

8222941

COMMUNITY DECLARATION

EASEMENTS, RESTRICTIONS AND COVENANTS

FOR

SOUTH SHORE HARBOUR COMMUNITY ASSOCIATION, INC.

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COMMUNITY DECLARATION  
EASEMENTS, RESTRICTIONS, AND COVENANTS  
FOR

SOUTH SHORE HARBOUR COMMUNITY ASSOCIATION, INC.

This Community Declaration is made this 5th day of August, 1982 by South Shore Harbour Development, a Texas joint venture ("Declarant").

ARTICLE I

GENERAL

**Section 1.1. Project Area.** Declarant is the owner of certain parcels of land in the city of League City, County of Galveston, State of Texas, which, with other parcels which may be acquired by Declarant, is defined in this Community Declaration as the "Project Area". Declarant intends to develop the Project Area as balanced, planned community accommodating a mix of Residential, commercial, industrial and other land uses, including substantial non-urban area and open space.

**Section 1.2. Purposes of Declaration.** Property which becomes subject to this Community Declaration in the manner hereinafter provided shall be referred to as the "Community Association Area". This Community Declaration is executed (a) in furtherance of a common and general plan for those portions of the Project Area which may become part of the community Association Area; (b) to protect and enhance the quality, value, desirability and attractiveness of all property which becomes part of the community Association Area; (c) to provide for a Community Association as a vehicle to hold, maintain, care for and manage Community Association Properties and to perform functions for the benefit of Owners and of privately owned Sites within the Community Association Area; (d) to define duties, powers and rights of the Community Association; and (e) to define certain duties, powers and rights of Owners of Privately Owned Sites within the Community Association Area.

**Section 1.3. Declaration.** Declarant, for itself, its successors and assigns, hereby declares that all property which becomes subject to this Community Declaration in the manner hereinafter provided, and each thereof, shall, from the date the same becomes subject to this Community Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations,

reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, for the duration thereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Association Area. The provisions of this Community Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 11.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property which becomes a part of the Community Association Area and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Community Association and its successors and assigns, and (d) all persons having or acquiring any right, title or interest in any property which becomes part of the Community Association Area or any part or parcel thereof or any improvement thereon and their heirs, personal representatives, successors and assigns.

**ARTICLE II**

**DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases when used in this Community Declaration shall have the meanings hereinafter specified.

**Section 2.1. Administrative Functions.** "Administrative Functions" shall mean all functions as are necessary and proper under this Community Declaration, except Recreation Functions, as hereinafter Defined, and shall include, without limitation, providing management and administration of the Community Association, providing architectural review services under Article X hereof, incurring reasonable attorneys' fees, Management fees, and accountants' fees, obtaining errors and omissions insurance for officers, directors and agents of the Community Association, obtaining fidelity bonds for any person handling funds of the Community Association, paying taxes levied against the Community Association Properties, incurring filing fees, recording costs and bookkeeping fees, obtaining and maintaining offices and office furniture and equipment providing public services commonly associated with municipal or other local governments, including, without limitation, providing security protection, fire protection, animal control, vegetation control, insect and pest control, communication and television service, hospitals, cultural and educational facilities, parking facilities, public transportation facilities, drainage facilities, trash and solid waste disposal services, and utility services, and performing other such reasonable and ordinary administrative tasks and public functions associated with operating the Community Association. The foregoing list shall not be deemed to be a representation by Declarant of services or facilities which will be available for use of the Owners, nor shall it be deemed a limitation of possible services, but rather examples of such possible services.

**Section 2.2. Annexable Area.** "Annexable Area" shall mean all of the real property described on Exhibit "A" attached hereto and made part hereof for all purposes, all or any portion of which may from time to time be made subject to this Community Declaration by Declarant pursuant to the provisions of Section 3.2 of this Community Declaration. as provided in Section 11.18 of this Community Declaration, the provisions of this Community Declaration shall not constitute an encumbrance or restrict the use of any portion of the Annexable Area which has not been made subject to this Community Declaration pursuant to the provisions of Section 3.2 of this Community Declaration.

**Section 2.3. Approval of Delegates Representing.** "Approval of Delegates Representing" shall mean the affirmative vote by those Delegates representing Members holding the percentage of votes (out of the total number of authorized votes within the Community Association) necessary to adopt or approve the issue in question. For Example, if the issue in question requires the approval of those Delegates representing not less than sixty-six (66%) percent of the entire voting power within the Community Association at the time of such vote, than, in order for such issue to be approved, six thousand six hundred (6,600) affirmative votes must be cast by the Delegates.

