if in the judgment of the DRC such matter would not be in the best interest of the Property

If the DRC disapproves a set of plans and specifications submitted hereunder or approves them as modified or subject to specific conditions, and if the applicant so requests in writing, the DRC shall give the applicant a written statement specifying the grounds for disapproval or qualified approval. Upon request by the applicant the DRC shall also make reasonable efforts to consult with and advise the applicant so that an acceptable proposal may be prepared and submitted.

Section 9.08: *Filing of Approved Plans.* Upon approval by the DRC of plans and specifications, a copy of such plans and specifications on which the approval is clearly marked shall be deposited with the DRC as a permanent record.

Section 9.09: *Inspection of Tracts and Improvements.* An agent of the DRC may enter upon and inspect any Tract and any Structures, Improvements or uses thereon during regular business hours and following reasonable notice for the purpose of ascertaining whether such Tract and the Structures, Improvements and uses thereon are in compliance with these Covenants and the standards, rules, regulations and approvals granted or promulgated by the DRC. Neither POA or the DRC, nor the agent of either of them shall be deemed to have committed a trespass by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this section.

Section 9.10: *Intentionally Omitted.*

- Section 9.11: Fees for Examination of Plans and Specifications.** The DRC may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these Covenants. Such charges shall be payable at the time and place designated by in the Boulder Guidelines, and shall be subject to amendment without advance notice.
- Section 9.12: Re-subdivision.** No lot may be re-subdivided except between or among the owners of abutting lots and thereafter each owner's resulting oversize tract shall be considered as one lot. Two or more lots may be re-subdivided to combine them into one oversize tract to be considered as one lot. All re-subdivisions must be done by re-platting the lots and filing the amended plat with the County Clerk in Galveston County. All re-subdivisions must be pre-approved, in writing, by the DRC. The DRC shall have the right to disapprove any re-subdivision for the following reasons, among others:
- A inadequate provisions have been made for drainage, to compensate for the any drainage easement that may be lost due to re-subdivision,
 - B a proposed view window at certain lot types may be lost, or
 - C any matter whether or not included in the DRC standards, rules or regulations if in the judgment of the DRC such matter would not be in the best interest of the Property.
- Section 9.13: Violation of Article IX.** If any Structure shall be erected, placed or maintained, or if any Improvement shall be made or any new use commenced on any Tract, other than in accordance with plans, specifications and descriptions approved by the DRC, such Structure, Improvement or use shall constitute a violation of these Covenants. Upon written notice from the POA or the DRC as appropriate, any such improvement shall be removed or corrected and any such use shall be terminated so as to extinguish the violation.
- Section 9.14: Enforcement.** If the Owner or Resident of a Tract upon which a violation of these Covenants exists has not taken reasonable steps to extinguish the violation within fifteen (15) days following the mailing of written notice specifying the violation, in addition to any and all rights and remedies available under the law, the POA or the DRC shall have the right, through their agents or employees, to enter upon such Tract during regular business hours and to take such steps as were specified in the notice to extinguish the violation of these Covenants. The cost thereof shall be a binding, personal obligation of the Owner, payment of which is secured by the POA Covenant Lien in the same manner as if amounts owing under this Section were Annual Assessments.

**ARTICLE X
GENERAL COVENANTS AND RESTRICTIONS**

- Section 10.01: Appearance and Use Restrictions of Tracts.** Without the prior written approval of the DRC:
- A no previously approved Structure shall be used for any purpose other than that for which it was originally approved,
 - B no Tract shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise,

- C no facilities, including poles and wires for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Tract, and no external or outside antennas of any kind shall be maintained on any Tract or Improvement where visible from public view, and
- D no well, pump, shaft, casing or other facility for the removal of subsurface water shall be placed or maintained on any Tract, and no boring, drilling, removal of, or exploration for subsurface water shall be conducted on any Tract

Section 10.02: Tree Preservation. No tree having a diameter of six (6) inches or more (measured at a point two (2) feet above ground level) shall be removed from any Tract without the express written authorization of the DRC. The DRC may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife to protect and encourage the preservation of the ecological balance of the Property. The DRC may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 10.02, the POA, the DRC or its agents or designees may come upon any Tract following reasonable notice, during reasonable hours, for the purpose of inspecting and marking trees. The POA, the DRC or their agents or designees shall not be deemed to have committed a trespass or wrongful act solely by reason of any such entry or inspection.

Section 10.03: Keeping of Animals. No animals except customary household pets shall be kept or maintained on any Tract except as specifically authorized by the DRC. No pets shall be kept, bred, or maintained for any commercial purpose. No animal shall be allowed on any Tract without the permission of the Owner of that Tract. No animal shall be allowed or permitted on any portion of the Property except the Tract of its Owner unless same shall be under the control of a responsible person by leash, rope, chain, or other restraining device.

Any pet that may, in the sole discretion of the POA, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Members or Residents, may be removed upon request of the Board.

The POA shall have authority to seize and impound any animal on the Property in violation of this Section or the regulations established hereunder. The POA shall have authority to impose reasonable fees for animal registration or other animal control services. No dog or cat over six months of age shall be kept on any Tract unless such animal shall have a current rabies inoculation.

Section 10.04: Temporary Buildings. Without the prior written approval of the POA, no mobile home, trailer, tent, garage or temporary building, and no building in the course of construction shall be used or placed, temporarily or permanently, on any Tract.

Section 10.05: Disposition of Trash and Other Debris. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Tract, except building materials during the course of construction for a period not to exceed 180 days following the date of delivery of the first such materials, unless such materials are visually screened in a manner approved by the DRC. During the course of construction, it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap material and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No burning of trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Tract.

If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, at such place on the Tract so as to provide access to persons making the pick-up. At all other times such containers shall be stored so that they cannot be seen from adjacent and surrounding property. The DRC may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of same on the Property.

- Section 10.06: Placement of Pipelines.** No water pipe, gas pipe, sewer pipe, or drainage pipe (except hoses and movable pipes used for irrigation purposes) shall be installed or maintained on any Tract above the surface of the ground, except at the point of connection to the structure served.
- Section 10.07: Natural Resources.** Except for areas specifically designated for such purposes by the DRC, no Tract or portion thereof shall be used for mining, boring, quarrying, drilling, removal or other exploitation of surface or subsurface natural resources.
- Section 10.08: Air and Water Pollution.** No use of any Tract will be permitted which emits pollutants into the atmosphere or discharges liquid or solid wastes or other harmful matter onto any land or into any waterway in excess of the requirements of federal, state or local law. No waste or other substance or material of any kind shall be discharged into any private or public sewer serving the Property or any part thereof in violation of applicable laws or regulations. No person shall dump waste or other substances or materials into any waterway on the Property.
- Section 10.09: Parking.** No trailer, trailer house, recreational vehicle, mobile home, boat, semi-truck tractor or trailer, or other truck with a licensed capacity in excess of one ton shall be parked on any street within the Property or brought upon or parked on any Tract except in an enclosed structure or other manner which does not permit it to be seen at ground level from adjacent property or an abutting street. This shall not be construed to prohibit the mere temporary standing or parking of any such vehicle for short periods preparatory to taking same to some other location for use or storage. Nothing contained herein shall be considered to prohibit the use of portable or temporary buildings or trailers as field offices by contractors during construction in Harborwalk, provided that the use and appearance of such a building or trailer has been approved by the DRC prior to its being moved on site.

No more than four (4) vehicles may be parked on the driveway of a Tract for more than forty-eight (48) hours. Such vehicles to be parked on a Tract must meet the restrictions of these Covenants, and at all times be operable, have current license tags, state inspection stickers, and comply with then current mandatory insurance under the laws of the State of Texas. All vehicles parked within the Property shall also be maintained in a manner such that the appearance of the vehicle does not detract from the marketability and appearance of the Property.

Parking of any vehicle other than in a driveway of a Tract or other paved area provided for parking is expressly prohibited. Parking on streets shall at all times be prohibited for any length of time exceeding twenty-four (24) hours.

Section 10.10: Non-Permitted Uses The following uses and operations shall not be permitted on any portion of the Property

- A refining of petroleum or of its products or byproducts, smelting of iron, tin, zinc, or other ores, drilling for and/or removal of oil, gas, or other hydrocarbon or other hazardous substances,
- B any establishment that offers or sells a product or service that is intended to provide sexual gratification to its users, including, but not limited to, the dissemination or exhibition of obscene materials or objects, any establishment the sole purpose of which is to offer or sell prophylactic devices, any establishment featuring topless, bottomless, or totally nude performances or personnel, or any establishment that regularly shows pornographic movies, or sells or rents pornographic material or movies,
- C any massage parlor, modeling studio, or establishment where men and/or women are engaged in salacious activities,
- D any pawn shop or similar establishment,
- E any establishment that offers or sells paraphernalia related to illegal drug use,
- F any carnival or fair unless organized and/or approved by the POA and/or HWD,
- G any use devoted primarily to entertain such as an amusement park, amusement arcade, "bingo" parlor, or game center,
- H incinerators, dumpsites or landfills

Section 10.11: Fireworks, Firearms, Etc. The sale or use of fireworks is prohibited on the Property, except by permit granted by the POA. The use of or discharge of firearms, air rifles or pellet guns on the Property is prohibited except by certified peace officers and by permit granted to individuals by the POA. Hunting of any kind and by any method, including but not limited to firearms, traps, snares, bow and arrows, or manually propelled missiles, is prohibited except by permit granted to individuals by the POA. If such permits are granted, the POA may designate certain areas for these activities, which must be conducted in accordance with all applicable federal, state and local laws.

