

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF
KEY HARBOUR SUBDIVISION**

This Declaration of Covenants, Conditions, and Restrictions and Easements of Key Harbour Subdivision (the "Declaration") is made as of February 27, 1998, by, Key Harbour Development Corp., a Texas corporation (the "Declarant").

Declarant is the owner of certain property (the "Property and/or the "Subdivision") in Montgomery County, Texas, which is more particularly described as follows:

Key Harbour Subdivision, a subdivision in Montgomery County, Texas, according to the map or plat thereof, recorded in Cabinet J, Sheet 130, Map Records of Montgomery County, Texas.

Declarant has created a residential community with designated "Lots" (as defined herein) for the benefit of the present and future owners of said Lots within the Subdivision, and desires to create and carry out a uniform plan for the improvement, development, and sale of the Lots.

Declarant desires to ensure the preservation of the values and for the maintenance of Common Area (as herein defined), and to this end desires to further subject the Subdivision to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and the owners thereof.

Declarant has deemed it desirable for the efficient preservation of the values of Lots in the Subdivision to subject and bind the Subdivision to the jurisdiction and assessment of the Association (as herein defined) with the power and duty to maintain and administer the Common Area of the Subdivision and the power to administer and enforce the covenants and restrictions and to collect and disburse the assessments and charges hereinafter created.

Declarant hereby declares that the Property, shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, regulations, and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any rights, title, or interest in all or any part of the Property.

ARTICLE I PURPOSE

Subdivision is encumbered by this Declaration for the following reasons: to ensure the best and highest use and most appropriate development of the Property; to protect Owners (as herein defined) against improper use of surrounding Lots; to preserve so far as practicable the natural beauty of the Property; to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials; to encourage and secure the erection of attractive improvements on each Lot with appropriate locations; to secure and maintain proper setbacks from streets and adequate free space; and, in general, to provide for development of the highest quality to enhance the value of investment made by Owners of Lots.

ARTICLE II DEFINITIONS

The following words, when used in this Declaration or in any Supplemental Declaration (as provided under Article XVIII below), unless inconsistent with the context of this Declaration, shall have the following meanings:

Section 2.1 “Annual Assessment” means the Assessment levied annually pursuant to Section 13.3.

Section 2.2 “Architectural Control Committee” means the Architectural Control Committee established pursuant to Section 12.1.

Section 2.3 “Articles” mean the Articles of Incorporation for Key Harbour Property Owners' Association currently on file with the Texas Secretary of State, and any amendment which may be made to those Articles from time to time.

Section 2.4 “Assessments” means the Annual, Special, and Default Assessments levied pursuant to Article XIII below.

Section 2.5 “Association” means Key Harbour Property Owners' Association, a Texas nonprofit corporation, its successors, and assigns.

Section 2.6 “Association Documents” means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

Section 2.7 **"Board of Directors"** means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

Section 2.8 **"Bylaws"** means the Bylaws adopted by the Association, as amended from time to time.

Section 2.9 **"Common Area"** means all the real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis, including the areas designated as such on the plats from time to time filed for the Property. Such interest may include, without limitation, estates in fee, for terms of years, or easements. At the time of the conveyance of the first Lot, Common Area shall include all portions of the Property other than Lots 1 through 23, inclusive.

Section 2.10 **"Common Expenses"** means (i) all expenses expressly declared to be common expenses by the Declaration, any Supplemental Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Residence Exterior pursuant to Section 6.1; (iii) insurance premiums for the insurance carried under Article X; and (iv) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

Section 2.11 **"Declarant"** means Key Harbour Development Corp., a Texas corporation, its successors and assigns.

Section 2.12 **"Declaration"** means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for Key Harbor Subdivision.

Section 2.13 **"Default Assessments"** means the Assessments levied by the Association pursuant to Section 13.6 below.

Section 2.14 **"Exterior Maintenance Area"** means the exterior of any Residence (excluding window panes), and the property surrounding the Residence and all improvements (excluding the Residence) within the perimeter of the Lot on which the Residence is located. Notwithstanding the foregoing, any and all mechanical or electrical devices or apparatus is specifically excluded.

Section 2.15 **"Design Guidelines"** means the standards, specifications, and guidelines applicable to construction, placement, location, alteration, landscaping, maintenance, and design of any improvements.

Section 2.16 **"ARC" and "Architectural Review Committee"** means the Architectural Review Committee of Key Harbour Property Owners' Association.

Section 2.17 "**First Mortgage**" means any Mortgage which is not subject to any lien or encumbrance for taxes or other liens which are given priority by statute.

Section 2.18 "**Lots**" means a plot of land subject to this Declaration and designated as a "Lot" on any subdivision plat of the Property recorded by Declarant in the office of the Clerk and Recorder of Montgomery County, Texas, together with all appurtenances and improvements, including a Residence, now or in the future of the Lot.

Section 2.19 "**Manager**" means a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time.

Section 2.20 "**Member**" means every person or entity who holds membership in the Association.

Section 2.21 "**Mortgage**" means any mortgage, deed of trust, or other document pledging any Lot and/or Residence or interest therein as security for payment of a debt or obligation.

Section 2.22 "**Mortgagee**" means any person or entity names as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person or entity under such Mortgage.

