

8926758

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SAN LEON LANDING

THE STATE OF TEXAS       SS  
                                  SS  
COUNTY OF GALVESTON    SS

THIS DECLARATION is made on this 15th day of August, 1989 by SAN LEON LANDING OWNER'S ASSOCIATION "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner, in part or whole, of that certain property situated in Galveston County, Texas, which has or will be platted and subdivided as San Leon Landing, hereinafter sometimes referred to as "the Properties" or "Subdivision"; and

WHEREAS, it is the desire of the Declarant to create exclusive residential waterfront homesites in said Subdivision for the purpose of preserving and enhancing the privacy and quiet enjoyment of homes built thereon by restricting by a general plan or scheme the use to which the lots in said Subdivision may be put, and in order to ensure uniformity and to maintain suitable standards for the use and occupancy of the lots in said SAN LEON LANDING, as exclusive residential waterfront sites for the benefit, use and convenience of each and every purchaser, their heirs and assigns, of lots in said SAN LEON LANDING.

NOW THEREFORE, Declarant hereby declares that the Properties shall be developed, held, transferred, improved, sold, conveyed and occupied subject to the easements, restrictions, covenants and conditions hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with the Properties, shall be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall unure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association". shall mean and refer to SAN LEON LANDING OWNERS ASSOCIATION, INC., it successors and assigns. The Association has the power to collect and disburse those maintenance assessments as described in Article V hereof.

Section 2. "Common Area". shall mean all real property including all or part of reserve "A" and easements together with the improvements thereon and all riparian rights and waterways owned by the Association, or owned by

the Declarant or Owners and dedicated for the common use and benefit of the Owners. The Common Area specifically includes, but is not limited to, the private streets, canals, bridges, breakwaters, bulkheads, drainage easements, culverts and other areas of a non-residential nature shown on the plat of SAN LEON LANDING.

Section 3. "Declarant". shall mean and refer to not only SAN LEON LANDING, LTD., but also to all heirs, executors, administrators or assigns, as successor developer of all or a substantial portion of the lots in the undeveloped state, but shall not include any purchaser of one or more developed Lots. For the purposes of this Declaration, "developed Lot" shall mean a Lot with the street on which it faces opened and improved and with utilities installed and ready to furnish utility service to such Lot, and "undeveloped Lot" is any Lot which is not a developed Lot.

Section 4. "Lot". shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of any property designated herein as "Common Area".

Section 5. "Owner". shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Properties". shall mean and refer to: (a.) that certain property hereinabove described as SAN LEON LANDING and (b.) such additions thereto as may hereafter be made subject to this Declaration.

## ARTICLE II

### BUILDING AND USE RESTRICTIONS

Section 1. Residence Buildings. No building or other structure shall be built, placed, constructed, reconstructed or altered on any Lot other than one (1) single family residence with appurtenances, and no structure shall be occupied or used until the exterior construction thereof is completed. No other detached buildings or structures shall be built, placed or constructed on any Lot for any purpose without first obtaining approval of same pursuant to Article III hereof. When construction of the residential dwelling has begun, the exterior or such construction must be completed within one hundred twenty (120) days from the time of starting. Garage areas shall be confined to that area under and below the main living area only. No detached garage structures shall be built, placed, constructed or reconstructed on any lot for any purpose without first obtaining approval of same pursuant to Article III hereof.

Section 2. Single-Family Residential Use. Each Lot (including land and improvements) shall be used and occupied for single-family residential and related recreations purposes only. No Owner or other occupant shall use or occupy his Lot, or permit the same or any part thereof to be used or occupied, for the purpose other than as a private single family residence for the Owner or his tenant and their families. As used herein, the term

"single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments or other apartment use. No Lot shall be used or occupied for any business, commercial, trade or professional purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not.