Section 10.12: Reservation of Minerals; Surface Waiver. In the event HWD hereafter reserves any interest it has in the oil, gas and other minerals in, on and under the Property, HWD on behalf of itself and its successors and assigns, hereby waives the right to use the surface of the Property, other than that land or easements owned by HWD or other owners of oil, gas or other minerals for exploring, drilling for, producing and mining oil, gas and other minerals, provided that HWD hereby retains and reserves, on behalf of itself and its successors and assigns, the right to pool the land with other lands for development of oil, gas and other minerals and the right to drill under and through the subsurface of the land below the depth of one hundred feet (100') by means of wells located on the surface of land or easements owned by HWD or other owners of oil, gas or other minerals.

Section 10.13: Improper Activity. No unlawful, noxious or offensive activity shall be carried on or maintained on any Tract, nor shall anything be done or permitted to be done thereon which may be or become an annoyance or a nuisance to surrounding Owners or Residents.

Section 10.14: Penalties for Violation of Article X. If the DRC determines that any provision of this Article has been violated the DRC or the POA may seek appropriate relief at law to assure that the purposes of this Article are fulfilled.

**ARTICLE XI
EASEMENTS**

Section 11.01: Rights Concerning Easements and Rights-of-Way. Easements and rights-of-way across each Tract are hereby expressly reserved to HWD, its designees, successors and assigns, in, on, over and under the Easement Area (as defined in Section 11 02 below) for the following purposes, among others

- A the installation, construction and maintenance of
 - (1) wires, lines, conduits and the necessary or proper attachments in connection with the transmission of electricity, telephone, community antenna television cables and other utilities and similar facilities,
 - (2) storm-water drains, land drains, public and private sewers, pipe lines for supplying gas, water and heat, and for any other public or quasi-public utility facility, service or function, whether above ground or underground,
- B slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by HWD, its successors and assigns, or which might create erosion or sliding problems, or which might change, obstruct or retard drainage flow, and
- C an open space or buffer area between a Tract and the adjacent Tracts or street rights-of-way, to provide separation and privacy among adjacent Tracts

Except with the written approval of the DRC, nothing shall exist or be placed on, over or above any portion of the Easement Area. If in the judgment of the DRC, anything hinders the Easement Area, the DRC may invoke the provisions of Sections 9.13 and 9 14 of these Covenants

Section 11.02: Definition of "Easement Area". "Easement Area" as used herein, means and refers to a strip of land within each Tract ten (10) feet in width along the entire distance of the front boundary of the tract, and five (5) feet in width along the entire distance of each side boundary of each tract, as well as the easement areas designated on the recorded plat for each Section of Harborwalk. HWD or its designee or any utility company may clear the Easement Area of all structures, trees, bushes and other growth, including any overhanging branches or protrusions from structures located upon adjacent property

Section 11.03: Reservation of Rights for Utilities. HWD, its successors and assigns, reserves the right to build, maintain, repair, sell, grant or lease all utilities in the Easement Area

Section 11.04: Right of Entry. HWD, the DRC and their respective agents, successors and assigns, shall have the right at reasonable times to enter upon all parts of the Easement Area for any of the purposes for which said easements and rights-of-way are reserved. HWD and its respective agents, successors and assigns shall be responsible for leaving each Tract in good condition and repair following any work or activity undertaken in an Easement Area

pursuant to the provisions of this section, provided that the obligation set forth above shall not extend to Structures not approved by the DRC Title to any Tract or portion thereof shall not include title to any utility lines in, under, or on, any street or the Easement Area HWD expressly reserves the right for itself, its successors and assigns, to construct, operate, maintain, repair, remove and replace utility lines in the Easement Area The conveyance of a Tract shall not convey any right to any utility lines located in the Easement Area on such Tract

**ARTICLE XII
SPECIFIC COVENANTS**

Section 12.01: Covenants Do Not Supersede Law or Governmental Authority. The Covenants set forth herein shall not be taken as permitting any action or thing prohibited by applicable laws, rules or regulations of any governmental authority In the event of any conflict, the most restrictive provision of such laws, rules, regulations or the Covenants shall govern, and control

**ARTICLE XIII
RESIDENTIAL COVENANTS AND RESTRICTIONS**

Section 13.01: Residential Provisions. The provisions of this Article XIII shall apply solely to Tracts designated for single-family residential uses

Section 13.02: Residential Uses Permitted. Tracts designated for single-family residential use shall be used exclusively for single-family residential purposes No multi-family Structure may be constructed on any Tract designated for single-family use No building, outbuilding or portion thereof shall be constructed for production of income such that tenants would occupy less than the entire Tract It is permitted for tenants to lease a residence, so long as tenants are leasing the entire land and improvements comprising the Tract

No Tract shall be occupied by more than a single family For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, and no more than two (2) persons who are not so related living together as a single household unit, and the household employees of either such household unit It is not the intent of the HWD to exclude from a Tract any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law

Section 13.03: Home Occupation. No business or business activity, whether for profit or not, shall be permitted in or on any Tract within the Property No deliveries of stock or merchandise for sale or distribution, no traffic of customers or clients to or from Tracts, no advertising of locations or phone numbers within the Tract as businesses, and no storage of materials, products or stock are permitted on any Tract Garage sales or yard sales (or any similar vending of merchandise) conducted on any Tract more than once within a 12-month period shall be considered a business activity and is therefore prohibited No business vehicles displaying commercial signage or advertising shall be permitted to be parked within public view in residential sections other than service vehicles contracted by Owners or Residents of Tracts to perform specific services. No vehicles with more than two axles shall be permitted to be parked or stored for a period in excess of twelve (12) hours in residential section of the

Property, without the prior written permission of the POA, whose approval will be issued at its sole and absolute discretion

Notwithstanding the foregoing, a residence may be used for a Home Occupation (as hereinafter defined) provided that

- A no person other than a Resident of the residence shall be engaged or employed in the Home Occupation at the site,
- B there shall be no visible storage or display of occupational materials or products,
- C there shall be no exterior evidence of the conduct of a Home Occupation and no Home Occupation shall be conducted on the Tract outside of the residence, and
- D no additional parking shall be provided for or required by the Home Occupation

As used herein, the term "Home Occupation" shall mean a commercial enterprise conducted in a residence which is incidental to the principal residential use

No livestock, domestic or wild animals, nor plants or crops shall be raised on any Tract for the purpose of selling same, whether for profit or not. Exchange of such animals, plants or produce for anything of value to the seller shall constitute a sale of the merchandise and is therefore prohibited under this provision

Section 13.04: Tract Use for Model Home or Real Estate Office. A residential Tract may, with the written approval of DRC, be used for a model home (which may include HWD's real estate office)

Section 13.05: Placement of Signs. No sign or emblem of any kind may be kept or placed on any Tract or mounted, painted or attached to any Structure, fence or other improvement upon such Tract so as to be visible from public view except the following

- A **Builder Signs** Builders may erect one (1) sign on Tracts where a Structure is under construction, not to exceed 3' x 4' in area and extending not more than five feet (5') above the surface of the Tract. These signs must be in accordance with the signage guidelines and specifications established for Builder Signs in the Builder Guidelines, and must be removed from the lot before a Certificate of Occupancy is issued for the Structure
- B **Political Signs** Not more than two (2) political signs, not exceeding 2' x 3' in area, may be erected upon a Tract by the Owner or Resident of such Tract advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within three (3) days after such election
- C **School Spirit Signs** Signs containing information about one or more children residing in the Structure and the school they attend shall be permitted so long as the sign is not more than 3' x 3' and is fastened only to a stake in the ground. There shall be no more than one sign for each child under the age of eighteen (18) residing in the Structure, and said signs may not be displayed more than three (3) months in a calendar year

- D Security Signs/ Stickers Signs or stickers provided to an Owner or Resident by a commercial security or alarm company providing service to the Structure shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one (1) sign and no more than six (6) stickers located on the windows or doors. Stickers shall also be permitted upon windows and doors for the "Child Find" program or a similar program sponsored by a local police and/or fire department

No signs advertising "For Sale", "For Lease", "Available" or similar language will be permitted on any Tract within the Property, other than those specifically allowed in Section 13.05(A) above

If any sign is placed within the subdivision in violation of these Covenants, the POA, the DRC, or their agents shall be authorized to enter upon any Tract and remove and/or dispose of any such sign violation, and in doing so shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry, removal and/or disposal nor in any way shall the POA, the DRC, or their agent be liable for any accounting or other claim for such action

Section 13.06: Use of Clothes Hanging Devices and Machinery. No clothing or any other household fabrics shall be hung in the open on any Tract. No machinery shall be placed or operated upon any Tract (saving such machinery as is usual in the operation or maintenance of a private residence) except with the written approval of the DRC

Section 13.07: Chemical Fertilizers, Pesticides, or Herbicides. No chemicals, fertilizers, pesticides, herbicides or hazardous substances shall be used on the Property except normal household quantities of those products which are readily available for consumer use and are approved by a regulatory agency for household use

ARTICLE XIV WATERFRONT AREAS AND WATERWAYS

Section 14.01: Restrictions for Waterfront Tracts. Any Tract which abuts a bay, canal or other waterway (hereinafter collectively referred to as "Waterways") shall be subject to the following additional restrictions.