Section 2.23 "**Owner**" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot which is part of the Property, and "Owner" also includes the purchaser under a contract for deed covering a Lot, but excludes those having such interest in a Lot merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

Section 2.24 "**Project**" means the planned community created by this Declaration, consisting of the Property, the Residences, and any other improvements constructed on the Property.

Section 2.25 "**Residence**" means the single-family dwelling constructed on any one Lot.

Section 2.26 "**Special Assessment**" means an assessment levied pursuant to Section 13.5 below on an irregular basis.

Section 2.27 "**Resident**" means each Owner who resides within the Properties, a bona fide lessee who has an enforceable lease agreement with an Owner and who resides on the Property, and any individual who is otherwise lawfully dominant in a Residence.

Section 2.28 "**Successor Declarant**" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed record in the office of the Clerk and Recorder of Montgomery County, Texas, designating such party

as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

Section 2.29 "**Subdivision Plat**" means the map or plat of Key Harbour Subdivision, filed for record in Cabinet J, Sheet 130, Map Records of Montgomery County, Texas, and any amendment thereof upon filing of same for record in Official Records of Montgomery County, Texas.

Section 2.30 "**Single Family**" means a group related by blood, adoption, or marriage or a number of unrelated room mates equal to the number of bedrooms in a Residence.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 3.1 **The Association**. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2 **Transfer of Membership**. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

Section 3.3 **Classes of Membership**. The Association shall have two classes of membership:

Class A. Class A Members shall be all Owners, with the exception of Declarant, and, except as otherwise provided for in this Declaration, shall be entitled to vote in the Association matters pursuant to this Declaration on the basis of one (1) 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 by one person or alternative persons (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one vote be cast with respect to any one Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest, provided, however, that notwithstanding any provision to the contrary contained herein, the Declarant shall have the right to elect a majority of the Board of Directors of the

Association until such time as the Declarant no longer holds the title to any Lot within the Property or to any additional property which may have been brought under the provisions hereof by recorded Supplemental Declaration. The Class B Membership of Declarant shall terminate on the earlier of:

- (a) Twenty (20) years following the date of recording this Declaration, or
- (b) the date on which Declarant voluntarily relinquishes its Class B membership, evidenced by a notice recorded in the office of the Clerk and Recorder for Montgomery County, Texas. After termination of the Class B membership, Declarant and any designated Successor Declarant shall be entitled to one (1) vote for each Lot owned.

Section 3.4 **Compliance with Association Documents.** Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots and for the benefit of Declarant's adjacent properties.

Section 3.5 **Books and Records.** The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 3.6 **Manager.** The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.7 **Association as Successor Declarant.** The Association shall succeed to all of the duties and responsibilities of Declarant under this Declaration upon termination of the Class B membership in accordance with Section 3.3 above. The Association shall not succeed to any rights of Declarant regarding any portion of any other property owned by Declarant which has not then been annexed to the Property.

Section 3.8 **Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association

under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

ARTICLE IV POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

The Board of Directors shall have power to take the following actions:

A. Adopt and publish rules and regulations governing the use of the Common Area, including any recreational facilities which may be constructed on such property, and the Exterior Maintenance Area, and governing the personal conduct of the Members and their guests, and the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations; and

B. Exercise for the Association all powers, duties, and authority vested in or delegated to the Board of Directors and not reserved to the Members or Declarant by other provisions of this Declaration, the Articles, or Bylaws.

ARTICLE V COMMON AREA PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT

Section 5.1 **Conveyance of Common Area.** From time to time, Declarant may, but shall not be obligated to, convey to the Association by written instrument recorded with the Clerk and Recorder of Montgomery County, Texas, certain parcels of the Property as Common Area for use by all of the Owners. The Common Area shall be designated for the common use and enjoyment of the Owners, subject to the limitations set forth in this Article.

Section 5.2 **Maintenance.** The Association shall maintain and keep the Common Area in good repair, and the cost of such maintenance shall be funded as provided in Article XIII. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements located in the Common Area. In the event the Association does not maintain or repair the Common Area, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

ARTICLE VI EXTERIOR MAINTENANCE AREA AND SPECIAL EASEMENT

Section 6.1 **Residence Exteriors.** The Association shall maintain the exterior finish of all Residences, including, but not limited to, painting of the exterior of all Residences, (including

decks and porches), minor roof repair (but not replacement). The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Residence. The Owner shall be responsible for repair or replacement of broken window panes.

Section 6.2 **Landscaping, Sidewalks and Driveways.** The Association shall maintain landscaping of the Lot surrounding the perimeter of the Residence, including, but not limited to, lawns, trees and shrubs. The Association shall also maintain sidewalks and driveways. The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine. The landscaping, sidewalks, and driveways shall be a part of the Exterior Maintenance Area.

Section 6.3 **Special Easement.** Declarant hereby reserves for itself and grants to the Association, the Board of Directors, and their respective representatives, a nonexclusive easement to enter upon and use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 6.

Section 6.4 **Maintenance Contract.** The Association or Board of Directors may employ or contract for the services of one or more individuals or maintenance companies to perform certain delegated powers, functions, or duties of the Association to maintain the Exterior Maintenance Area. Any such employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board. The Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 6.5 **Owner's Responsibility.** The Owner shall be responsible for maintaining all portions of the Owner's Lot (including the Residence) other than the Exterior Maintenance Area. No Owner shall make any addition or other alteration to any portion of the Exterior Maintenance Area without the express consent of the Association. The Association shall be entitled to reimbursement for cost of repair from any Owner who causes, or whose tenant, employee or guest causes, damage to the Exterior Maintenance Area by a deliberate act or negligence. Notwithstanding the foregoing, Owner shall be authorized to make minor variations to the landscaping (such as planting flowers) without procuring the Association's approval. However, the Owner shall be responsible for maintaining such landscaping in a good and attractive condition.