**Section 3. Minimum Elevation.** The building placed or erected on any Lot for use and occupancy as a dwelling shall be constructed in compliance with all federal, state and local regulations and standards, and satisfy all mandatory minimum elevation requirements as to the interior living area of the residential structure. Provided however, in no event shall the elevation of the interior living area of the residential structure (exclusive of porches and decking), measured to the top of the lowest interior living area floor, be less than nine feet (9) above Mean Sea Level (M.S.L.), unless otherwise approved by any governing authority and subsequent approval of same pursuant to Article III hereof.

**Section 4. Minimum Square Footage Within Improvements.** The interior living area of the residential structure (exclusive of porches and decking) satisfying the minimum elevation requirements described in Section 3 above, shall contain not less than one thousand eight hundred fifty (1,850) square feet. Any enclosed area on the ground level of the residential structure shall contain not less than three hundred (300) square feet and shall be constructed and improved in compliance with all federal, state and local regulations and standards.

**Section 5. Location of the Improvements on the Lot.** No building shall be located on any lot nearer to the private street than the minimum set back line on the recorded plat, nor nearer to the private canal than fifteen (15) feet. No building shall be located nearer than fifteen (15) feet to the north side lot line, with the exception of lots 2 and 19 where a distance of ten (10) feet from the north lot line shall be maintained. At least 10% of the length of the side of the building must be built on the south lot line. For the purpose of this covenants and restrictions, saves, steps and unroofed terraces shall not be considered as part of a building, provided, however that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

The exterior wall of any building that is parallel to and within five (5) feet of any south property line shall have no windows, doors or other openings in it unless the south property line is on the street side of a corner Lot.

**Section 6. Waterfront Improvements.** No pier, pylons, deck, boat slip or other similar structure shall be placed or erected on the banks, or in the canal which extends more than eighteen (18) feet over or into the water of said canal, measured from the centerline of the bulkhead adjacent to or adjoining such pier, deck boat slip or other similar structure. Each Lot shall be allowed the use of a boat slip(s) located in the canal, whether or not same includes a pier, deck or other similar structure. No Owner shall be allowed to place or erect any boat slip, pier, dock or other similar structure in any body of water unless same is situated entirely within the boundaries of the waterfront property line of said Lot adjacent to such

body of water. Provided, however, the Architectural Control Committee shall have the authority to approve alternate locations of such structures within the canals. No boating craft shall be allowed to be docked in any canal if such craft extends more than eighteen (18) feet into the canal from the centerline of the bulkhead when docked at any bulkhead, pier, deck, boat slip or other similar structure. No pier, deck, boat slip or other similar structure that projects into the water shall be constructed on any lot without approval of the Architectural Control Committee. The committee will only consider plans and proposals presented to it in writing and will immediately reject any plans for a home made type deck such as one floating on barrels. Should the committee grant permission for a floating deck or ramp, the owner therefore agrees to maintain and keep it in a sightly manner, free of litter, fishing poles, buckets and so forth. Subject to the restrictions herein set forth, the location, size, dimensions, design, construction materials and other characteristics of such improvements relative to the purpose hereof of promoting the utilization, protection, safety and uniformity of the Properties, shall be subject to the approval of the Architectural Control Committee and the provisions of Article III hereof.