- A No wharf, pier, bulkhead or other structure or obstruction shall be built or maintained upon any waterfront site or into or upon any Waterway on or adjacent to the Property except with the specific prior written approval of the DRC. No structure or obstruction shall be permitted if it threatens safe navigation upon such Waterway or the safe and convenient use of such Waterway as a recreation facility. Wharves, piers, bulkheads or other structures must be located in the areas designated for these improvements on the recorded plat and defined in the Boulder Guidelines
- B. No boat canal shall be constructed or installed upon any Tract nor shall any facility or device be constructed or installed upon any Tract which shall in any way alter the course of or natural boundaries of any Waterway, or which shall involve or result in the removal of water from any Waterway except with the specific written approval of the DRC

- C No boats, hoists, launching facilities or similar structures or equipment shall be installed, constructed or maintained upon any Tract except with the specific written approval of the DRC, nor shall any boat trailer be stored on any Tract in violation of the standards or regulations of the DRC Boathouses or other structures must be located in the areas designated for these improvements on the recorded plat and defined in the Boulder Guidelines

Section 14.02: Use of Watercraft. The POA shall have the right to promulgate rules and regulations for the operation and storage of watercraft on those canals serving only residential Tracts. No watercraft of any kind shall be operated or stored upon any canal serving only residential Tracts without a permit from the POA. Any approved boating shall conform to all rules and regulations promulgated by the POA concerning the use of watercraft. Those canals serving commercial marinas or businesses are exempt from the rules and regulations and permitting procedures of the POA.

ARTICLE XV DURATION AND AMENDMENT

Section 15.01: Duration, Amendment or Termination of Covenants. The Covenants shall run with and bind the Property and all Owners and Residents, shall inure to the benefit of and be enforceable by HWD, the POA, any Owner and their respective legal representatives, heirs, successors and assigns, until the 31st day of December in the year 2063 after which time said Covenants shall be automatically extended for successive periods of ten (10) years unless terminated effective the 31st day of December 2063 (or effective at the end of any such ten (10) year period) by affirmative vote of (i) sixty-six and two thirds per cent (66-2/3%) of the Class A Members eligible to vote and electing to vote either personally or by proxy, and (ii) one hundred percent (100%) of the Class B Members, if any, entitled to vote, which vote has been held and completed within the six (6) months prior to the 31st day of December, 2063 (or the end of any such ten (10) year extension period). Prior to termination as herein provided the Covenants may be amended but not terminated in any respect by an instrument signed by not less than (i) sixty-six and two thirds percent (66-2/3%) of the Class A Members eligible to vote, and (ii) one hundred percent (100%) of the Class B Members, if any, eligible to vote, which instrument shall be filed for recordation in the Real Property Records of the county in which the property subject to the Covenants is located or such other place of recording as may be appropriate at the time of the execution of such instrument. Prior to termination as herein provided the Covenants may be terminated by an instrument signed by not less than one hundred percent (100%) of the Members eligible to vote, which instrument shall be filed for recordation in the Real Property Records of the county in which the property subject to the Covenants is located or such other place of recording as may be appropriate at the time of the execution of such instrument.

ARTICLE XVI GENERAL

Section 16.01: Violation or Breach of Covenants. Violation or breach of any Covenant herein contained shall give HWD or the POA, and their respective legal representatives, successors and assigns, in addition to all other remedies, the right (after the elapsing of 15 days from the time receipt is acknowledged of written notice to the Owner of any Tract involved setting forth in reasonable detail the nature of such violation or breach and the specific action or actions to be taken to remedy such violation or breach and if at the end of such time reasonable steps to accomplish such action have not been taken), to enter upon the land on which such violation or breach exists, and to take the actions specified in the notice to the

Owner to remedy, abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, and the said parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal, provided that such remedy, abatement or removal is carried out in accordance with the provisions of this section. Nothing herein contained shall be deemed to affect or limit the rights of the POA, HWD or any Owner to enforce the Covenants by appropriate judicial proceedings.

- Section 16.02: Failure to Enforce Covenants.** The failure of HWD, the POA, or any Owner to enforce the Covenants or any portion thereof shall in no event be considered a waiver of the right to do so thereafter as to the same violation or breach or as to such other violation or breach occurring prior or subsequent thereto.
- Section 16.03: Covenants Do Not Create Reversion.** No Covenant herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reversion.
- Section 16.04: Relief for Violation or Breach.** Damages shall not be deemed to be the exclusive remedy for any breach or violation of any provision hereof. Any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity.
- Section 16.05: Enforcement of Covenants.** Any party to a legal proceeding who succeeds in enforcing a Covenant or enjoining the violation of a Covenant shall be reimbursed for its court costs and reasonable attorney fees incurred in such cause.
- Section 16.06: Administration Pursuant to these Covenants.** The POA and the DRC to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of these Covenants. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the POA and the DRC shall take into consideration the best interests of the Members to the end that the Property shall be developed, preserved and maintained as a high quality community.
- Section 16.07: Effect of Violation of Covenants on Mortgage.** No violation of any of these Covenants shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, provided, however, that any mortgagee in possession or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to the Covenants as fully as any other Owner of any portion of the Property.
- Section 16.08: Promise of Grantee to be Bound by Covenants.** Each person or entity accepting a deed, lease, mortgage, easement or other instrument conveying an interest in any Tract, whether or not the same incorporates or refers to these Covenants, thereby agrees for himself, his heirs, successors and assigns to observe, perform and be bound by the Covenants and to incorporate the same by reference in any deed or other conveyance of his interest in real property subject to these Covenants.

Section 16.09: Waiver of Liability.

NEITHER HWD, THE POA, THE DRC, NOR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS OR SPECIFICATIONS FOR ANY STRUCTURE OR IMPROVEMENT TO BE CONSTRUCTED, REMODELED OR MOVED ONTO ANY TRACT, OR TO ANY OWNER OR RESIDENT OR OTHER THIRD PARTY, BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH (I) THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE ANY SUCH PLANS OR SPECIFICATIONS, OR (II) THE INSPECTION, FAILURE TO INSPECT, OR (III) THE FAILURE OF ANY OF SUCH INDEMNIFIED PARTIES TO ENFORCE ANY OF THE REQUIREMENTS OF THESE COVENANTS REQUIRING THE SUBMISSION OF PLANS, SPECIFICATIONS, A DESCRIPTION OF USES OR A GRADING PLAN FOR APPROVAL BY THE DRC EVERY PERSON WHO SUBMITS PLANS TO THE DRC FOR APPROVAL AGREES BY SUBMISSION OF SUCH PLANS, AND EVERY OWNER AND RESIDENT AGREES, BY ACCEPTING A DEED OR OTHER CONVEYANCE TO A TRACT OR INTEREST THEREIN, THAT IT WILL NOT BRING ANY ACTION OR SUIT AGAINST SUCH PARTIES TO RECOVER ANY SUCH DAMAGES, AND THAT IF IT VIOLATES THIS AGREEMENT NOT TO BRING ANY SUCH SUIT OR ACTION, IT WILL PAY ALL COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO, COURT COSTS AND ATTORNEYS' FEES INCURRED BY ANY PARTY DEFENDING ANY SUCH ACTION OR SUIT

ARTICLE XVII**COVENANTS WITH RESPECT TO EQUAL HOUSING OPPORTUNITY**

Section 17.01: Covenants of Owners. Each Owner or Resident agrees that neither he nor anyone authorized to act for him will refuse to sell or rent, negotiate for the sale or rental, or otherwise make unavailable or deny any portion of the Property to any person because of race, color, religion, sex or national origin. Any restrictive covenant on the Property relating to race, color, religion, sex or national origin is recognized as being illegal and void and is specifically disclaimed.

HWD shall be deemed a beneficiary of this covenant and this covenant shall run with the land in favor of HWD for the entire period during which this covenant shall be in force and effect without regard for whether HWD is or becomes an owner of any land or interest therein to which this covenant relates. In the event of any breach of any such covenant, HWD shall have the right to exercise all rights and remedies, and to maintain any actions at law or suits in equity or other proceedings to enforce the curing of such breach, as may be available under law.

**ARTICLE XIII
MISCELLANEOUS**

Section 18.01: Alteration of Covenants. No change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of these Covenants.

Section 18.02: Severability of Provisions. The determination by any court that any provision of these Covenants is unenforceable or void shall not affect the validity of any of the other provisions hereof.

- Section 18.03: Successor Entity.** The POA shall be empowered to assign its rights, or any part thereof to any successor, public body, authority, agency, district or non-profit membership corporation (hereinafter referred to as the "Successor Entity") Upon any such assignment the Successor Entity shall have those rights and be subject to those duties of the POA assigned thereby, and shall be deemed to have agreed to be bound by the appropriate provisions hereof to the same extent as if the Successor Entity had been an original party to the Covenants Any such assignment shall be accepted by the Successor Entity under a written agreement pursuant to which the Successor Entity expressly assumes the duties and obligations of the POA thereby assigned If for any reason the POA shall cease to exist without having first assigned its rights hereunder to a Successor Entity, the covenants, restrictions, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner or Resident may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a nonprofit membership corporation and assigning the rights of the POA hereunder to such nonprofit corporation with the same force and effect, and subject to the same conditions, as provided in this Section 18.03 with respect to an assignment and delegation of the POA to a Successor Entity
- Section 18.04: Titles.** All Titles or headings of the Articles and Sections herein are for the purpose of reference and shall not be deemed to limit, modify or otherwise affect any of the provisions hereof All references to singular terms shall include the plural where applicable, and all references to the masculine shall include the feminine and the neuter
- Section 18.05: Notices.** Any notice given or required to be sent under the provisions of these Covenants shall be deemed to have been properly given when mailed, postpaid, to the last known address of the person to whom notice is to be given.
- Section 18.06: No Warranty of Enforceability.** While HWD has no reason to believe that any of the sections, terms, or provisions in these Covenants are or may be invalid or unenforceable for any reason or to any extent HWD makes no warranty or representation as to the present or future validity or enforceability of any such sections, terms or provisions Any Owner acquiring a portion of the Property shall not do so in reliance on the enforceability or validity of any one or more of any such sections, terms, or provisions of these Covenants and shall assume and does assume all risks of the validity and enforceability thereof and, by acquiring a portion of the Property, agrees to hold HWD and the POA harmless therefrom
- Section 18.07: Time is of the Essence.** In regard to the acts, duties, obligations, or responsibilities to be performed by any Member, Resident or Owner pursuant to these Covenants, time is of the essence as to such performance
- Section 18.08: Further Restrictions.** The restrictions contained herein are in addition to and cumulative of other restrictions placed on the Property by HWD
- Section 18.09: Governing Law.** These Covenants are made in Galveston County, Texas, and shall be governed by and enforced in accordance with the laws of the State of Texas Any and all obligations performable hereunder, including but not limited to, the obligation to pay annual and benefits assessments, are to be performed in Galveston County, Texas