ARTICLE VII PROPERTY RIGHTS

Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area 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 facility now or hereafter situated or constructed or situated upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities;

(b) the right of the Association to suspend an Owner's voting rights and the right to use any facility for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for infractions by an Owner of the restrictive covenants contained in this Declaration and/or the Association's rules and regulations for the duration of the infraction;

(c) the right of the Association to grant easements in and to the Common Areas to any public agency, authority or utility for such purposes as benefits the Properties or portions thereof and Owners or Lots contained therein;

(d) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds (2/3) of each Class of members present at a meeting called for such purpose shall approve; provided however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Subdivision;

(e) the right of the Association to dedicate or offer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or offer has been approved by at least two-thirds (2/3) of the votes which those of the Class A members of the Association which are present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and by the Class B member so long as the membership shall exist; and

(f) the right of the Association to prescribe rules and regulations as they may be expanded, amended or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot may be affected by this provision and that the rules and regulations may change from time to time. The initial rules and regulations are set forth in **Exhibit "A"** attached hereto. The Board shall have the authority to enforce the rules and regulations by all appropriate means, including but not limited to the imposition of fines, if notice and an opportunity to be heard are given, and a member found to have violated the rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees.

ARTICLE VIII
OTHER EASEMENTS AND RESERVED RIGHTS

Section 8.1 **Recorded Easements.** The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements of record as of the date of recordation of this Declaration.

Section 8.2 **Drainage Easements.** Declarant also reserves for itself and its successors and assigns and grants to the Association and its agents, employees, successors, and assigns, an easement to enter on any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water.

Any entity using this general easement shall use its best efforts to install and maintain the drainage facilities provided for without disturbing the uses of the Owners. The Association and Declarant shall proceed with the installation and maintenance activities as promptly as reasonably possible.

Section 8.3 **Declarant's Rights Incident to Construction.** Declarant hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under, and across the Common Area, together with the right to store materials on the Common Area and to make such other use of the Common Area as may be reasonably necessary or incident to the construction of Residences on the Lots or other improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Common Area by the Owners.

Section 8.4 **Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association and any member of the Board of Directors or the Manager, and their respective officers, agents, employees and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make such emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior or interior (upon the giving of reasonable notice under the circumstances) of the Residence on such Lot, as required by the Association Documents, and/or to install and repair all utilities (including but not limited to electric ity, telephone, and cable television).

Section 8.5 **Reservation of Easements.** All easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Map. No shrubbery, fence, or other obstruction shall be placed in any easement. Right of use for ingress and egress shall be available at all times over any dedicated easement or alleyway for purposes of installing, operating, maintaining, repairing, or removing any utility or any obstruction placed in such

easement or alleyway that would interfere with the installation, maintenance, operation, or removal of such utility.

Section 8.6 **Access Easement.** An ten foot (10') private non-exclusive access easement is hereby reserved to Declarant, and granted to the Association, Owners, and any member of the Board of Directors or the Manager, and their respective officers, agents, employees and assigns, upon, across, over, in and under the Property. The ten foot (10') private non-exclusive access easement is located along the land adjacent and contiguous with the bulkhead of Lake Conroe. Owners have the right to use such access easements provided that such use does not interfere with the other Owners right to use such non-exclusive access easement. The purpose of this private non-exclusive access easement is to permit the Owners access to the boat slips on Lake Conroe.

ARTICLE IX USE RESTRICTIONS AND ARCHITECTURAL STANDARDS RESIDENTIAL USE ONLY

Section 9.1 **Residential Use.** All Lots shall be used for single-family residential purposes only. However, Declarant, as well as any other person engaged in the construction and sale of residences on the Property, shall have the right, during the construction and sales period, to use facilities as may be reasonably necessary or convenient for its business purpose of constructing and selling residences on the Property.

Section 9.2 **Resubdivision or Consolidation.** No Lot shall be resubdivided or split.

Section 9.3 **Noxious or Offensive Activities Prohibited.** No noxious or offensive activity shall be conducted on any Lot that may be or may become an annoyance or nuisance to the neighborhood.

Section 9.4 **Prohibited Residential Uses.** No structure not approved for residential use by the Architectural Control Committee, including but not limited to trailers, mobile homes, motor homes, basements, tents, shacks, garages, and other outbuildings and accessory structures, shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 9.5 **Signs.** No signs of any type shall be allowed on any Lot except one sign of not more than five square feet advertising the property for sale or rent. However, Declarant shall have the right, during the construction and sales period, to construct and maintain signs advertising the construction and sale.

Section 9.6 **Oil Development and Mining Prohibited.** No oil well drilling, development, or refining, and no mineral quarrying or mining operations of any kind shall be permitted on any Lot. No oil well, tank, tunnel, mineral excavation, or shaft shall be permitted on

any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any Lot.

Section 9.7 **Rubbish, Trash and Garbage.** No Lot or Common Area shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash, garbage, leaves, brush, or other debris.