Section 7. Bulkheads. The bulkheads located on the Properties have been placed and constructed thereon for the purposes of creating, preserving and defining the boundaries of the canals, waterways and other bodies of water and developing, protecting and defining the waterfront boundaries of the Lots, all respectively being situated in, on, about, adjacent to or forming a part of the Subdivision. The bulkheads are herein designated as Common Area for the benefit of and maintenance by the Association and the members thereof, yet are part of and appurtenant to the Lot of the Subdivision to which they are adjoined or attached. Each Owner's easement of use and enjoyment of the bulkheads is hereby restricted and limited to only such uses as are incidental to the Owner's use and enjoyment of his Lot and the Common Area as will not harm, damage or in any way adversely affect the placement or structural soundness and effectiveness of the bulkheads as established boundaries and protective devices of the Subdivision. An affirmative duty is imposed upon each Owner, for himself, his family members, his tenants, and his contract purchasers who reside upon the property, and for each of their guests and invitees on the property, to maintain a clean and safe area in, on and around the bulkhead adjoining his Lot, to not damage or harm the bulkhead through intentional misuse, neglect, negligence or construction to, on or around the bulkhead and to not cut, split, divide, separate or detach any part of the bulkhead in any manner. In the event of any damage or harm to the bulkhead by reason of any action on the part of an Owner prohibited herein such bulkhead shall be repaired or replaced at the sole cost and expense of the Owner or occupant responsible therefor. In the event said Owner or occupant fails and refuses to make such repairs or replacement and such failure or refusal continues for, three (3) days after written demand to repair or replace is given by the Association, Declarant or their assigns to the Owner or occupant, the Association, Declarant or their assigns may, without being under any duty to so do, enter upon said Lot, and make sure repairs or replacement, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the Lot to pay such statement of costs immediately upon receipt thereof, which such costs shall be deemed a

special maintenance assessment set forth in Article V hereof.

**Section 8. Sanitary Sewer System and Utilities.** No dwelling house placed or erected on a Lot shall be occupied until the same is connected and tied into the sanitary sewer system made available to the Owners, and no connections to the water system and the sanitary sewer system shall be covered until inspected and approved by the appropriate utility company furnishing utility services to the properties. No sewage septic tanks shall be used or permitted. No sewage shall be disposed of in any other manner whatsoever where said sanitary sewer system is available. In no event shall any sewage be drained or in any manner discharged into any canal, waterway or any other body of water, and no "privy", vault or other outhouse of similar character shall be placed, erected or allowed on the Lot.

Each Owner of Lot shall, at his own cost and expense, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code and the furnishing service) such service cables, lines, pipes, meter loops, meters, transformers, taps and other equipment or fixtures necessary to furnish and connect the various utility services to the improvements located on such Lot. Electrical service to each Lot shall be exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

**Section 9. Easements.** Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded plat of the Subdivision and no structure of any kind shall be erected upon any of said easements. Any driveway or portion of a driveway constructed upon a Lot and which lies within or crosses any such easement, shall be constructed of flexible base type materials only, which construction shall be approved pursuant to Article III hereof. Each utility company suing the easements is hereby granted full rights of ingress and egress over, upon and across the Common Area in connection with its installation and maintenance of utilities servicing the Subdivision. Neither Declarant nor any utility company using the easement shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers or improvements of the Owner located on the land within or affected by said easements. Full rights of ingress and egress shall be had by the Declarant and Association at all times over and upon each Lot for the maintenance and repairs on each Lot and Common Area in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association or Declarant upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of its maintenance fund, except as to damage caused during or by use of the above described utility easements.

Full rights of ingress and egress shall be had by the Fire Department of San Leon Volunteer Fire Department, Texas City Fire Department, or any other authorized Fire Prevention Agency for the purpose of extinguishing fires to any of the buildings in the Subdivision. No such Fire Prevention Agency shall be held liable for any damage done by them or their assigns,

their agents, employees, or servants to streets, shrubbery, trees, flowers or improvements of the owner of the land in the subdivision. Damage created by any of the aforementioned agencies to the streets shall be repaired at the expense of the Owners Association out of the funds held in reserve.

**Section 10. Prohibition of Trade and Offensive Activities.** No activity, whether for profit or not, shall be carried on or from any Lot or canal or waterway adjacent thereto which is not related to single family residential and recreational purposes. No commercial boating craft, including, without limitation, fishing and shrimping boats, shipping vessels, offshore rigging boats and charter boats, shall be allowed on or operated from any canal or waterway adjacent to any Lot. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot or Common Area which may be or become an annoyance or a nuisance to the Subdivision. The canals and any other Common Area shall at all times be kept free of debris, trash, rubbish, garbage and other unsightly and/or unsanitary articles that would constitute a hazard to navigation.