**ARTICLE XIX
ALTERNATE DISPUTE RESOLUTION**

Section 19.01: Conflict Resolution Committee (CRC). No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation Owners, Residents; Members; the Board, officers in the POA, the POA, or the DRC Each individual shall represent himself or herself, or, in the case of ownership by a business or other entity, such entity shall appoint a representative The POA shall be represented by a member of the Board The Board shall be represented by an individual designated by the Board. The dispute shall be brought before the CRC for resolution This non-binding mediation process shall be used for all disputes concerning five thousand dollars (\$5,000 00) or less In the event that the parties cannot come to an agreement under this process of mediation by the CRC, the parties must submit to mediation under Section 19 02 of this Article

The CRC shall consist of three (3) individuals, at least two (2) of whom must be Members, all appointed by the Board The Board shall maintain, if possible, a list of no less than twenty (20) volunteer Members in good standing willing to serve on such committee All such volunteers shall be required to attend a training session before being eligible to actually serve on the CRC

Disputes between Owners that are not regulated by these Covenants shall not be subject to the dispute resolution process

Section 19.02: Outside Mediator. If a dispute between any of the above entities or individuals concerns more than five thousand dollars (\$5,000 00), or if the parties cannot reach agreement under Section 19.01 of this Article, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel The dispute will be brought before a mutually selected mediator Such mediator will either be an attorney-mediator skilled in community association law, a Professional Community Association Manager ("P C A M.") as certified by the Community Associations Institute, or a Certified Property Manager ("C P M.") as certified by the Institute of Real Estate Managers In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Property, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties The Board shall maintain a list of no less than ten (10) potential mediators, but the parties will be in no way limited to their choice by this list Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after thirty (30) days, each party shall select its own mediator and a third will be appointed by the two selected mediators If this selection method must be used, each party will pay the costs of its selected mediator and will share equally the costs of the third appointed mediator

Section 19.03: Mediation is Not a Waiver. By agreeing to use this dispute resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled

Section 19.04: Assessment Collection. The provisions of these Covenants dealing with Alternate Dispute Resolution shall not apply to the collection of assessments by the Association as set out in these Covenants

018-23-1666

Section 19.05: Term. This Article XIX shall be in full force and effect for an initial period of three (3) years from the date of execution of this Declaration. Thereafter this Article XIX shall remain in full force and effect unless, at the first open meeting of the POA after such initial period, a majority of a quorum of the Board votes to terminate the provisions of this Article XIX, Alternative Dispute Resolution

EXECUTED effective the 21st day of March 2003

HARBORWALK DEVELOPMENT LTD
By Harborwalk GP, LLC, its General Partner

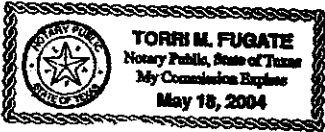
By *Lynn B Watkins*
Lynn B Watkins, Manager

STATE OF TEXAS
COUNTY OF GALVESTON

This instrument was acknowledged before me on the 21st day of March, 2003, by Lynn B Watkins of South Harborwalk GP LLC, General Partner, in his capacity as Manager of said company on behalf of Harborwalk Development LTD

Torri M. Fugate
Notary Public, State of Texas

My commissions expires *May 18, 2004*



018-23-1667

CANCELLATION OF EXISTING RESERVATIONS,
RESTRICTIONS AND MAINTENANCE PROVISIONS
AND IMPLEMENTATION OF NEW DECLARATION OF
COVENANTS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS
OF
HARBORWALK

EXHIBIT 'A'

Metes and Bounds Description of
Property Subject to These Covenants

EXHIBIT 'A'
HARBORWALK, SECTION ONE

All those certain two (2) tracts or parcels of land being out of and a part of the R.M. BRECKENRIDGE SURVEY, Abstract #38 (as to TRACT A described herein), the JAMES SPILLMAN SURVEY, Abstract #175 (as to TRACT A and TRACT B described herein), the LINDSEY T. YOWELL SURVEY, ABSTRACT B16, and the ARTHUR BURKE SURVEY, Abstract #25 (as to TRACT B described herein), said two (2) tracts or parcels of land further being a part of those certain tracts conveyed by Strother Timberlands, Ltd, to Flamingo Isles, LLC, by instrument dated September 16, 1998, and recorded at Film Code 012-97-0573, Galveston County Deed Records, and being more particularly described as TRACT A and TRACT B by metes and bounds as follows,

NOTE ALL BEARINGS ARE LAMBERT GRID BEARINGS AND ALL COORDINATES REFER TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, AS DEFINED BY ARTICLE 21 071 OF THE NATURAL RESOURCES CODE OF THE STATE OF TEXAS, 1983 DATUM 1993 ADJUSTMENT) COORDINATES LISTED ARE BASED ON SURFACE COORDINATES AND DISTANCES SHOWN HEREON ARE SURFACE DISTANCE ALL DISTANCES SHOWN HEREON MAY BE CONVERTED TO GRID BY MULTIPLYING BY A SCALE FACTOR OF 0.999863486

TRACT A

COMMENCING at a 1-1/2 inch iron pipe found for the most Southeasterly corner of the JONAS BUTLER SURVEY, Abstract #195 (a k a the THOMAS TOBY SURVEY, Abstract #195), the Northeasterly most corner of the MACO STEWART SURVEY, Abstract #666, said point being at the Westerly line of the said LINDSEY T. YOWELL SURVEY, and further being the most Northerly Southwest corner of the original Flamingo Isles, LLC, TRACT A, said commencing point having Texas State Plane Coordinate Values of Y=13,677,864.89 and X=3,246,424.25,

THENCE N 13°37'19" E, along the East line of said JONAS BUTLER SURVEY, the same being the West line of the YOWELL SURVEY, at 864.41 feet passing a 2 inch iron pipe found for the Northwesterly most corner of the aforesaid YOWELL SURVEY, the same being the Southwesterly most corner of the SPILLMAN SURVEY, and continuing for a total distance of 884.41 feet to an iron rod with cap set for POINT OF BEGINNING of the herein described TRACT A, said point having Texas State Plane Coordinate Values of Y=13,678,724.31 and X=246,632.52,

THENCE N 13°37'19" E, continuing along the East line of said JONAS BUTLER SURVEY, a distance of 942.24 feet to an iron rod with cap set for corner, said point being at the Southerly line of the Highland Bayou Diversion Channel, a 300 foot right-of-way as described of record at Volume 2267, Page 272, Galveston County Deed Records,

THENCE N 13°37'15" E, crossing said Highland Bayou Diversion Channel and continuing along the West line of the JAMES SPILLMAN SURVEY; at 300.00 feet pass an iron rod found for the North line of said Diversion Channel, at 4575.33 feet pass a 2 inch iron pipe found for the Northeast corner of the JONAS BUTLER SURVEY, Abstract #194, the same being the

Southeast corner of the **ARTHUR BURKE SURVEY**, Abstract #25, and continuing along said course for a total distance of 11,482.77 feet to an iron rod with cap set for corner being at the South line of the A.T. & S.F. R.R. 200 foot right-of-way, and from which point a found 3/4 inch iron rod bears N 77°35'13" E, 1.05 feet,

THENCE S 70°16'55" E, along and with said South right-of-way line, a distance of 120.68 feet to an iron rod with cap set for corner, and from which point a found 5/8" iron rod bears N 81°59'11" E, 0.93 feet,

THENCE S 13°37'15" W, parallel with and 120.00 feet perpendicularly distant from the West line of said **JAMES SPILLMAN SURVEY**, at 11,169.83 feet pass the North line of the aforesaid Highland Bayou Diversion Channel and continuing along said course for a total distance of 11,469.83 feet to an iron rod with cap set for corner and being at the South line of said Diversion Channel,

THENCE S 13°37'19" W, parallel with and 120.00 feet perpendicularly distant from the West line of said **JAMES SPILLMAN SURVEY**, a distance of 862.36 feet to an iron rod with cap set for corner,

THENCE S 76°22'43" E, a distance of 5,574.79 feet to an iron rod with cap set for point of curve to the left, said curve having a radius of 180.00 feet,

THENCE in a Northeasterly direction, with said curve to the left, an arc distance of 92.48 feet, the chord of which curve bears N 88°54'08" E, 91.47 feet to an iron rod with cap set for point of tangency,

THENCE N 74°10'59" E, a distance of 230.10 feet to an iron rod with cap set for point of curve to the right, said curve having a radius of 260.00 feet,

THENCE in a Northeasterly direction, with said curve to the right, an arc distance of 135.30 feet, the chord of which curve bears 133.78 feet to an iron rod with cap set for point of tangency,

THENCE S 76°00'00" E, a distance of 151.43 feet to an iron rod with cap set for point of curve to the right, said curve having a radius of 50.00 feet,

THENCE in a Southeasterly direction, with said curve to the right, an arc distance of 22.55 feet, the chord of which curve bears S 63°04'44" E, 22.36 feet to an iron rod with cap set for point of reverse curvature, said reverse curve having a radius of 50.00 feet;

THENCE in a Southeasterly direction, with said reverse curve, an arc distance of 22.55 feet, the chord of which curve bears S 63°04'44" E, 22.36 feet to an iron rod with cap set for point of tangency,

THENCE S 76°00'00" E, a distance of 35.00 feet to an iron rod with cap set for corner,