Section 9.8 **Sewage Disposal.** No individual sewage-disposal system shall be permitted on any Lot.

Section 9.9 **Water Supply.** No individual water-supply system shall be permitted on any lot.

Section 9.10 **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets maybe kept, provided they are not kept, bred, or maintained for any commercial purpose.

Section 9.11 **Fences, Walls, Hedges, and Utility Meters.** No fence, wall, or hedge shall be placed, or permitted to remain, on any Lot.

Section 9.12 **Trucks, Buses, and Trailers.** No truck or bus (except a passenger van for personal use) or trailer shall be left parked in the street in front of any Lot, except for construction and repair equipment while a residence or residences are being built or repaired in the immediate vicinity. No truck or bus (except a passenger van for personal use) or boat or trailer shall be parked on the driveway or any portion of the Lot for more than forty-eight (48) consecutive hours.

Section 9.13 **Prohibited Activities.** No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot.

Section 9.14 **Wood-Burning Stoves and Fireplaces.** No fireplace or wood-burning stove shall be installed or used on any Lot unless it meets the requirements, standards, and recommendations of the Architectural Control Committee.

Section 9.15 **Poles, Masts, and Antennas.** No poles, masts, antennas, or satellite dishes of any type, size, or height shall be installed on any Lot unless approved by the Architectural Control Committee.

Section 9.16 **Water Softeners and Air Conditioning Equipment.** No water softener shall be installed or used that discharges effluent brine into the sewage system. Location, type, and screening of water softeners and air conditioning units shall be first approved by the Architectural Control Committee before installation or use.

Section 9.17 **Improvements to Boat Slips/Docks.** No Owner shall make any permanent modifications or repairs to the boat slips/docks or construct a new boat slip without the Architectural Control Committee's prior consent. All new boat slips must be located as shown in Exhibit "____". All wood construction must be painted/stained where visible in a manner consistent with the other boat slips in the Subdivision.

Section 9.18 **No Mooring of Boats taller than Ten (10) Feet.** To protect the view and airspace for the enjoyment of all Owners, no boat taller than Ten (10) feet may be moored to the boat slip/dock. Except for temporary construction barges being used for construction of boat slips/docks, no structure or any part of such structure on a boat slip may be higher than Two Hundred Seven Feet (207') above seal level.

Section 9.19 **Review of Architectural Control Committee.** No exterior addition to or change or alteration to the Residence shall be made until the plans and specifications showing the nature, kind, shape, heights, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

After receiving the approval of the Architectural Control Committee, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by any governmental or quasi-governmental body having jurisdiction over the Project.

ARTICLE X INSURANCE AND FIDELITY BONDS

Section 10.1 **Authority to Purchase.** All insurance policies relating to the Common Area shall be purchased by the Board of Directors or its duly authorized agent. The Board of Directors, the Manager, and Declarant shall not be liable for failure to obtain any coverage required by this Article X or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable cost.

Section 10.2 **Notice to Owners.** The Board of Directors shall promptly furnish to each Owner written notice of adverse changes in, or termination of, insurance coverage obtained on behalf of the Association under this Article.

Section 10.3 **General Insurance Provisions.** All such insurance coverage obtained in accordance with the terms of this Article shall be governed by the following provisions:

- (a) As long as Declarant owns any Lot, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article X shall not be deemed to protect or be for

the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims;

- (b) The deductible amount, if any, or any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments; or as an item to be paid from working capital reserves established by the Board of Directors or alternatively, the Board of Directors may treat the expense as an assessment against an Owner whose negligence or willful act resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible in accordance with Section 10.6 and 10.7 below; and
- (c) Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage provided by the Board of Directors pursuant to this Article shall be a Common Expense to be paid by regular Annual Assessments levied by the Association.

Section 10.4 **Physical Damage Insurance on Common Area.** The Board of Directors shall obtain and maintain in full force and effect physical damage insurance on all insurable improvements within the Common Area, if any, in an amount equal to full replacement value (i.e., 100 percent of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage). Such insurance shall afford protection against at least the following:

- (a) Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement, and caused by debris removal, demolition, vandalism, malicious mischief, windstorm, and water damage;
- (b) Such other risks as shall customarily be covered with respect to projects in Montgomery County, Texas similar to the Project in construction, location, and use.

If there are not improvements within the Common Area, no physical damage insurance need be obtained by the Association.

Section 10.5 **Provisions Common to Physical Damage Insurance.**

A. In contracting for the policy or policies of insurance obtained pursuant to Section 10.4 above, the Board of Directors shall make reasonable efforts to secure coverage, as the Board deems advisable, which provides the following:

(i) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to this Declaration not to do so;

(ii) The following endorsements (or equivalent): (a) "cost of demolition;" (b) "contingent liability from operation of building laws or codes;" (c) "increased cost of construction;" and (d) "agreed amount" or elimination of co-insurance clause;

(iii) Periodic appraisals to determine replacement cost, as more fully explained in Section 10.5.B below; and

(iv) A provision that no policy may be canceled, invalidated, or suspended on account of the conduct of any Owner (including such Owner's tenants, servants, agents, invitees, and guests), any member of the Board of Directors, officer, or employee of the Association or the Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, the Manager, any Owner, or Mortgagee.

B. Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Board of Directors may deem advisable, the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the board may determine, of the then current replacement cost of the property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Article.