**Section 11. Use of Temporary Structures.** No structures of a temporary character, mobile home, camper, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence. No structures of a temporary character shall be placed or used on any lot at any time for storage purposes.

**Section 12. Storage and Parking of Automobiles, Boats, Trailers and Other Vehicles.** No boat trailers, boats, travel trailers, inoperative automobiles, campers, or vehicles of any kind shall be parked or stored in the private streets or any right-of-way. Storage of such items and vehicles must be within the structure of the residential dwelling, garage or other structure approved for such purpose by the Association on the Lot. Provided, however, automobiles, trucks and recreational vehicles owned by Owners or their guests and invitees for personal use only may be allowed to park on the driveways on Lots and only for periods of time not to exceed three (3) days. Such vehicles may, upon approval by and at the sole discretion of the Association, be allowed to park upon the Lots for longer periods of time, in no event, however, to exceed seven (7) consecutive days. No commercial trucks, vans or trailers shall be parked on driveways or on streets within the Properties for periods of time exceeding twelve (12) hours, nor more than twenty four (24) hours in any calendar week, not in a manner or position which restricts or prevents the free and unobstructed use of any private street.

**Section 13. Storage of Garbage, Waste or Unsightly Objects.** No Lot shall be used as a dumping ground for rubbish, trash or garbage or other waste material and objects shall not be kept, except in sanitary containers of metal, plastic or masonry materials with sanitary cover lids. No Lot shall be used for open storage for any materials whatsoever which storage is visible from the street, except new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may remain thereon for a reasonable time so long as the construction progresses without undue delay until the completion of the improvements after which all excess materials

shall be removed from the Lot.

**Section 14. Mineral Operation.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

**Section 15. Walls, Fences and Hedges.** No wall, fence or hedge shall be erected or maintained nearer to the front Lot line than the front building line on such Lot, nor on corner Lots nearer to the side Lot line than the building setback line parallel to the side street. No side or rear fence, wall or hedge shall be more than six (6) feet in height. No wall or fence shall be erected on any Lot adjacent to a bulkhead adjoining said Lot if such wall or fence, in the sole opinion of the Architectural Control Committee, will cause an adverse effect on the proper drainage of the Lot or the structural soundness and effectiveness of the bulkhead. Any wall, fence or hedge erected on a Lot by Declarant or his assigns, shall pass ownership with title to the Lot and it shall be the Owner's responsibility to maintain said wall, fence or hedge thereafter.

**Section 16. Lot Maintenance.** The Owner or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of material and equipment except for normal residential requirements or recreational purposes or incident to construction or improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind or the burning (except as permitted by law) of any such materials is prohibited. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirement or any of them, such default continuing after ten (10) days' written notice thereof, Declarant or his assigns, may without being under any duty to do so, trespass or otherwise, enter upon said Lot, cut, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions and to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the Lot to pay such statement immediately upon receipt thereof.

**Section 17. Lot Drainage.** Each Lot shall be maintained so as to preserve the drainage of the Lot and adjacent roadway areas, public or private. The erection or placing of any structure or object or the filling in or excavation of any area of the Lot which will prevent free and adequate drainage or allow water to stand on the Lot, or adjacent Lots, or adjacent roadways, is prohibited. No walkways, slabs or other similar materials and having a subsurface foundation or a thickness in excess of two (2) inches or a width exceeding four (4) feet shall at any time be placed or constructed upon the ground which is above the subsurface structure of any bulkhead located adjacent to or adjoining such walkway or slab.