THENCE S 14°00'00" W, a distance of 60.00 feet to an iron rod with cap set for corner, said point being at the beginning of a curve to the left, said curve having a radius of 50.00 feet,

THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 78.87 feet, the chord of which curve bears S 58°48'38" W, 70.94 feet to an iron rod with cap set for point of tangency;

THENCE S 13°37'17" W, a distance of 1351.68 feet to an iron rod with cap set for corner,

THENCE S 76°22'43" E, a distance of 3955.00 feet to a point for corner being at the Mean High Water Line of West Galveston Bay as surveyed August 17, 1999, by William E. Merten, Licensed State Land Survey, and filed with the General Land Office of the State of Texas,

THENCE S 29°46'39" W, along the Mean High Water Line of said West Galveston Bay, a distance of 154.61 feet to a point for corner;

THENCE N 76°22'43" W, a distance of 2826.39 feet to a point for corner,

THENCE S 13°37'17" W, a distance of 251 50 feet to a point for corner, said point being at the beginning of a curve to the left having a radius of 400.00 feet,
THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 1281 65 feet, the chord of which curve bears S 11°49'47" W, 799 61 feet to an iron rod with cap set for corner;
THENCE S 13°37'17" W, a distance of 74 26 feet to an iron rod with cap set for point of curve to the left, said curve having a radius of 25 00 feet,
THENCE in a Southeasterly direction, with said curve to the left, an arc distance of 39 17 feet, the chord of which curve bears S 31°15'56" E, 35.29 feet to an iron rod with cap set for point of tangency;
THENCE S 76°09'09" E, a distance of 177 54 feet to an iron rod with cap set for point of curve to the left, said curve having a radius of 25 00 feet,
THENCE in a Northeasterly direction, with said curve to the left, an arc distance of 34 24 feet, the chord of which bears N 64°36'57" E, 31 62 feet to an iron rod with cap set for corner,
THENCE S 76°09'09" E, 65.46 feet to an iron rod with cap set for corner, said point being the beginning of a curve to the left, said curve having a radius of 25 00 feet;
THENCE in a Southeasterly direction, with said curve to the left, an arc distance of 34.24 feet, the chord of which bears S 36°55'16" E, 31.62 feet to an iron rod with cap set for point of tangency,
THENCE S 79°09'09" E, a distance of 83 48 feet to an iron rod with cap set for corner,
THENCE S 13°50'51" W, a distance of 60.00 feet to an iron rod with cap set for corner,
THENCE S 15°22'48" W, a distance of 113 09 feet to a point for corner, said point being at a curve to the left, said curve having a radius of 742 12 feet,
THENCE in a Northwesterly direction, with said curve to the left, an arc distance of 222 55 feet, the chord of which curve bears N 50°21'31" W, 221 72 feet to a point of compound curvature, said curve having a radius of 50.00 feet,
THENCE in a Northwesterly direction, with said compound curve, an arc distance of 15 01 feet, the chord of which curve bears N 67°33'04" W, 14 96 feet to a point of tangency;
THENCE N 76°09'09" W, a distance of 157.58 feet to a point for curve to the left, said curve having a radius of 15 00 feet;
THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 23 62 feet, the chord of which curve bears S 58°44'04" W, 21 26 feet to a point of tangency,
THENCE S 13°37'17" W, a distance of 54 81 feet to a point for corner,
THENCE N 76°26'27" W, a distance of 10 07 feet to a point for corner;
THENCE S 13°37'17" W, a distance of 244 82 feet to a point for corner, said point being the beginning of a curve to the left, said curve having a radius of 397 12 feet,
THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 625 16 feet, the chord of which bears S 62°06'47" W, 562 58 feet to a point for corner,
THENCE S 76°09'09" E, a distance of 984 22 feet to a point for corner,
THENCE N 58°50'16" E, a distance of 146 42 feet to a point for corner,
THENCE S 76°09'09" E, a distance of 349.28 feet to a point for corner,
THENCE S 74°37'12" E, a distance of 425 42 feet to a point for corner being at the aforementioned Mean High Water Line of West Galveston Bay,

THENCE in a Southwesterly direction along the Mean High Water Line of said West Galveston Bay, the following courses and distances,

S 67°39'28" W, a distance of 21.41 feet,
 S 74°11'31" W, a distance of 98.73 feet,
 S 82°45'38" W, a distance of 143.98 feet;
 N 78°26'04" W, a distance of 139.65 feet,
 N 38°01'17" W, a distance of 66.38 feet,
 N 61°32'18" W, a distance of 31.07 feet,
 S 75°51'13" W, a distance of 101.40 feet, and;

S 36°12'00" W, a distance of 59.05 feet to a point for corner being the point of intersection of said Mean High Water Line of West Galveston Bay with the common line of the **R.M. BRECKENRIDGE SURVEY** and the **ALEX RAMSEY SURVEY**, **THENCE** N 76°22'51" W, along the South line of the **R.M. BRECKENRIDGE SURVEY**, the same being the North Line of the **65.46 ALEX RAMSEY SURVEY**, a distance of 2044.94 feet to an iron rod with cap set for corner, said point being at the Northwest corner of said **R.M. BRECKENRIDGE SURVEY**, the same being the Southeast corner of said **LINDSEY T. YOWELL SURVEY**;

THENCE N 13°37'17" E, along the Northwest line said **R.M. BRECKENRIDGE SURVEY**, same being the Southeast line of the **LINDSEY T. YOWELL SURVEY**, a distance of 189.18 feet to an iron rod with cap set for corner, said point being at a curve to the right, said curve having a bearing of 50.00 feet,

THENCE in a Northeasterly direction, with said curve to the right, an arc distance of 135.08 feet, the chord of which curve bears N 06°45'19" E, 97.59 feet to an iron rod with cap set for point of reverse curvature, said reverse curve having a radius of 25.00 feet,

THENCE in a Northeasterly direction, with said reverse curve, an arc distance of 14.69 feet to an iron rod with cap set for corner, said point being at said Northwest line of the **R.M. BRECKENRIDGE SURVEY**;

THENCE N 13°37'17" E, along the Northwest line said **R.M. BRECKENRIDGE SURVEY**, at 3034.17 feet passing the Northwest corner of the **R.M. BRECKENRIDGE SURVEY**, same being the Northeast corner of said **LINDSEY T. YOWELL SURVEY**, and being at the South line of said **JAMES SPILLMAN SURVEY**, and continuing for a total distance of 3054.17 feet to an iron rod with cap set for corner,

THENCE N 76°22'43" W, parallel to and 20 feet perpendicularly distant from the South line of said **JAMES SPILLMAN SURVEY**, same being the North line of said **LINDSEY T. YOWELL SURVEY**, a distance of 5154.73 feet to an iron rod with cap set for corner,

THENCE S 13°40'24" W, a distance of 270.00 feet to an iron rod with cap set for corner,

THENCE N 76°22'43" W, a distance of 487.86 feet to an iron rod with cap set for corner,

THENCE N 135°40'24" E, a distance of 270.00 feet to an iron rod with cap set for corner,

THENCE N 76°22'43" W, parallel to and 20 feet perpendicularly distant from the South line of said **JAMES SPILLMAN SURVEY**, a distance of 584.87 feet to the **POINT OF BEGINNING** and containing a calculated area of 114.81 acres of land

TRACT B

BEGINNING at an iron rod with cap set for the point of intersection of the South right-of-way line of Texas State Highway #6 with the West line of the **JAMES SPILLMAN SURVEY**, Abstract #175, the same being the East line of the **ARTHUR BURKE SURVEY**, Abstract #25, and from which point a found 3/4 inch iron rod bears S 12°58'24" E, 1 78 feet, said beginning point having Texas State Plane Coordinate Values of Y=13,691,927.12 and X=3,249,831.72,
THENCE S 13°37'15" W, along and with the common line of said **SPILLMAN** and **BURKE** Surveys, a distance of 10 00 feet to an iron rod with cap set for corner,
THENCE S 72°57'55" E, along and with the South line of said Texas State Highway #6, a distance of 120 21 feet to an iron rod with cap set for corner, from which point a found 5/8 iron rod bears S 15°09'02" E, 1 97 feet,
THENCE S 13°37'15" W, parallel with and 120 00 feet perpendicularly distant from the West line of said 5 46 **SPILLMAN SURVEY**, a distance of 895.84 feet to an iron rod with cap set for corner, said point being at the North right-of-way line of a 60 foot public roadway right-of-way and from which a found 1 inch iron rod bears S 04°16'57" E, 2 99 feet,
THENCE N 70°16'55" W, along and with said North right-of-way line, a distance of 120 68 feet to a point for corner, said point being at the West line of said **SPILLMAN SURVEY**, the same being the East line of the aforesaid **BURKE SURVEY**;
THENCE N 13°37'15" E, along and with said common line, a distance of 467 06 feet to a point for curve,
THENCE in a Northeasterly direction along the arc of a curve to the right, said curve having a radius of 408 51 feet and a central angle of 12°19'11", an arc distance of 87 84 feet, the chord of which curve bears N 07°27'40" E, 87 67 feet, to a point for tangency,
THENCE N 13°37'15" E, parallel with the East line of said **BURKE SURVEY**, a distance of 346 52 feet to a point for corner being at the South line of said Texas State Highway #6,
THENCE S 72°57'55" E, along and with said South right-of-way line, a distance of 9.42 feet to the **POINT OF BEGINNING** and containing a calculated area of 2 55 acres of land

NOTE THIS PROPERTY DESCRIPTION HAS BEEN PREPARED BASED ON ACTUAL SURVEYS MADE ON THE GROUND AND UNDER THE DIRECTION OF DALE L. HARDY, REGISTERED PROFESSIONAL LAND SURVEYOR 4847, BETWEEN JULY 2002 AND DECEMBER 2002 AND TO WHICH REFERENCE IS MADE