C. A duplicate original or photocopy of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums and any notice issued under Section 10.5.A(iv) above, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty days prior to expiration of the then current policy. The Mortgagee of a Residence shall be notified promptly of any event giving rise to a claim under such policy.

Section 10.6 **Liability Insurance**. The Board of Directors shall obtain and maintain in full force and effect comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage insurance with such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Manager, each Owner, and the employees of the Association against any liability to the public or to the Owners (and their guests, invitees, tenants, agents and employees) arising out of or incident to the ownership or use of the Common Area. Such comprehensive policy or public liability insurance shall also cover, if applicable, contractual liability, liability for non-owned and hired automobiles, and, if applicable, bailee's liability, garagekeeper's liability, host liquor liability insurance, employer's liability

insurance, and such other risks as shall customarily be covered with respect to projects similar to the Project in construction, location and use.

Section 10.7 Provisions Common to Physical Damage Insurance, Liability Insurance.

Any insurance coverage obtained by the Association under the provisions of this Article X above shall be subject to the following provisions and limitations:

A. The named insured under any such policies shall include Declarant, until all the Lots have been conveyed, and the Association, as a trustee for the Owners and their Mortgagees, as their interests may appear, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee") who shall have exclusive authority to negotiate losses and receive payments under such policies;

B. In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees.

Section 10.8 Other Insurance. The Board of Directors may obtain insurance against such other insurable risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.9 Insurance Obtained by Owners. Each Owner, at its expense, shall obtain fire and casualty insurance on its Residence in amount equal to the replacement value. In addition, each Owner, at its expense, shall procure and maintain with responsible companies, approved by the Association, liability insurance insuring Owner, the Association, and Owner's Lot and Residence, as their interest may appear, against all claims, demands, or actions for injury to, or death of, any one person in an amount of not less than \$100,000.00 and for injury to, or death of, more than one person in any one accident to the limit of \$1,000,000.00 made by or on behalf of any person or persons, firm or corporation arising from, relating to, or connected with Owner's Lot and/or Residence. The Association shall be an additional insured for all such insurance policies. Owner shall deliver to the Association a certificates of insurance evidencing such insurance coverage prior to Owner's occupation of the Lot and by January 15 of each year thereafter. In the event that Owner fails to provide such certificate of insurance then the Association may procure such insurance at Owner's expense, and the Association shall make a Default Assessment against such defaulting Owner for such insurance premiums.

ARTICLE XI INCIDENTS OF OWNERSHIP IN THE PROJECT

Section 11.1 Inseparability. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Lot and the Residence and other improvements thereon shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance respectively of the

entire Lot, including each easement, license, and all other appurtenant rights created by law or by this Declaration.

Section 11.2 **Property Rentals.** A Residence may be used by a Single Family for permanent or short term occupancy by its Owner, its family, servants, agents, guests, invitees, and tenants, and such Owner shall be allowed to rent or arrange for rental of its Residence for any length of time, except that such Residence may not be used as an office or for any other commercial purpose. Declarant reserves the right to establish display models and sales offices until such time as Declarant no longer owns any Lots.

ARTICLE XII ARCHITECTURAL CONTROL

Section 12.1 **Architectural Control Committee.** Declarant shall designate and appoint an Architectural Control Committee consisting of not less than three (3) qualified persons, which shall serve at the pleasure of the Declarant.

Section 12.2 **Approval of Plans and Specifications.** The Architectural Control Committee must review and approve in writing all of the following projects on the Property:

- (a) Construction of any building, fence, wall, or other structure;
- (b) Any exterior addition, change, or alteration in any building, fence, wall, or other structure; and
- (c) Any substantial landscaping or grading of any Lot or Lots.

Section 12.3 **Application for Approval.** To obtain approval to do any of the work described in Section 12.2, an Owner must submit an application to the Architectural Control Committee showing the plans and specifications for the proposed work. Such plans and specifications shall detail the nature, shape, height, materials, colors, and location of the proposed work.

Section 12.4 **Standard for Review.** The Architectural Control Committee shall review applications for proposed work in order to (1) ensure conformity of the proposal with these covenants, conditions, and restrictions and (2) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Committee shall have broad, discretionary authority to interpret and apply these standards. In rejecting an application, the Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies.

Section 12.5 **Failure of Committee to Act.** If the Architectural Control Committee fails either to approve or reject an application for proposed work within sixty (60) days after submission, then Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

Section 12.6 **Failure to Submit Plans or Proceeding with Construction without Architectural Control Committee Approval.** Each Owner hereby grants to the Committee the right to inspect all construction in the Subdivision. Each Owner acknowledges that all construction that has not been pre-approved by the Committee or any construction that is not in compliance with the Committee's prior approval would damage the Subdivision, the Association, and each Owner in a way that may be difficult to ascertain. Therefore, the parties each agree that the Committee may (a) procure an injunctive order granted by a court of appropriate jurisdiction halting such construction, and/or (b) levy a special assessment in the sum of _____ on such Owner violating such approval requirements. The parties agree that if such special assessment is levied that such sum shall be considered as liquidated damages, and not as a penalty, in the event of such breach. Failure by the Committee to enforce any such construction violation shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XIII ASSESSMENTS

Section 13.1 **Obligation.** Each Owner, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Board of Directors as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area and the Exterior Maintenance Area and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. Notwithstanding any provision that may be contained in this Declaration to the contrary, for so long as Declarant is the owner of any Lot, Declarant shall not be liable for assessments against such Lot, provided that Declarant funds any deficit in the operating expenses of the Association. Declarant may, at any time, commence paying such assessments as to all Lots that Declarant then owns and thereby terminate its obligations to fund deficits in the operating expenses of the Association.