**Section 18. Signs, Advertisements, Billboards.** No sign, advertisement,

billboard or advertising structure of any kind shall be placed, maintained or displayed to the public view on any lot or boat moored in the canal, except one sign for each building site, of not more than five (5) square feet, advertising the property for sale or rent. Declarant or his assigns, and/or the Association shall have the right to remove any such sign, advertisement, billboard or structure which is placed on said Lots, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal. Declarant or his assigns, may maintain, as long as he owns property in SAN LEON LANDING, in or upon such portion of the Properties as Declarant may determine, such facilities as in his sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs, and Declarant may use, and permit such builders (who are at the relevant time building and selling houses in SAN LEON LANDING) to use residential structures for sales offices and display purposes, but all rights of Declarant and of any builder acting with Declarant's permission under this sentence shall be operative and in effect only during the construction and initial sales period within the area composed of SAN LEON LANDING, in no event to extend later than two (2) years from the date of the conveyance of the second Lot to an Owner.

Section 19. Building and Roofing Material. All buildings placed or erected on a Lot shall be finished on the outside with an accepted wood, composition and/or masonry residential exterior building material, and no corrugated metal, felt or paper shall be used as exterior siding or roofing on any building placed or erected on the Lot. All buildings must be kept in good repair and in neat and clean condition and must be painted when necessary to preserve the attractiveness thereof. The roof of any building shall be constructed or covered with (1) glazed tile or (2) asphalt, fiberglass or composition type shingles or architectural metal roofing comparable in color to wood shingles. The decision of such comparison shall rest exclusively with the Architectural Control Committee. Any other type of roofing material shall be permitted only at the sole discretion of the Architectural Control Committee upon written request.

Section 20. Maximum Height of Antenna. No electronic antenna or device of any type other than an antenna for receiving normal television signals shall be erected, constructed, placed or permitted to remain on any Lot or house. Television antennas must be located to the rear of the roof ridge line, gable or center line of the residential structure. Freestanding antennas must be attached to and located behind the rear wall of the residential structure. No antenna, either freestanding or attached, shall be permitted to extend more than ten (10) feet above the roof of the residential structure on the Lot, or shall be erected on a wooden pole.

#### ARTICLE III

##### ARCHITECTURAL CONTROL

No buildings or improvements of any character shall be erected or placed or the erection thereof begun, or changes made in the design thereof after original construction, on any Lot until the construction plans and specifications and a plan showing the location of the structure or improvements have been submitted to and approved in writing by the



Architectural control Committee (hereinafter referred to as "Committee) or its duly authorized representative, as to compliance with these restrictions, quality of material, harmony of external design with existing and proposed structures and as to location with respect to topography and finish grade elevation. The Committee shall have the right to require that evidence be furnished to it that proposed construction techniques to be used on any lot or waterfront improvements will not cause damage to any bulkhead, drainage easement or other common area. The initial members of the Committee shall be Charles A. Hinton, Larry J. Wasson, Margart R. Hinton, and David D. Hinton. If there exists at any time one or more vacancies in the committee, the remaining member or members of such Committee may designate successor member (s) to fill such vacancy or vacancies provided that Declarant may from time to time, without liability of any character for so doing, remove and replace any such members of the Committee as he may in his sole discretion determine. The Declarant, Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. In the event the Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Declarant hereby retains his rights to assign the duties, powers, ad responsibilities of the Committee to SAN LEON LANDING OWNERS ASSOCIATION, INC., when one hundred percent (100%) of all lots in SAN LEON LANDING are owned by Owners, and the "Architectural Control Committee" ("Committee") herein shall include the Association, as such assignee. The approval or lack of disapproval by the Committee shall not be deemed to constitute any warranty or representation by such Committee including, without limitation any warranty relating to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. Any thing contained in this Article III or elsewhere in this Declaration to authorized representative, is hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of and deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Subdivision lot and of the size and location of any such building or improvement when, in the sole and final judgment and opinion of the Committee, or its duly authorized representative, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole. The Committee may require the submission to it of such documents and items (including as examples, but without limitation, written request for and description of the variances requested, plans, specifications, plot plans and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for a variance. If the Committee shall approve such request for a variance, the Committee may evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including as examples,