**Section 2.4. Architectural Committee.** "Architectural Committee" shall mean the Committee provided for in Article X of this Community Declaration.

**Section 2.5. Articles of Incorporation.** "Articles of Incorporation" shall mean the Articles of Incorporation of South Shore Harbour Community Association, Inc., which have been or will be filed in the office of the Secretary of State of the State of Texas, as amended from time to time.

**Section 2.6. Assessment.** "Assessment" shall mean a Common Assessment, a Special Assessment or a Reimbursement Assessment as hereinafter defined.

**Section 2.7. Assessment Area.** "Assessment Area" shall be a portion of the Community Association Area so designated in a Supplemental Declaration for purposes of determining when Common Assessments shall commence against certain Privately Owned Sites and the Owners thereof. All properties dedicated to and accepted by a governmental authority and the Common Areas shall be exempt from the Assessments described herein.

**Section 2.8. Board of Directors.** "Board of Directors" or "Board" shall mean the board of Directors of the Community Association.

**Section 2.9. Budget.** "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Community Association in performing its function under this Community Declaration and prepared pursuant to Section 8.12 of this Community Declaration.

**Section 2.10. Bylaws.** "Bylaws" shall mean the Bylaws of the Community Association which have been or will be adopted by the Board of Directors of the Community Association, as amended from time to time.

**Section 2.11. Commercial Site.** "Commercial Site" shall mean a Privately Owned Site within the Community Association Area which is designated in a Supplemental Declaration covering that Site for commercial Uses.

**Section 2.12. Common Area.** "Common Area" shall mean any portion of the Community Association Area designated as common area which is for the primary use and benefit of the Owners of certain Privately Owned Sites as may be provided in a Supplemental Declaration covering such portion of the Community Association Area. Such Common Area may be owned (a) by a Sub-Association in which all such Owners shall be entitled to membership, or (b) in undivided interests by such Owners, or (c) separately or individually by Owners over which a Sub-Association may have an easement for maintenance purposes, or (d) by a cooperative housing corporation as defined in Section 2.16 of the Internal Revenue Code, (e) the Community Association for the benefit of and for the common use and enjoyment by those Owners, or (f) Declarant, for the common use and enjoyment by those owners entitled to use such Common Area, until such time as Declarant conveys fee simple title of such Common Area to the Community Association or other Person described in this Section 2.12.

**Section 2.13. Common Assessment.** "Common Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of Operating the Community Association, including expenses incurred in connection with any authorized function of the Community Association, which are to be paid by each Owner to the Community Association for purposes provided herein and charged to such Owner and to the Privately Owned Site of such Owner. Each Common Assessments includes an Administrative Functions Common Assessment ("AFCA") and may or may not include a Recreation Functions Common Assessments ("RFCA"), or any other assessments established pursuant to Section 8.8 of this Community Declaration.

**Section 2.14. Community Association.** "Community Association" shall mean shall mean South Shore Harbour Community Association, Inc., a Texas non-profit corporation now existing or to be created after the date hereof, its successors and assigns.

**Section 2.15. Community Association Area.** "Community Association Area" shall mean the First Subdivision together with any real property which hereafter becomes subject to this Community Declaration by the execution and Recordation of a Supplemental Declaration as provided in Section 3.3 of this Community Declaration.

**Section 2.16. Community Association Properties.** "Community Association Properties" shall mean all real and personal property, including improvements (a) now or hereafter owned by the Community Association or (b) with respect to which the community Association holds an easement for the use, care or maintenance thereof, which in either event is held for the common use and enjoyment of certain of its Members as provided herein and for other purposes as may be permitted by this Community Declaration.

**Section 2.17. Community Declaration.** "Community Declaration" shall mean this instrument as it may be amended from time to time.

**Section 2.18. Condominium.** "Condominium" shall mean (a) a "condominium unit" as defined in Section 2 (d) of the Texas Condominium Ownership Act, Texas Revised Civil Statutes, Articles 1301a, or as defined in any State of Texas statute or statutes in lieu of any or such statute which may hereafter be enacted; or (b) that portion of real property owned by a cooperative housing corporation, as defined in Section 2.16 of the Internal Revenue Code, to which a shareholder is entitled to exclusive occupancy; or (c) a unit in a project in which an undivided interest in land is coupled with the right of exclusive occupancy of any space located thereon.