Section 13.2 **Purpose of Assessments.** The Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of the Project and for payment of Common Expenses including maintenance of the Exterior Maintenance Area, and for the improvement and maintenance of the Common Area, as more fully set forth in this Article below.

Section 13.3 **Annual Assessments.** The Board of Directors of the Association may establish any reasonable system for collection periodically of Annual Assessments for Common Expenses, in advance, as deemed desirable and consistent with the Articles and Bylaws of the Association. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Board of Directors shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area and Exterior Maintenance Area; expenses of management; taxes and special governmental assessments pertaining to the Common Area and Exterior Maintenance Area and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, common lighting within the Common Area and Exterior Maintenance Area; routine repairs and renovations with the Common Area and Exterior Maintenance Area; wages, common water and utility charges of the Common Area and private water and sewage usage fees, Exterior Maintenance Area; legal (including a reserve for the expense of litigation) and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Common Area and Exterior Maintenance Area on a periodic basis, as needed.

Annual Assessments shall be payable with thirty (30) days after written notice of the amount due is given to the Owner. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from the obligation to pay the same. The Association shall have the right, but not the obligation, to make pro rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 13.4 **Apportionment of Annual Assessments.** Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the Lots, subject to the following provisions. All expenses (including but not limited to, costs of maintenance, repair, and replacement) relating to the Exterior Maintenance Area on fewer than all of the Lots shall be borne by the Owners of those affected Lots only. The Assessments against any Lot owned by Declarant shall not commence before completion of construction of the Residence on the Lot. Issuance of a certificate of occupancy for the Residence shall be evidence of completion of construction, for the purposes of this Section.

Section 13.5 **Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 13.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of

assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 13.4, subject to the requirements that any extraordinary insurance costs incurred as a result of the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payments shall be due less than 30 days after such notice shall have been given.

Section 13.6 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expenses of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Default Assessment as least 30 days prior to the due date.

Section 13.7 **Effect of Nonpayment: Assessment Lien.** Any Assessment installment, whether pertaining to an Annual, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- B. Assess an interest charge from the date of delinquency at the maximum rate allowed by law;
- C. Suspend the voting rights and the right of use of the Common Area of the Owner during any period of delinquency;
- E. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- F. File a statement of lien with respect to the Lot and proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Lot shall constitute a lien on such Lot, including the Residence and any other improvements on the Lot. To evidence the lien created under this Section 13.7, the Association may, but shall not be required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued penalty on the indebtedness, (iv) the name of the Owner of the Lot, and (v) a description of the Lot.

The notice shall be signed and acknowledged by the President or a Vice President of the Association or by the Manager, and the Association shall serve the notice upon the Owner by mail to the address of the Lot or to such other address as the Association may have in its files for such Owner. At least ten (10) days after the Association mails the Owner such a notice, the Association may record the same in the office the Clerk and Recorder of Montgomery County, Texas. Such lien for Assessments shall attach from the due date of the Assessment. Thirty (30) days following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under the laws of the state of Texas. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Section 13.8 **Personal Obligation.** The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his lot or by waiver of the use of enjoyment of all or any part of the Common Area. Suit to recover a money judgment for unpaid Assessments, any penalties and interest therein, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 13.9 **Successor's Liability for Assessment.** In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Lot, except as provided in Section 13.10 below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under 13.12 below.

Section 13.10 **Subordination of Lien.** The lien of the Assessments provided for in this Declaration shall be subordinate to (a) the lien of real estate taxes and special governmental assessments and (b) the lien for all sums unpaid on a First Mortgage of record, including all unpaid obligatory advances as may be provided by such encumbrance. The lien for Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Texas. No sale or transfer shall release a Lot from the lien of Assessments, except in the case of a sale or transfer of a Lot pursuant to a decree of foreclosure, by a public trustee in foreclosure, or by any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a First Mortgage, which shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. The amount of such extinguished lien may be reallocated

and assessed to all Lots as a Common Expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, any Assessments made after the sale or transfer.

Section 13.11 **Notice to Mortgagee.** The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

Section 13.12 **Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board of Directors and upon the written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Board of Directors shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot.

Section 13.13 **Capitalization of the Association.** Upon the initial acquisition of record title to a Lot from Declarant, each Owner shall make a non-refundable contribution to the working capital and reserves of the Association in an amount equal to one-fourth of the amount of the Annual Assessment as determined by the Board of Directors for that Lot for the year in which the Owner acquired title.

ARTICLE XIV ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article X upon their damage or destruction as provided in this Article, or a complete or partial taking as provided in Article XVI below. Acceptance by grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE XV DAMAGE OR DESTRUCTION

Section 15.1 **The Role of the Board of Directors.** In the event of damage to or destruction of all or part of (a) any Common Area improvement, (b) other property covered by insurance written

in the name of the Association under Article X, or (c) Residence and if the Owner does not commence the repairs of such Residence within thirty (30) days after such damage ("Owner Damage"), then the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property. (The property insured by the Association pursuant to Article X is sometimes referred to as the "Association-Insured Property.")