but without limitation, the type of alternate materials to be permitted, and alternate fence height approved or specifying the location, plans and specifications applicable to an approved out building) and signed by a majority of the then members of the Committee (or by the Committee's duly authorized representative). Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the Committee or (b) failure by the Committee to respond to the request for variance within thirty (30) days after its receipt of the required documents. In the event the Committee or any successor to the authority thereof shall not then be functioning and/or the term of the Committee shall have expired and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted, it being the intention of Declarant that no variances be available except at the discretion of the Committee, or if it shall have succeeded to the authority of the Committee in the manner provided herein, the Board of directors of the Association. The Committee shall have no authority to approve any variance except as expressly provided in this Declaration.

#### ARTICLE IV

##### SAN LEON LANDING OWNERS ASSOCIATION, INC. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Holders of future interests not entitled to present possession shall not be considered as Owners for the purposes of voting hereunder.

Class B. The Class B member(s) shall be Declarant or his heirs, executors, administrators or assigns and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership including duly annexed area; or

(2) on January 1, 1995.

#### ARTICLE V

## COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, in the case of each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed such deed, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge of the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at this time when the assessment fell due.

Section 2. Purpose of Assessment. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and, in particular, maintenance of any Common Area, parkways, esplanades and entry ways, negotiation of garbage and trash collection contracts, police and security service, fire protection, emergency medical service, street cleaning, street lighting, mosquito control and other services as may be in the community's interest.

Section 3. Rate of Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be \$1,200 per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by an amount equal to not more than ten percent (10%) above the maximum annual assessment which could have been made without a vote of the membership in the case of the previous year.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased to an amount in excess of ten percent (10%) of the maximum assessment for the previous year by a vote of two thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose.
- (c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a common area or of a capital improvement upon a Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of each class of members who are voting

in person or by proxy at a meeting duly called for this purpose. Notwithstanding the foregoing, the Association shall have the power and authority in an emergency situation or under circumstances which present an immediate threat to the health, safety and welfare of the members of the association, or a threat of preventable damage or destruction of a Common Area or Lot within the Subdivision, to levy a special assessment therefor without calling a meeting or obtaining the assent of the members prescribed above.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be mailed by U.S. mail first class to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any such meeting, the meeting shall be adjourned but another meeting may be called subject to the same notice requirement, but the required quorum at such subsequent meeting shall be one half (1/2) of the required quorum applicable in the case of the preceding meeting to each class of membership. To such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. All Lots in SAN LEON LANDING shall commence to bear their applicable maintenance fund assessment simultaneously and Lots owned by Declarant are not exempt from assessment. Lots which are occupied by residents shall be subject to the annual assessment determined by The Board of Directors in accordance with the provisions of Sections 3 and 7 hereof. All Lots in SAN LEON LANDING which are not occupied by a resident and which are owned by Declarant, a builder, or a building company, shall be assessed at the rate of one-sixth (1/6) of the annual assessment above. The rate of assessment for an individual Lot, within a calendar year, can change as the character of ownership and status of occupancy by a resident changes, and the applicable assessment for such Lot shall be prorated according to the rate required during each type of ownership.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots in SAN LEON LANDING on the first day of the month following the sale of the third lot or September 1, 1992, whichever ever occurs first. The annual assessment shall be adjusted according to the number of months remaining in the then current calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed (by U.S. first class mail) to every owner subject thereto. The payment dates shall be established by the Board of Directors. The payment(s) shall be prorated and paid annually or semiannually reflecting all changes made by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request

for such certificate signed by the Owner, but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the highest non usurious rate allowed under the laws of the State of Texas, or other applicable law, or if no such limitation is imposed, then at the rate of eighteen percent (18%) per annum, and if placed in the hands of an attorney for collection or if collected through probate or other judicial proceeding, there shall be paid to the Association an additional reasonable amount, but no less than fifteen percent (15%) of the amount owing, as attorneys fees. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the Lot involved. No Owner may waive or otherwise escape liability for the non-use of the Common Area of abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the Assessment provided for herein shall be subordinate to the lien of any first mortgage existing at any time upon the particular Lot involved. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but such lien shall exist as, and constitute, a separate and distinct charge and lien on each Lot.