**Section 2.19. Declarant.** "Declarant" shall mean South Shore Harbour Development, a Texas joint venture composed of South Shore Harbour Investors, a Texas general partnership, and Anrem Corporation, a Texas corporation, and such joint venture's successors and assigns. A Person shall be deemed a "successor and assign" of South Shore Harbour Development, a Texas joint venture, as Declarant only if such Person is specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Community Declaration and shall be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant under this Community Declaration which are specifically designated in such written instrument. However, a successor to South Shore Harbour Development by consolidation or merger shall automatically be deemed a successor or assign of South Shore Harbour Development as Declarant under this Community Declaration.

**Section 2.20. Declarant Owned Acreage.** "Declarant Owned Acreage" shall mean land lying within the Annexable Area (including any "Reserves" [as hereinafter defined]) which (i) has not been subdivided into Privately Owned Sites, whether single-family or multi-family Residential, Commercial, or Industrial Sites or otherwise, or (ii) is not within a Delegate District.

**Section 2.21. Deed of Trust.** "Deed of Trust" shall mean a Mortgage as hereinafter defined.

**Section 2.22. Delegate.** "Delegate" shall mean the natural Person selected by Members within a Delegate District pursuant to Section 4.5 hereof to represent such Delegate District and to cast votes on behalf of Members within such Delegate District as provided in this Community Declaration.

**Section 2.23. Delegate District.** "Delegate District" shall mean a geographical area which may constitute any portion or portions of the Community Association Area and from which all Members in that Delegate District shall elect a single Delegate to represent their collective voting power, as further provided in Article IV hereof.

**Section 2.24. FHA.** "FHA" shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development, including such department or agency of the United States government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate.

**Section 2.25. FHLMC.** "FHLMC" shall mean the Federal Home Loan Mortgage Corporation or The Mortgage Corporations created by Title III of the Emergency Home Finance Act of 1970, including any successors thereto.

**Section 2.26. First Subdivision.** "First Subdivision" shall mean all of the real property described in Exhibit "B" attached hereto and incorporated herein by this reference, which property Declarant intends to develop as Residential Sites and Community Association Properties.

**Section 2.27. FNMA.** "FNMA" shall mean the Government National Mortgage Association, a government-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto.

**Section 2.28. GNMA.** "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successor thereto.

**Section 2.29. Government Mortgage Agencies.** "Government Mortgage Agencies" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase Mortgage loans.

**Section 2.30. Improvements.** "Improvements" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings,

swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, poles, signs, exterior tanks, solar energy equipment, exterior air conditioning fixtures and equipment, water softener fixtures, exterior lighting, recreational equipment or facilities, radio or television antenna and microwave television antenna, and landscaping which is visible from the Community Association Properties or a Privately Owned Site, other than the Privately Owned Site on which the landscaping is located.

**Section 2.31. Improvement to Property.** "Improvement to Property" shall mean any improvement, change, alteration or addition to any property within the Community Association Area. "Improvement to Property" is more particularly defined in Section 10.2 of this Community Declaration.

**Section 2.32. Industrial Site.** "Industrial Site" shall mean any Privately Owned Site within the Community Association Area designated in the Supplemental Declaration covering that site for industrial uses.

**Section 2.33. Maintenance Funds.** "Maintenance Funds" shall mean the accounts into which the Board shall deposit monies paid to the Community Association and from which disbursements shall be made in the performance of the functions of the Community Association pursuant to Article VIII hereof.

**Section 2.34. Manager.** "Manager" shall mean any one or more Persons employed by the Community Association as hereinafter provided in the Community Declaration who is engaged to perform any of the duties, powers or functions of the Community Association.

**Section 2.35. Member.** "Member" shall mean the Person, or if more than one, all Persons collectively, who constitute the Owner of a Privately Owned Site, and Declarant.