PREPARED BY

DALE L. HARDY / GEOSURV, LLC
REGISTERED PROFESSIONAL LAND SURVEYORS
P.O. BOX 246, LEAGUE CITY, TEXAS 77574
PH 281-554-7739 FAX 281-554-6928
dhardy@geosurvlc.com

PAGE 5 OF 5

018-23-1673

CANCELLATION OF EXISTING RESERVATIONS,
RESTRICTIONS AND MAINTENANCE PROVISIONS
AND IMPLEMENTATION OF NEW DECLARATION OF
COVENANTS, RESTRICTITONS, EASEMENTS,
CHARGES AND LIENS
OF
HARBORWALK

EXHIBIT 'B'

Metes and Bounds Description of
Property Subject to Annexation

EXHIBIT 'B'

All those certain three (3) tracts or parcels of land being out of and a part of the R.M. **BRECKENRIDGE SURVEY**, Abstract #38 (as to TRACT I described herein), the **LINDSEY T. YOWELL SURVEY**, Abstract #216 (as to TRACT I described herein), the **JAMES SPILLMAN SURVEY**, Abstract #175 (as to TRACT I and TRACT II described herein), and the **ARTHUR BURKE SURVEY**, Abstract #25 (as to TRACT II and TRACT III described herein), said three (3) tracts or parcels of land further being a part of TRACT I, all of TRACT II and all of TRACT III as conveyed by Strother Timberlands, Ltd, to Flamingo Isles, LLC, by instrument dated September 16, 1998, and recorded at Film Code 012-97-0573, Galveston County Deed Records, and being more particularly described as TRACT I, TRACT II and TRACT III by metes and bounds as follows,

NOTE. ALL BEARINGS ARE LAMBERT GRID BEARINGS AND ALL COORDINATES REFER TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, AS DEFINED BY ARTICLE 21 071 OF THE NATURAL RESOURCES CODE OF THE STATE OF TEXAS, 1983 DATUM 1993 ADJUSTMENT) COORDINATES LISTED ARE BASED ON SURFACE COORDINATES AND DISTANCES SHOWN HEREON ARE SURFACE DISTANCE ALL DISTANCES SHOWN HEREON MAY BE CONVERTED TO GRID BY MULTIPLYING BY A SCALE FACTOR OF 0.999863486

TRACT I

COMMENCING at a 1-1/2 inch iron pipe found for the most Southeasterly corner of the **JONAS BUTLER SURVEY**, Abstract #195 (a k a the **THOMAS TOBY SURVEY**, Abstract #195), the Northeastly most corner of the **MACO STEWART SURVEY**, Abstract #666, said point being at the Westerly line of the **LINDSEY T. YOWELL SURVEY**, Abstract #216, and further being the most Northerly Southwest corner of the original Flamingo Isles, LLC, TRACT I,

THENCE N 13°37'19" E, along the East line of said **JONAS BUTLER SURVEY**, the same being the West line of the **YOWELL SURVEY**, and with the West line of said Flamingo Isles, LLC, TRACT I, a distance of 481.51 feet to an iron rod with cap set for corner, said point being the **POINT OF BEGINNING** of the herein described TRACT I,

THENCE N 13°37'19" E, continuing along the East line of said **JONAS BUTLER SURVEY**, at 382.90 feet pass a 2 inch iron pipe found for the Northwesterly most corner of the aforesaid **YOWELL SURVEY**, the same being the Southwesterly most corner of the **SPILLMAN SURVEY**, and continuing along the East line of said **JONAS BUTLER SURVEY** and with the East line of said **SPILLMAN SURVEY** for a total distance of 1345.14 feet to an iron rod with cap set for corner, said point being at the Southerly line of the Highland Bayou Diversion Channel, a 300 foot right-of-way as described of record at Volume 2267, Page 272, Galveston County Deed Records,

THENCE S 76°26'10" E, along and with said Southerly right-of-way line, a distance of 8857.41 feet to a point for angle to the right,

THENCE S 76°04'01" E, along and with said Southerly right-of-way line, a distance of 2136 15 feet to a point for curve to the right, said curve having a radius of 668 51 feet,

THENCE in a Southeasterly direction along the arc of said curve to the right an arc distance of 373 40 feet, the chord of which curve bears S 60°03'56" E, 368 56 feet, to a point for corner being at the Mean High Water Line of West Galveston Bay as surveyed August 17, 1999, by William E Merten, Licensed State Land Survey, and filed with the General Land Office of the State of Texas,

THENCE in a Southwesterly direction along the Mean High Water Line of said West Galveston Bay, the following courses and distances,

S 21°11'14" W, a distance of 26 52 feet,
 S 01°14'31" W, a distance of 68 24 feet;
 S 11°43'23" E, a distance of 139 19 feet,
 S 32°22'18" E, a distance of 49 41 feet,
 S 07°45'30" W, a distance of 102 14 feet,
 S 70°20'42" W, a distance of 147 22 feet,
 S 51°41'59" W, a distance of 59 64 feet,
 S 36°07'57" E, a distance of 47 20 feet,
 S 35°17'23" W, a distance of 60 41 feet,
 S 74°37'43" W, a distance of 26 42 feet,
 S 10°42'13" W, a distance of 55 38 feet,
 S 28°26'19" W, a distance of 92 77 feet;
 S 60°06'48" W, a distance of 91 65 feet,
 S 21°10'04" W, a distance of 25 89 feet;
 S 50°44'44" W, a distance of 34 22 feet,
 S 76°12'58" W, a distance of 55 12 feet,
 S 49°58'13" W, a distance of 62 75 feet,
 S 34°28'11" W, a distance of 40 69 feet,
 S 60°24'30" W, a distance of 28 00 feet;
 S 00°45'09" W, a distance of 24 30 feet,
 S 27°48'29" W, a distance of 108.41 feet,
 S 36°01'02" W, a distance of 189 55 feet,
 S 51°09'23" W, a distance of 124 26 feet,
 S 57°49'08" W, a distance of 120 46 feet,
 S 64°24'38" W, a distance of 155 97 feet,
 S 61°20'09" W, a distance of 230 87 feet,
 S 59°30'00" W, a distance of 308 83 feet,
 S 41°49'52" W, a distance of 9 65 feet,
 S 41°36'22" W, a distance of 73 89 feet,
 S 29°46'39" W, a distance of 187 48 feet,
 S 07°17'00" E, a distance of 105 59 feet;
 N 81°53'07" W, a distance of 39 44 feet,
 S 65°35'18" W, a distance of 15 95 feet,
 S 43°01'26" W, a distance of 202 44 feet,
 S 38°05'39" W, a distance of 127 27 feet,

S 32°46'05" W, a distance of 174 88 feet,
 S 26°55'18" W, a distance of 107 72 feet,
 S 10°55'46" W, a distance of 27 13 feet,
 S 29°08'11" E, a distance of 17 68 feet,
 S 27°32'23" W, a distance of 112.06 feet,
 S 55°52'14" W, a distance of 111 16 feet,
 S 21°16'02" W, a distance of 40 25 feet,
 S 72°32'03" W, a distance of 84 02 feet,
 S 24°44'56" W, a distance of 99 82 feet,
 S 27°13'54" E, a distance of 45.52 feet,
 S 17°32'37" W, a distance of 20 05 feet,
 S 53°05'07" W, a distance of 191 59 feet,
 S 70°05'45" W, a distance of 56 75 feet,
 S 88°27'55" W, a distance of 49 64 feet,
 S 81°07'35" W, a distance of 275 43 feet,
 S 63°56'24" W, a distance of 87 81 feet,
 S 50°21'13" W, a distance of 82 01 feet,
 S 67°39'28" W, a distance of 474 80 feet,
 S 74°11'31" W, a distance of 98 73 feet,
 S 82°45'38" W, a distance of 143 98 feet;
 N 78°26'04" W, a distance of 139 65 feet,
 N 38°01'17" W, a distance of 66 38 feet,
 N 61°32'18" W, a distance of 31 07 feet,
 S 75°51'13" W, a distance of 101 40 feet, and,
 S 36°12'00" W, a distance of 59 05 feet to a point for corner being the point of
 intersection of said Mean High Water Line of West Galveston Bay with the common
 line of the R.M. BRECKENRIDGE SURVEY and the ALEX RAMSEY SURVEY, said line
 further being the South line of the aforesaid Flamingo Isles, LLC, TRACT I,
 THENCE N 76°22'51" W, along and with said common line, at 2044 94 feet pass the
 Southwesterly corner of said R.M. BRECKENRIDGE SURVEY, said point being the most
 Easterly Southeast corner of the LINDSEY T. YOWELL SURVEY, and continuing along and
 with the most Northerly South line of said YOWELL SURVEY for a total distance of 4655 64
 feet to an iron rod with cap set for corner, said point being the most Southerly Southwest corner
 of the Flamingo Isles, LLC, TRACT I, and further being an interior corner of said LINDSEY T.
 YOWELL SURVEY;
 THENCE N 13°39'36" E, along and with the most Southerly East line of said Flamingo Isles,
 LLC, TRACT I, at 2462 06 feet pass an iron rod with cap set for corner and being an interior
 corner of said Flamingo Isles, LLC, TRACT I, and continuing along said course for a total
 distance of 2943 57 feet to an iron rod with cap set for corner,
 THENCE N 76°20'24" W, parallel with the most Northerly South line of said Flamingo Isles,
 LLC, TRACT I, a distance of 3618 75 feet to the POINT OF BEGINNING and containing a
 calculated area of 775 9 acres of land