#### ARTICLE VI

##### GENERAL PROVISIONS

Section 1. Enforcement. Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any provisions which shall remain in full force and effect.

Section 3. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility or improvement situated upon the Common Area, if any, and the right

to establish and enforce rules and regulations governing the use and enjoyment of the common Area.

- (b) The right of the Association to suspend the voting rights and rights to use of any recreational facility by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations.
- (c) The right of the Association to dedicate or transfer its interest, title, easement, or other rights in any to all or any part of the Common Area, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two thirds (2/3) of each class of the members agreeing to such dedication or transfer has been recorded in the Public Record of Real Property of Galveston County, Texas.
- (d) The right of the Association to collect and disburse those funds as set forth in Article V.
- (e) All other rights of the Association, Declarant or other persons and all covenants, conditions and restrictions set forth in the provisions of this Declaration or provided for in the By Laws of the Association.

Section 4. Delegation of Use. Any Owner may delegate in accordance with the provisions hereof or of the By Laws of the SAN LEON LANDING OWNER'S ASSOCIATION, INC. his right of enjoyment to any Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 5. Title to Common Areas. Declarant may retain the legal title to the Common Area in the properties until such time as it has completed improvements thereon, if any, and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Area has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all of the rights and privileges relating to such Common Area and facilities granted to the Association in this Declaration and in any amendments to this Declaration.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This declaration may be amended during the first thirty (30) year period by an instrument signed by those owners owning not less than seventy-five percent (75%) of the Lots within SAN LEON LANDING and thereafter by an instruction signed by those Owners owning not less than sixty percent (60%) of the Lots within SAN LEON LANDING. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Galveston County, Texas.

Declarant shall have and reserves the right at any time and from time to time prior to January 1, 1992 without the order or consent of any other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any owner or his mortgagee.

Section 7. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two thirds (2/3) of each class of membership.

Section 8. Books and Records. The books, records and papers of the Association shall, during reasonable business hours, be subject to inspections by any members. The Articles of Incorporation, By Laws of the Association, and Restrictive Covenants shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

Section 9. Interpretation. If the Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 10. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.

EXECUTED this 17th day of August, 1989.

DECLARANT:

SAN LEON LANDING, LTD.

Charles A. Hinton  
CHARLES A. HINTON

Margaret R. Hinton  
MARGARET R. HINTON

David D. Hinton  
DAVID D. HINTON

Susan H. Hinton  
SUSAN H. HINTON

THE STATE OF TEXAS  
COUNTY OF TITUS

BEFORE ME, the undersigned authority, on this day personally appeared Charles A. Ninton, Margaret R. Ninton, and David D. Hinton, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15<sup>th</sup> day of August, 1989.

Marianne B. Spearman  
Notary Public in and for Titus  
County, Texas

THE STATE OF TEXAS  
COUNTY OF GALVESTON

BEFORE ME, the undersigned authority, on this day personally appeared SUSAN H. HINTON, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17<sup>th</sup> day of August, 1989.

Claudette Lockman  
Notary Public in and for ~~Titus~~  
~~County~~ the State of Texas  
My Commission expires: 12/17/89

STATE OF TEXAS COUNTY OF GALVESTON  
I hereby certify that this instrument was filed  
on the date and time stamped hereon by me and  
was duly recorded in the Official Public Records  
of Real Property of Galveston County Texas, on

AUG 17 1989

1989  
89 AUG 17 AM 11:42  
[Signature]  
COUNTY CLERK  
GALVESTON COUNTY TEXAS



Jessie B. [Signature]  
COUNTY CLERK  
GALVESTON CO. TEXAS