**Section 2.36. Miscellaneous Use Site.** "Miscellaneous Use Site" shall mean any Privately Owned Site within the Community Association Area designated in the Supplemental Declaration covering that Site for agricultural, mixed residential and office, or other uses or designated as an "Unrestricted Reserve" (as hereinafter defined), except any Residential Site, Industrial Site or Commercial Site. The manner in which any miscellaneous Use Site will utilize any Community Association Properties and contribute to the cost of operating the Community Association shall be set forth in the supplemental Declaration covering such Site.

**Section 2.37. Mortgage.** "Mortgage" shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Privately Owned Site, encumbering the Privately Owned Site to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage".

**Section 2.38. Mortgagee.** "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee.

**Section 2.39. Mortgagor.** "Mortgagor" shall mean the Person who mortgages his or its property to another (i.e., the maker or grantor of a Mortgage). The Term "Mortgagor" shall include a grantor under a Deed of Trust.

**Section 2.40. Notice and Hearing.** "Notice and Hearing" shall mean a written notice and a public hearing before the Board of Directors or a tribunal appointed by the Board, in the manner provided in this Community Declaration or in the Bylaws.

**Section 2.41. Notice of Completion.** "Notice of Completion" shall mean a written notice to the Architectural Committee of the completion of any Improvement to Property pursuant to Article X of this Community Declaration.

**Section 2.42. Owner.** "Owner" shall mean the person, including Declarant, or if more than one, all Persons collectively, who hold fee simple title of record to a Privately Owned Site, including sellers under executory contracts of sale and excluding buyers thereunder. The Owner of a Privately Owned Site developed as rental apartments, retail, commercial, office and/or warehouse space, shopping centers, or office buildings shall be the Owner for purposes of this Community Declaration and not the leases or tenants thereof.

**Section 2.43. Person.** "Person" shall mean a natural person, a corporation, a partnership or any other entity.

**Section 2.44. Privately Owned Site.** "Privately Owned Site" or "Site" shall mean any Condominium, townhouse or any lot or parcel of land within the Community Association Area which is shown upon any recorded plat, map or any other parcel of land which may be sold or conveyed without violation of the provisions of Texas law pertaining to the subdivision of land. "Privately Owned Site" or "site" shall include, without limitation, any lot or parcel developed as rental apartments containing one or more apartment buildings, shopping centers and office/warehouse parks containing one or more units or buildings, an office/warehouse parks containing one or more units or buildings, an office building containing one or more units or suites or other commercial buildings containing one or more separate buildings, but shall not include: (a) any property owned by a public body, (b) the Community Association Properties, or (c) any Common Area.



**Section 2.45. Project Area.** "Project Area" shall mean the aggregate of the Community Association Area, which is subject to this Community Declaration at any point in time, and the Annexable Area, which may at any time thereafter be annexed into the Community Association Area and thereby be made subject to this Community Declaration.

**Section 2.46. Record or Recorded.** "Record or Recorded" or "Site" shall mean the filing for record of any document in the office of the Clerk and Recorder of Galveston County, Texas.

**Section 2.47. Recreation Cost Centers.** "Recreation Cost Centers" shall mean one or more recreational Improvements on a portion or portions of the Community Association Properties which improvements are restricted for the exclusive use of certain Owners of Privately Owned Sites, and where the expenses of operating such improvements are borne solely by such Owners. There may be one or more such Recreation Cost Centers established in the Community Association Area, as further provided in Sections 8.10 and 8.11 hereof.

**Section 2.48. Recreation Functions.** "Recreation Functions" shall mean providing for active and passive recreational activities in connection with a Recreation Cost Center, including any and all facilities associated therewith; provided, however, that the foregoing shall not be deemed to be a representation by Declarant of services or facilities which will be available for the use of the Owners.

**Section 2.49. Reimbursement Assessment.** "Reimbursement Assessment" shall mean a charge against a particular Owner and his Privately Owned Site for the purpose of reimbursing the Community Association for expenditures and other costs of the Community Association in curing any violation, directly attributable to the owner, of the Community Declaration or the Rules and Regulations, pursuant to Section 8.22 hereof, together with late charges and interest as provided for herein.

**Section 2.50. Reserve Fund.** "Reserve Fund" shall mean the portion of each Maintenance Fund earmarked as contingency funds for the operation of the Community Association Area and the construction, repair, replacement or other restoration work to the Community Association Properties.

**Section 2.51. Residential Site.** "Residential Site" shall mean any Privately Owned Site within the Community Association Area designated in the Supplemental Declaration covering that Site for apartment rental, condominium, townhouse, Patio home or other single family or multi-family dwelling purposes.