TRACT II

COMMENCING at a 2 inch iron pipe found for the Southwest corner of JAMES SPILLMAN SURVEY, Abstract #175, the same being the Northwest corner of the LINDSEY T. YOWELL SURVEY, Abstract #216, and further being a point on the East line of the JONAS BUTLER SURVEY, Abstract #195 (a.k.a. the THOMAS TOBY SURVEY, Abstract #195), THENCE N 13°37'19" E, along the East line of said JONAS BUTLER SURVEY, the same being the West line of the SPILLMAN, and with the West line of the aforesaid Flamingo Isles, LLC, TRACT I, a distance of 962.24 feet to an iron rod with cap set for corner, said point being at the South line of the Highland Bayou Diversion Channel, a 300 foot right-of-way as described of record at Volume 2267, Page 272, Galveston County Deed Records, and further being the POINT OF BEGINNING of the herein described TRACT II,

THENCE N 13°37'15" E, crossing said Highland Bayou Diversion Channel and continuing along the West line of the JAMES SPILLMAN SURVEY; at 300 00 feet pass an iron rod found for the North line of said Diversion Channel, at 4575 33 feet pass a 2 inch iron pipe found for the Northeast corner of the JONAS BUTLER SURVEY, Abstract #194, the same being the Southeast corner of the ARTHUR BURKE SURVEY, Abstract #25; and continuing along said course for a total distance of 11,482 77 feet to an iron rod with cap set for corner being at the South line of the A T & S F R R 200 foot right-of-way, and from which point a found 3/4 inch iron rod bears N 77°35'13" E, 1 05 feet;

THENCE S 70°16'55" E, along and with said South right-of-way line, a distance of 120 68 feet to an iron rod with cap set for corner, and from which point a found 5/8" iron rod bears N 81°59'11" E, 0 93 feet,

THENCE S 13°37'15" W, parallel with and 120 00 feet perpendicularly distant from the West line of said JAMES SPILLMAN SURVEY, at 11,169.83 feet pass the North line of the aforesaid Highland Bayou Diversion Channel and continuing along said course for a total distance of 11,469 83 feet to an iron rod with cap set for corner and being at the South line of said Diversion Channel,

THENCE N 76°26'10" W, along and with said South right-of-way line, a distance of 120 00 feet to the POINT OF BEGINNING and containing a calculated area of 31 6 acres of land

TRACT III

BEGINNING at an iron rod with cap set for the point of intersection of the South right-of-way line of Texas State Highway #6 with the West line of the JAMES SPILLMAN SURVEY, Abstract #175, the same being the East line of the ARTHUR BURKE SURVEY, Abstract #25, and from which point a found 3/4 inch iron rod bears S 12°58'24" E, 1 78 feet, said beginning point having Texas State Plane Coordinate Values of Y=13,691,927 12 and X=3,249,831 72,

THENCE S 13°37'15" W, along and with the common line of said SPILLMAN and BURKE Surveys, a distance of 10.00 feet to an iron rod with cap set for corner,

THENCE S 72°57'55" E, along and with the South line of said Texas State Highway #6, a distance of 120.21 feet to an iron rod with cap set for corner, from which point a found 5/8 iron rod bears S 15°09'02" E, 1 97 feet,

THENCE S 13°37'15" W, parallel with and 120 00 feet perpendicularly distant from the West line of said 5 46 SPILLMAN SURVEY, a distance of 895 84 feet to an iron rod with cap set for corner, said point being at the North right-of-way line of a 60 foot public roadway right-of-way and from which a found 1 inch iron rod bears S 04°16'57" E, 2 99 feet,

THENCE N 70°16'55" W, along and with said North right-of-way line, a distance of 120 68 feet to a point for corner, said point being at the West line of said SPILLMAN SURVEY, the same being the East line of the aforesaid BURKE SURVEY;

THENCE N 13°37'15" E, along and with said common line, a distance of 467 06 feet to a point for curve,

THENCE in a Northeasterly direction along the arc of a curve to the right, said curve having a radius of 408 51 feet and a central angle of 12°19'11", an arc distance of 87 84 feet, the chord of which curve bears N 07°27'40" E, 87 67 feet, to a point for tangency,

THENCE N 13°37'15" E, parallel with the East line of said BURKE SURVEY, a distance of 346 52 feet to a point for corner being at the South line of said Texas State Highway #6,

THENCE S 72°57'55" E, along and with said South right-of-way line, a distance of 9 42 feet to the POINT OF BEGINNING and containing a calculated area of 2.55 acres of land, said herein described TRACT I, TRACT II and TRACT III containing a total calculated area of 810.05 acres, SAVE AND EXCEPT that certain 117.36 acres described as TRACT A and TRACT B as follows,

All those certain two (2) tracts or parcels of land being out of and a part of the R.M. BRECKENRIDGE SURVEY, Abstract #38 (as to TRACT A described herein), the JAMES SPILLMAN SURVEY, Abstract #175 (as to TRACT A and TRACT B described herein), the LINDSEY T. YOWELL SURVEY, ABSTRACT B16, and the ARTHUR BURKE SURVEY, Abstract #25 (as to TRACT B described herein), said two (2) tracts or parcels of land further being a part of those certain tracts conveyed by Strother Timberlands, Ltd, to Flamingo Isles, LLC, by instrument dated September 16, 1998, and recorded at Film Code 012-97-0573, Galveston County Deed Records, and being more particularly described as TRACT A and TRACT B by metes and bounds as follows,

TRACT A

COMMENCING at a 1-1/2 inch iron pipe found for the most Southeasterly corner of the JONAS BUTLER SURVEY, Abstract #195 (a k a the THOMAS TOBY SURVEY, Abstract #195), the Northeasterly most corner of the MACO STEWART SURVEY, Abstract #666, said point being at the Westerly line of the said LINDSEY T. YOWELL SURVEY, and further being the most Northerly Southwest corner of the original Flammgo Isles, LLC, TRACT A, said commencing point having Texas State Plane Coordinate Values of Y=13,677,864 89 and X=3,246,424 25,

THENCE N 13°37'19" E, along the East line of said JONAS BUTLER SURVEY, the same being the West line of the YOWELL SURVEY, at 864 41 feet passing a 2 inch iron pipe found for the Northwesterly most corner of the aforesaid YOWELL SURVEY, the same being the Southwesterly most corner of the SPILLMAN SURVEY, and continuing for a total distance of 884 41 feet to an iron rod with cap set for POINT OF BEGINNING of the herein described TRACT A, said point having Texas State Plane Coordinate Values of Y=13,678,724 31 and X=246,632 52,

THENCE N 13°37'19" E, continuing along the East line of said JONAS BUTLER SURVEY, a distance of 942 24 feet to an iron rod with cap set for corner, said point being at the Southerly line of the Highland Bayou Diversion Channel, a 300 foot right-of-way as described of record at Volume 2267, Page 272, Galveston County Deed Records,

THENCE N 13°37'15" E, crossing said Highland Bayou Diversion Channel and continuing along the West line of said **JAMES SPILLMAN SURVEY**; at 300 00 feet pass an iron rod found for the North line of said Diversion Channel; at 4575 33 feet pass a 2 inch iron pipe found for the Northeast corner of the **JONAS BUTLER SURVEY**, Abstract #194, the same being the Southeast corner of the **ARTHUR BURKE SURVEY**, Abstract #25, and continuing along said course for a total distance of 11,482 77 feet to an iron rod with cap set for corner being at the South line of the A T & S F R R 200 foot right-of-way, and from which point a found 3/4 inch iron rod bears N 77°35'13" E, 1 05 feet;
THENCE S 70°16'55" E, along and with said South right-of-way line, a distance of 120 68 feet to an iron rod with cap set for corner, and from which point a found 5/8" iron rod bears N 81°59'11" E, 0 93 feet,
THENCE S 13°37'15" W, parallel with and 120 00 feet perpendicularly distant from the West line of said **JAMES SPILLMAN SURVEY**, at 11,169 83 feet pass the North line of the aforesaid Highland Bayou Diversion Channel and continuing along said course for a total distance of 11,469 83 feet to an iron rod with cap set for corner and being at the South line of said Diversion Channel,
THENCE S 13°37'19" W, parallel with and 120 00 feet perpendicularly distant from the West line of said **JAMES SPILLMAN SURVEY**, a distance of 862 36 feet to an iron rod with cap set for corner;
THENCE S 76°22'43" E, a distance of 5,574.79 feet to an iron rod with cap set for point of curve to the left, said curve having a radius of 180 00 feet;
THENCE in a Northeasterly direction, with said curve to the left, an arc distance of 92 48 feet, the chord of which curve bears N 88°54'08" E, 91 47 feet to an iron rod with cap set for point of tangency,
THENCE N 74°10'59" E, a distance of 230 10 feet to an iron rod with cap set for point of curve to the right, said curve having a radius of 260.00 feet,
THENCE in a Northeasterly direction, with said curve to the right, an arc distance of 135 30 feet, the chord of which curve bears 133 78 feet to an iron rod with cap set for point of tangency,
THENCE S 76°00'00" E, a distance of 151 43 feet to an iron rod with cap set for point of curve to the right, said curve having a radius of 50 00 feet,
THENCE in a Southeasterly direction, with said curve to the right, an arc distance of 22 55 feet, the chord of which curve bears S 63°04'44" E, 22 36 feet to an iron rod with cap set for point of reverse curvature, said reverse curve having a radius of 50 00 feet,
THENCE in a Southeasterly direction, with said reverse curve, an arc distance of 22 55 feet, the chord of which curve bears S 63°04'44" E, 22 36 feet to an iron rod with cap set for point of tangency,
THENCE S 76°00'00" E, a distance of 35.00 feet to an iron rod with cap set for corner,
THENCE S 14°00'00" W, a distance of 60 00 feet to an iron rod with cap set for corner, said point being at the beginning of a curve to the left, said curve having a radius of 50 00 feet,
THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 78 87 feet, the chord of which curve bears S 58°48'38" W, 70 94 feet to an iron rod with cap set for point of tangency,
THENCE S 13°37'17" W, a distance of 1351 68 feet to an iron rod with cap set for corner,
THENCE S 76°22'43" E, a distance of 3955 00 feet to a point for corner being at the Mean High Water Line of West Galveston Bay as surveyed August 17, 1999, by William E Merten, Licensed State Land Survey, and filed with the General Land Office of the State of Texas,