Section 15.2 **Repair and Reconstruction.** As soon as practical after the damage occurs and required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property or Owner Damage. As attorney-in-fact for the Owner, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property and Owner Damage, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 15.3 **Funds for Repair and Reconstruction.** The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property. The proceeds received by the Association from any hazard insurance carried by the Owner shall be used for the purpose of repair, replacement, and reconstruction of the Owner Damage.

If the proceeds of the Association's insurance in connection with the Association-Insured Property are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 13.5, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners (except as provided below), a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. However, if the aggregate of any Special Assessment for expenses relating to the Common Area exceeds the greater of (i) 10 percent of the gross annual budget for the Association for the year or (ii) \$10,000, then the Special Assessment shall be subject to the approval of sixty-five percent (65%) of the votes of the Class B Member(s), as long as the Class B membership exists, and sixty-five percent (65%) of the votes of the Class A Members who are subject to the Special Assessment and who attend a meeting for the purpose of approval of such Special Assessment. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

If the proceeds of the Owner's insurance in connection with the Owner Damage are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction of the Owner Damage, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 13.6, levy, assess, and collect in advance from the Owner whose Residence has been damaged, without the necessity of a special vote of the

Owners, a Default Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction.

Section 15.4 **Disbursement of Funds for Repair and Reconstruction of Association-Insured Property.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

Section 15.5 **Disbursement of Funds for Repair and Reconstruction of Owner Damage.** The insurance proceeds held by the Association and the amounts received from the Default Assessments provided for above in Section 15.3, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction of the Owner Damage shall be made from insurance proceeds, and the balance from the Default Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owner whose Residence was repaired in proportion to the contributions each Owner made as Default Assessments.

Section 15.6 **Decision not to Rebuild Common Area.** If Declarant, and Owners representing at least sixty-seven percent (67%) of the Class A votes in the Association, and sixty-seven percent (67%) of the votes of the First Mortgagees (based on 1.0 vote for each Mortgage which encumbers a Lot) agree in writing not to repair and reconstruct improvements within the Common Area and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in equal shares per Lot benefitted by the Common Area prior to the destruction, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE XVI CONDEMNATION

Section 16.1 **Rights of Owners.** Whenever all or any part of the Common Area shall be taken by authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of tile taking or

conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 16.2 Partial Condemnation; Distribution of Award: Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed, and the award shall be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless with sixty (60) days after such taking Declarant, and Owners who represent at least sixty-seven percent (67%) of the Class A votes of all of the Owners, and sixty-seven percent (67%) of the First Mortgagees (based on 1.0 vote for each Mortgage which encumbers a Lot) shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the provisions in Article XV above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

Section 16.3 Partial Condemnation of Lot; Distribution of Award: Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom Lot was conveyed, and the award shall be disbursed as follows:

If the taking involves a portion of a Residence, then the Association shall have sixty (60) days after such taking to determine in its sole discretion if the Residence can be economically restored for use as a Residence. If the Residence(s) are to be repaired or restored, the provisions in Article XV above regarding Owner Damage and the disbursement of funds in respect to Owner Damage shall apply. If there is a decision made not to repair or restore the Residence(s), or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners of such Residences taken in such condemnation, first to the Mortgagees and then to the Owners, as their interests appear.

Section 16.4 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 15.6 above.

**ARTICLE XVII
MISCELLANEOUS COVENANTS**

Section 17.1 **General Reservations.** Declarant reserves (a) the right to dedicate any access roads and streets serving the Property for and to public use, to grant to Montgomery County, Texas a road easement with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of parking and/or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, and/or the Association.

Section 17.2 **Limit on Timesharing.** No Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing" or "Interval ownership" plan, or any similar plan without the specific written approval of Declarant (for so long as Declarant remains a Class B member of the Association).

Section 17.3 **Right of Release and Termination.** The Declarant shall have the right and ability to assign or to release and terminate any rights reserved to the Declarant pursuant to this Declaration by execution of a document expressing the Declarant's intent to assign or release and terminating such right, which document shall be recorded in the Official records of Montgomery County, Texas.

**ARTICLE XVIII
EXPANSION**

Section 18.1 **Reservation of Right to Expand.** Declarant reserves the right to expand the Property to include additional Lots and Common Area.

Section 18.2 **Supplemental Declarations and Supplemental Plats.** Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder for Montgomery County, Texas, no later than ten (10) years from the date of recording of this Declaration, one or more Supplemental Declarations setting forth the Lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions, and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

Section 18.3 **Expansion of Definitions.** In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. Reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Property as expanded. The recordation in the records of Montgomery County, Texas, of a supplemental plat or

plats incident to any expansion shall operate automatically to grant, transfer, and convey to the Association the new Common Area added to the Property as the result of such expansion.

Section 18.4 **Declaration Operative on New Lots.** The new Lots shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the supplemental plat(s) depicting the Expansion Property and Supplemental Declaration(s) of public record in the real estate records of Montgomery County, Texas.

ARTICLE XIX WITHDRAWAL

Section 19.1 **Right of Declarant.** Declarant reserves the right, to be exercised at any time or times before the expiration of ten (10) years following the date of recording of this Declaration, to withdraw from the jurisdiction of this Declaration any portion of the Property which Declarant has not sold or made subject to a contract for sale.

ARTICLE XX MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Lots. To the extent applicable, necessary, or proper, the provisions of this Article XX apply to this Declaration and also to the Articles and Bylaws.