**Section 2.52. Rules and Regulations.** "Rules and Regulations" shall mean rules and regulations adopted by the Board of Directors as provided in Section 5.16 of this Community Declaration, as amended from time to time.

**Section 2.53. Special Assessment.** "Special Assessment" shall mean a charge against each Owner and his Privately Owned Site representing a portion of the costs to the Community Association for the purpose of funding major capital repairs, maintenance, replacements and improvements, pursuant to Section 8.21 hereof.

**Section 2.54. Subassociation.** "Subassociation" shall mean any Texas corporation, or unincorporated association, and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations and of which the membership is composed of Owners of Privately Owned Sites within all or part of the area covered by the Supplemental Declarations. Additionally, a Subassociation may be formed by the written agreement of not less than sixty-six percent (66%) of the Owners of Privately Owned Sites within any separately annexed subdivision forming part of a Delegate District.

**Section 2.55. Supplemental Declaration.** "Supplemental Declaration" shall mean a written instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which may be Recorded on any portion of the Annexable Area in Accordance with Section 3.3 of this Community Declaration.

**Section 2.56. VA.** "VA" shall mean the Veterans Administration of the United States of America, including such department or agency of the United States government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on Residential Sites.

### ARTICLE III

#### **ANNEXATION TO COMMUNITY ASSOCIATION AREA**

**Section 3.1. Property Hereby Made Subject.** Declarant hereby declares that the first Subdivision is hereby made subject to this Community Declaration. The First Subdivision initially shall constitute Delegate District No. 1 and the first Assessment Area and, as further provided in the Supplemental Declaration applicable thereto, it shall be developed as Residential Sites and Community Association Properties.

**Section 3.2. Property which May Be Annexed.** Declarant may, but shall in no way be required to, from time to time, unilaterally add to the Community Association Area all or any portion of the Annexable Area, provided that Declarant makes reasonable progress in the development of Privately Owned Sites. However, delays in development or sale of the Privately Owned

Sites, and delays resulting from cause beyond the reasonable control of Declarant (including, without limitation, governmental restrictions, war or civil commotion, general debt moratorium, or unavailability of utilities or building permits [which delays are herein referred to as "Excusable Delays"]), shall not affect the right of Declarant to annex further property into the Community Association Area. In any event it shall be conclusively presumed that Declarant is reasonably progressing in the development of Privately Owned Sites if the first annexation proposed by Declarant under this Community Declarations is effected prior to the third (3rd) annual anniversary of the recordation of this Community Declaration, as extended by Excusable Delays, and if any subsequent annexation proposed by Declarant hereunder is effected prior to the third annual anniversary of the Recordation of the most recently Recorded Supplemental Declaration annexing a portion of the Annexable Area into the Community Association Area, as extended by Excusable Delays, (notwithstanding the fact that such most recently Recorded Supplemental Declaration may have been withdrawn from the Community Association Area pursuant to Section 3.5 hereof). The annexation, itself, of such Annexable Area, regardless of whether any improvements are constructed in such Annexable Area, shall satisfy the aforesaid requirement of Declarant making reasonable progress in the development of Privately Owned Sites. Should Declarant fail to make reasonable progress in the development of Privately Owned Sites as provided above at any time during the term of this Community Declaration, then the next succeeding annexation of Annexable Area shall require the approval of Delegates representing not less than two-thirds (2/3rds) of the voting power within the community association (excluding any voting power of the Declarant). However, any annexations subsequent to an annexation approved by such Delegates shall not require the vote of the Delegates described in the preceding sentence if such annexations occur prior to the third annual anniversary of the Recordation of the most recently Recorded Supplemental Declaration annexation a portion of Annexable Area into the Community Association Area, as extended nu Excusable Delays.