THENCE S 29°46'39" W, along the Mean High Water Line of said West Galveston Bay, a distance of 154 61 feet to a point for corner;
THENCE N 76°22'43" W, a distance of 2826 39 feet to a point for corner,
THENCE S 13°37'17" W, a distance of 251 50 feet to a point for corner, said point being at the beginning of a curve to the left having a radius of 400 00 feet,
THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 1281 65 feet, the chord of which curve bears S 11°49'47" W, 799 61 feet to an iron rod with cap set for corner,
THENCE S 13°37'17" W, a distance of 74 26 feet to an iron rod with cap set for point of curve to the left, said curve having a radius of 25 00 feet,
THENCE in a Southeasterly direction, with said curve to the left, an arc distance of 39 17 feet, the chord of which curve bears S 31°15'56" E, 35 29 feet to an iron rod with cap set for point of tangency,
THENCE S 76°09'09" E, a distance of 177 54 feet to an iron rod with cap set for point of curve to the left, said curve having a radius of 25 00 feet,
THENCE in a Northeasterly direction, with said curve to the left, an arc distance of 34 24 feet, the chord of which bears N 64°36'57" E, 31 62 feet to an iron rod with cap set for corner,
THENCE S 76°09'09" E, 65.46 feet to an iron rod with cap set for corner, said point being the beginning of a curve to the left, said curve having a radius of 25 00 feet,
THENCE in a Southeasterly direction, with said curve to the left, an arc distance of 34 24 feet, the chord of which bears S 36°55'16" E, 31 62 feet to an iron rod with cap set for point of tangency,
THENCE S 79°09'09" E, a distance of 83 48 feet to an iron rod with cap set for corner,
THENCE S 13°50'51" W, a distance of 60 00 feet to an iron rod with cap set for corner,
THENCE S 15°22'48" W, a distance of 113 09 feet to a point for corner, said point being at a curve to the left, said curve having a radius of 742 12 feet;
THENCE in a Northwesterly direction, with said curve to the left, an arc distance of 222 55 feet, the chord of which curve bears N 50°21'31" W, 221 72 feet to a point of compound curvature, said curve having a radius of 50 00 feet;
THENCE in a Northwesterly direction, with said compound curve, an arc distance of 15 01 feet, the chord of which curve bears N 67°33'04" W, 14.96 feet to a point of tangency,
THENCE N 76°09'09" W, a distance of 157.58 feet to a point for curve to the left, said curve having a radius of 15 00 feet;
THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 23 62 feet, the chord of which curve bears S 58°44'04" W, 21 26 feet to a point of tangency,
THENCE S 13°37'17" W, a distance of 54 81 feet to a point for corner,
THENCE N 76°26'27" W, a distance of 10 07 feet to a point for corner,
THENCE S 13°37'17" W, a distance of 244 82 feet to a point for corner, said point being the beginning of a curve to the left, said curve having a radius of 397.12 feet,
THENCE in a Southwesterly direction, with said curve to the left, an arc distance of 625 16 feet, the chord of which bears S 62°06'47" W, 562 58 feet to a point for corner;
THENCE S 76°09'09" E, a distance of 984 22 feet to a point for corner,
THENCE N 58°50'16" E, a distance of 146.42 feet to a point for corner,
THENCE S 76°09'09" E, a distance of 349 28 feet to a point for corner,
THENCE S 74°37'12" E, a distance of 425 42 feet to a point for corner being at the aforementioned Mean High Water Line of West Galveston Bay,

THENCE in a Southwesterly direction along the Mean High Water Line of said West Galveston Bay, the following courses and distances,

S 67°39'28" W, a distance of 21 41 feet,
 S 74°11'31" W, a distance of 98.73 feet;
 S 82°45'38" W, a distance of 143 98 feet,
 N 78°26'04" W, a distance of 139 65 feet,
 N 38°01'17" W, a distance of 66.38 feet,
 N 61°32'18" W, a distance of 31 07 feet,
 S 75°51'13" W, a distance of 101 40 feet, and,

S 36°12'00" W, a distance of 59 05 feet to a point for corner being the point of intersection of said Mean High Water Line of West Galveston Bay with the common line of the **R.M. BRECKENRIDGE SURVEY** and the **ALEX RAMSEY SURVEY**, **THENCE** N 76°22'51" W, along the South line of the **R.M. BRECKENRIDGE SURVEY**, the same being the North Line of the 65.46 **ALEX RAMSEY SURVEY**, a distance of 2044 94 feet to an iron rod with cap set for corner, said point being at the Northwest corner of said **R.M. BRECKENRIDGE SURVEY**, the same being the Southeast corner of said **LINDSEY T. YOWELL SURVEY**,

THENCE N 13°37'17" E, along the Northwest line said **R.M. BRECKENRIDGE SURVEY**, same being the Southeast line of the **LINDSEY T. YOWELL SURVEY**, a distance of 189 18 feet to an iron rod with cap set for corner, said point being at a curve to the right, said curve having a bearing of 50 00 feet;

THENCE in a Northeasterly direction, with said curve to the right, an arc distance of 135 08 feet, the chord of which curve bears N 06°45'19" E, 97 59 feet to an iron rod with cap set for point of reverse curvature, said reverse curve having a radius of 25 00 feet,

THENCE in a Northeasterly direction, with said reverse curve, an arc distance of 14 69 feet to an iron rod with cap set for corner, said point being at said Northwest line of the **R.M. BRECKENRIDGE SURVEY**,

THENCE N 13°37'17" E, along the Northwest line said **R.M. BRECKENRIDGE SURVEY**, at 3034 17 feet passing the Northwest corner of the **R.M. BRECKENRIDGE SURVEY**, same being the Northeast corner of said **LINDSEY T. YOWELL SURVEY**, and being at the South line of said **JAMES SPILLMAN SURVEY**, and continuing for a total distance of 3054 17 feet to an iron rod with cap set for corner,

THENCE N 76°22'43" W, parallel to and 20 feet perpendicularly distant from the South line of said **JAMES SPILLMAN SURVEY**, same being the North line of said **LINDSEY T. YOWELL SURVEY**, a distance of 5154.73 feet to an iron rod with cap set for corner,

THENCE S 13°40'24" W, a distance of 270.00 feet to an iron rod with cap set for corner,

THENCE N 76°22'43" W, a distance of 487 86 feet to an iron rod with cap set for corner;

THENCE N 135°40'24" E, a distance of 270 00 feet to an iron rod with cap set for corner,

THENCE N 76°22'43" W, parallel to and 20 feet perpendicularly distant from the South line of said **JAMES SPILLMAN SURVEY**, a distance of 584 87 feet to the **POINT OF BEGINNING** and containing a calculated area of 114 81 acres of land

TRACT B

BEGINNING at an iron rod with cap set for the point of intersection of the South right-of-way line of Texas State Highway #6 with the West line of the **JAMES SPILLMAN SURVEY**, Abstract #175, the same being the East line of the **ARTHUR BURKE SURVEY**, Abstract #25, and from which point a found 3/4 inch iron rod bears S 12°58'24" E, 1 78 feet, said beginning point having Texas State Plane Coordinate Values of Y=13,691,927 12 and X=3,249,831 72,
THENCE S 13°37'15" W, along and with the common line of said **SPILLMAN** and **BURKE** Surveys, a distance of 10 00 feet to an iron rod with cap set for corner,
THENCE S 72°57'55" E, along and with the South line of said Texas State Highway #6, a distance of 120 21 feet to an iron rod with cap set for corner, from which point a found 5/8 iron rod bears S 15°09'02" E, 1.97 feet,
THENCE S 13°37'15" W, parallel with and 120 00 feet perpendicularly distant from the West line of said 5 46 **SPILLMAN SURVEY**, a distance of 895 84 feet to an iron rod with cap set for corner, said point being at the North right-of-way line of a 60 foot public roadway right-of-way and from which a found 1 inch iron rod bears S 04°16'57" E, 2.99 feet,
THENCE N 70°16'55" W, along and with said North right-of-way line, a distance of 120 68 feet to a point for corner, said point being at the West line of said **SPILLMAN SURVEY**, the same being the East line of the aforesaid **BURKE SURVEY**;
THENCE N 13°37'15" E, along and with said common line, a distance of 467 06 feet to a point for curve,
THENCE in a Northeasterly direction along the arc of a curve to the right, said curve having a radius of 408 51 feet and a central angle of 12°19'11", an arc distance of 87 84 feet, the chord of which curve bears N 07°27'40" E, 87 67 feet, to a point for tangency,
THENCE N 13°37'15" E, parallel with the East line of said **BURKE SURVEY**, a distance of 346 52 feet to a point for corner being at the South line of said Texas State Highway #6,
THENCE S 72°57'55" E, along and with said South right-of-way line, a distance of 9 42 feet to the **POINT OF BEGINNING** and containing a calculated area of 2 55 acres of land

NOTE THIS PROPERTY DESCRIPTION HAS BEEN PREPARED BASED ON ACTUAL SURVEYS MADE ON THE GROUND AND UNDER THE DIRECTION OF DALE L. HARDY, REGISTERED PROFESSIONAL LAND SURVEYOR 4847, BETWEEN JULY 2002 AND DECEMBER 2002 AND TO WHICH REFERENCE IS MADE

PREPARED BY

DALE L. HARDY / GEOSURV, LLC
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