Section 20.1 **Approval Requirements.** Unless at least sixty-seven percent (67%) of the First Mortgagees (based on one vote for each Mortgage owned) and at least sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, the Association shall not be entitled to:

- A. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common Area (provided, however, that the granting of easements for public utilities or for other public purposes not inconsistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this clause);
- B. Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner;
- C. By act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design, appearance or maintenance of the Common Area or the Exterior Maintenance Area;

- D. Fail to maintain fire and extended coverage on the insurable property on the Common Area in an amount not less than 100 percent of the current replacement cost; or
- E. Use physical damage insurance proceeds for losses to improvements in the Common Area for other than the repair, replacement, or reconstruction of such property.

Section 20.2 **Title Taken By Mortgagee.** Any First Mortgagee who obtains title to the Lot and any improvements on the Lot pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Lot (i) is acquired or (ii) could have been acquired under the statutes of Texas governing foreclosures, whichever is earlier. Such Mortgagee will not be liable for any unpaid dues or charges attributable to the Lot which accrue prior to the date the Mortgagee acquired title or could have acquired title under the Texas foreclosure statutes, whichever is earlier. Sale or transfer of any Lot pursuant to a deed in lieu of foreclosure for the purpose of enforcing a First Mortgage shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer, and the amount of the extinguished lien may be reallocated and assessed to all Lots, as a Common Expense, at the direction of the Board of Directors.

Section 20.3 **Right to Pay Taxes and Charges.** Mortgagees who hold First Mortgages against Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 20.4 **Distribution of Insurance or Condemnation Proceeds.** In the event of a distribution of insurance proceeds or condemnation awards allocable among the Lots for losses to, or taking of, all or part of the Common Area, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any First Mortgagee.

ARTICLE XXI DURATION OF COVENANTS AND AMENDMENTS

Section 21.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years following the date of recording of this Declaration, after which time they shall be automatically extended for successive periods of time of ten (10) years each.

Section 21.2 **Amendment.** This Declaration, or any provision of it, may be amended at any time during the first 20-year period by an instrument signed by Owners holding not less than

sixty percent (60%) of the votes possible to be cast under this Declaration. Any amendment must be recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association.

Section 21.3 **When Modification Permitted.** Notwithstanding the provisions of Section 21.2 above or Section 21.5 below, no termination, extension, modification, or amendment of this Declaration made prior to the date of termination of the Class B Membership of Declarant, shall be effective unless the prior written approval of Declarant is first obtained.

Section 21.4 **Amendment by Declarant.** Declarant hereby reserves and is granted the right and power, but not the obligation, to record amendments or supplemental declarations amending this Declaration at any time and from time to time to (i) correct typographical or technical errors, (ii) to expand the Property to include additional Lots and Common Area pursuant to Article XVIII, or (iii) comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Government National Mortgage Association, the Veteran's Administration or any other governmental agency or any other public, quasi-public or private entity which performs functions similar to those currently performed by such entity and/or to induce any such agencies or entities to make, purchase, sell, insure or guarantee mortgages covering the Lots. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to such amendments or supplemental declarations on behalf of each Owner. Each deed, mortgage, or other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and consent to, the reservation of the power of declarant to make or consent to such amendments or supplemental declarations while Declarant has such power. No such amendment or supplemental declaration made by Declarant shall impair the lien of a First Mortgage upon any Lot or any warranties made by an Owner or Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure or guarantee a mortgage on such Lot.

Section 21.5 **Revocation.** This Declaration shall not be revoked, except as provided in Article XVI regarding total condemnation, without the consent of all of the Owners evidenced by a written instrument duly recorded.

ARTICLE XXII GENERAL PROVISIONS

Section 22.1 **Enforcement.** Except as otherwise provided in this Declaration, the Board of Directors, Declarant, or any Owner shall have the right to enforce, by a 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 the Board of Directors, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 22.2 **Severability**. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 22.3 **Conflicts between Documents**. In case of conflict between this Declaration and the Articles and Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 22.4 **Counterparts**. This Declaration and the required approvals and joinder to it, may be executed in two or more counterparts which, taken together shall evidence agreement of Declarant and all such parties approving or joining in this Declaration.

Section 22.5 **Attorneys' Fees**. If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

Section 22.6 **Liberal Interpretation**. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

EXECUTED by Declarant this 27th day of February, 1998.

KEY HARBOUR DEVELOPMENT CORP.,
a Texas Corporation

FILED FOR RECORD
93 MAR -2 AM 8:57
MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS
DEPUTY

By:

Scott Eidson
Scott Eidson, President

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this instrument was filed in
File Number Sequence on the date and at the time
stamped herein by me and was duly RECORDED in
the official Public Records of Real Property of
Montgomery County, Texas.

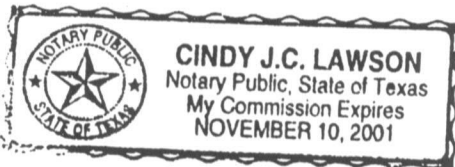
MAR - 2 1998

THE STATE OF TEXAS §
§
COUNTY OF BRAZOS §



Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

This instrument was acknowledged before me on February 27, 1998 by Scott Eidson, President of **KEY HARBOUR DEVELOPMENT CORP.,** a Texas corporation, on behalf of such corporation.



Cindy J.C. Lawson
Notary Public - State of Texas