**Section 3.3. Manner of Annexation.** Real property within the Annexable Area ("Annexed Property"), shall become part of the Community Association Area and subject to this Community Declaration, effective upon the Recordation in the office of the Clerk and Recorder of Galveston County, Texas, of a Supplemental Declaration meeting the requirements hereinafter set forth. A Supplemental Declaration (a) shall be executed and acknowledged by the Owner(s) of the Annexed Property described therein; (b) shall, if the Annexed Property described therein; (b) shall, if the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area and has the power to annex additional property into the Community Association Are; (c) shall contain an adequate legal description of the Annexed Property; (d) shall contain a reference to this Community Declaration which shall state its

date of Recordation and the book and page of the Records of the Clerk and Recorder of Galveston County, Texas, where this Community Declaration is Recorded; (e) shall state the land classification (residential, commercial, industrial or otherwise, including unrestricted reserves shown on the Recorded plat (the "Plat"), for such Annexed Property (collectively herein referred to as the "Reserves") of the Annexed Property; (f) shall designate the Assessment Area or Assessment Areas covered by the Supplemental Declaration and state the manner in which the Owners of any Privately Owned Sites shall contribute to the cost of operating and maintaining such Community Association Properties (g) shall contain a statement that the Annexed Property is declared to be part of the Community Association Area under this Community Declaration and that the Annexed Property shall be subject to this Community; (h) shall state whether the Owners of any Privately Owned Sites therein or other Persons shall be authorized to use any recreation cost center or other Community Association Properties; (i) shall designate in which Delegate District the Annexed Property is located; (j) shall state whether the Owners of any Privately Owned Sites therein are subject to any Assessments, other than "AFCAs" and "RFCAs" (as hereinafter defined: ; (k) shall provide that Sites therein shall be subject to the jurisdiction of a Subassociation or shall not be subject to the Jurisdiction of a Subassociation; and (l) may include a conveyance by Declarant of Common Area to one or more of the of the Persons described in Section 2.12 hereof. If a portion of the Annexed Property made part of the Community Association by a Supplemental Declaration is classified as a Reserve and no land classification for such Reserve has been made on the Plat or said Supplemental Declaration, then the Declarant, without the consent of any Owner, may designate the permitted use(s) of such Reserve by a Supplemental Declaration otherwise satisfying the requirements of this Section 3.3. Additionally, a Supplemental Declaration may provide for phased annexation so that portions of the Annexable Area may be made subject to the Supplemental Declaration and this Community Declaration at different times. A deed by which Declarant conveys a parcel of property, including property comprising the Common Area, to another Person may constitute a Supplemental Declaration if it meets the foregoing requirements, as applicable (and may designate such Person a successor and assign of Declarant with respect to all or a portion of the property conveyed therein as described in Section 2.19 hereof). A Supplemental Declaration may impose on the Annexed Property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions to those set forth in this Community Declaration, taking into account the unique and particular aspects of the proposed development of the Annexed Property covered thereby; provided, however, in no event shall any Supplemental Declaration revoke, modify or amend the covenants or restrictions established by this Community Declaration or any other Supplemental Declaration for any other property comprising part of the Community Association Area or within the Project Area or Revoke (So as to terminate)

The provisions of the covenants or restrictions established by this Community Declaration as to such Annexed Property. A Supplemental Declaration may provide for a Subassociation of Owners within the property described in the Supplemental Declaration and for the right of the Subassociation to assess such Owners. Upon Recordation of a Supplemental Declaration, the Annexed Property shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, except to the extent specifically stated in the Supplemental Declaration. If the annexation of any Annexable Area has the direct effect of increasing the then current budgeted expenses of the Community Association to provide services to such Annexed Property in a manner consistent with the remainder of the Community Association Area, Declarant shall directly pay to the Community Association the amount of money necessary to provide required services to such Annexed Property in a manner consistent with the remainder of the Community Association Area, until such time as the Annexed Property becomes subject to Assessment in a manner consistent with the remainder of the Community Association Area owned by Owners, other than Declarant, as applicable.

**Section 3.4. Government Mortgage Agency Approvals.** As long as the Declarant has Class B Membership rights and provided further that one or more Government Mortgage Agencies is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Community Association Area, the following actions require the prior approval of those Government Mortgage Agencies insuring or guaranteeing loans or having agreed to insure or guarantee loans on any portion of the Community Association Area, (ii) dedication of the Common Area, (iii) mergers and consolidations of the Community Association, (iv) mortgaging of the Common Area, and (v) amendment of this Community Declaration.

**Section 3.5. Withdrawal of Annexed Property.** All or any portion of the Annexable Area which has been annexed by a Supplemental Declaration may be withdrawn from the Community Association Area and from this Community Declaration by the Owners of such Annexed Property to correct a surveyor error or other technical or clerical error or otherwise, in the manner described below; provided, however, Annexed property that is not then owned by Declarant may be withdrawn only if no assessments have then commenced with respect to such Annexed property. The withdrawal of Annexed property shall be accomplished by the execution, acknowledgement and recordation of a withdrawal notice ("Notice of Withdrawal"). The Notice of Withdrawal (i) shall be executed and acknowledged by all of the Owner(s) of the Annexed Property to be withdrawn; (ii) shall, if the Annexed property to be withdrawn is not the owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area and has the power to annex additional property into the Community Association Area;

(iii) shall contain an adequate legal description of the Annexed Property; (iv) shall contain a reference to the Supplemental Declaration for such Annexed Property which reference shall state the date thereof, the date of Recordation thereof and the recording reference in the office of the Clerk and Recorder of Galveston County, Texas, where the Supplemental Declaration was recorded; and (v) shall contain a statement and declaration that all or any portion of the Annexable Area which is being withdrawn is withdrawn from the Community Association Area and shall not be thereafter subject to this Community Declaration or the Supplemental Declaration for such Annexed Property.

The withdrawal shall be effective upon recordation of the Notice of Withdrawal and, upon recordation of the Notice of Withdrawal, the Annexed Property described therein shall no longer be part of the Community Association Area or subject to the Community Declaration or the Supplemental Declaration for such Annexed Property. Any Annexed Property, which is withdrawn from the Community Association Area and the Community Declaration pursuant to a Notice of Withdrawal may be annexed at any subsequent time in one or more annexations, and the withdrawal of such Annexed Property does not create any future impediment to any number of annexations or withdrawals of such Annexed Property.

The withdrawal of such Annexed Property shall not impair the validity of any action taken by the Board, Delegates or Community Association notwithstanding the exercise by the Owners of such Annexed Property of any voting rights hereunder. Additionally, the Owners of such Annexed Property shall be liable for their prorate share of any assessments imposed against such Annexed Property prior to the date of Recordation of the Notice of Withdrawal, and the Association shall not be obligated to refund any portion of any assessment paid by the Owners of such Annexed Property.

**Section 3.6. Vacating of Plat or Correction of Plat by Declarant and Owners.** No provision of this Community Declaration shall preclude the Declarant and/or Owners of Annexed Property from vacating any plat of such Annexed Property or filing a replat to correct any error in the original platting or replatting of such Annexed Property provided that such vacating or replatting is done in accordance with Texas Revised Civil Statutes, Article 974a, such as an error in any course or distance shown on the prior plat, as an error in description of the real property on the prior plat or any other type of scrivener or clerical error or omission in the description of the real property on the prior plat or otherwise. Additionally, the Declarant and each Owner of any Annexed Property which is not platted as a subdivision, which is affected, by one or more of the following errors may, without the joinder of any other Owner, file a Supplemental Declaration correcting such errors ("Correction Supplemental Declaration")

Provided that the property rights of any other Owner are not adversely affected by such Correction Supplemental Declaration: (i) to correct an error in any course or distance described in the prior Supplemental Declaration; (ii) to add any course or distance that was omitted in the prior Supplemental Declaration; (iii) to correct an error in the description of the real property described in the prior Supplemental Declaration; (iv) to indicate monuments set after death, disability, or retirement from practice of the engineer surveyor charged with responsibilities for setting monuments; (v) to indicate the proper location or character of any monument which has been changed in location or character or which originally was described at the wrong location or incorrectly as to its character on the Prior Supplemental Declaration; (vi) to correct any other type of scrivener or clerical errors or omission; such errors or omissions may include, but are not limited to, the lot numbers , unit numbers, parking spaces, building site numbers, acreage, street name and identification of adjacent Annexed Property; (vii) to correct an error in courses and distances of lot lines between two adjacent Privately Owned Sites when both Owners join the application of such correction, provided that such amendment does not intend to remove such privately owned Sites from the Operation of this Community Declaration or any Supplemental Declaration; or (viii) to relocate a lot line in order to cure the inadvertent encroachment of a building or improvement on a lot line or on an easement.

#### **ARTICLE IV**

##### **COMMUNITY ASSOCIATION OPERATION**

**Section 4.1. Community Association.** The Community Association will be formed as a Texas non-profit corporation under the Texas Non-Profit Corporation Act. The Community Association shall have the duties, powers and rights set forth in this Community Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Community Association shall have a Board of Directors to manage its affairs; the Board of Directors shall be elected by Owners within the Community Association Area, and Delegates shall be elected by Owners within each Delegate District, acting in their capacity as Members of the Community Association.

**Section 4.2. Community Association Board of Directors.** The affairs of the Community Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Community Association or to agents and employees of the Community Association but such delegation of authority shall

Not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Community Association. Action by or on behalf of the Community Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee without a vote of Members or Delegates, except as otherwise specifically provided in this Community Declaration.

**Section 4.3. Membership in Community Association.** Each Owner within the Community Association Area shall be a Member of the Community Association. The Person or Persons who constitute the Owner of a Privately Owned Site shall automatically be the holder of the Membership appurtenant to that Privately Owned Site. Initially, the Owners, other than Declarant, shall hold one membership in the Community Association Area as a "Class A Member", and Declarant shall hold one membership in the Community Association for each Privately Owned Site owned by Declarant as "Class B Member", subject to the provisions of Section 4.5 hereof. Membership in the Community Association shall not be assignable separate and apart from fee simple title to a Privately Owned Site except that an Owner may assign some or all of his rights as an Owner and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Community Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Community Declaration, notwithstanding any such arrangement.

**Section 4.4. Establishment of Delegate District.** The Community Association Area shall be divided into Delegates Districts, as hereinafter described, and each Delegate District shall elect one (1) Delegate to the Community Association to exercise the voting power of all the Members in such Delegate District. If a Subassociation is created by the Recordation of a Supplemental Declaration, then all of the Annexed Property within the jurisdiction of the Subassociation shall constitute a Delegate District and no other Annexed Property shall be included within such Delegate District, except as otherwise provided in such Supplemental Declaration. In the event that a Subassociation is not created for one or more portions of the Annexed Property, then the Delegate Districts for such portions of the Annexed Property shall be established by Declarant at the time such portions of the Annexed Property become part of the Community Association Area by the Recordation of a Supplemental Declaration or other written instrument signed by Declarant. Additional portions of Annexed Property may be added to existing Delegate Districts by a Supplemental Declaration or other written instrument signed by Declarant. Such Supplemental Declaration(s) or other instrument(s) shall contain a legal description of the portion of the Annexed Property which shall comprise all or a portion of a Delegate District for purposes of this Community Declaration.



**Section 4.5. Voting Rights of Members.** Each Member shall have the right to cast votes for the election of a Delegate to the Community Association to exercise the voting power of the Delegate District in which the Member's Privately Owned Site is located. If such Delegate District is within the jurisdiction of a Subassociation, then the Member shall have the same voting rights for the election of the Delegate from that Delegate District as are provided for the election of the Board of Directors of the Subassociation, subject to the provisions of Article XII of the Bylaws relating to suspension of voting rights. If such Delegate District is not subject to the jurisdiction of a Subassociation, then the Member shall have the hereinafter-described voting rights for the election of a Delegate to represent the Delegate District. There shall be two classes of Members, Class A Members and Class B Members. Initially, Class A Members shall be all Owners, with the exception of Declarant, and each Class A Members shall be entitled to one (1) vote for each Privately Owned Site restricted to single family residential use owned by such Class A Member within a Delegate District. Each Class A Member owning a privately Owned Site restricted to residential use, other than single-family residential use, or restricted as a Commercial Site, Industrial Site, or otherwise shall be entitled to the following number of votes: (i) one (1) vote for each three (3) apartment units located on a Privately Owned Site (with a full vote being assigned for any extra one (1) or two (2) apartment units not constituting a multiple of three (3) apartment units, in lieu of assigning a fractional vote) ; (ii) one (1) vote for each three (3) individually numbered Hotel or Motel Guest rooms (or any extra one (1) or two (2) individually numbered hotel or motel guest rooms) located on a Privately Owned Site; and (iii) one (1) vote for each 2,500 square feet (or extra part thereof) of enclosed floor area (as determined by the set of "as-built" plans delivered to the Architectural Committee at the time of the delivery of the Notice of Completion, which plans [the "Completion Plans"] contain the Architect's certification of the total of the above-described enclosed floor area in such improvement to Property), (a) of common rooms and facilities or administrative offices within an apartment complex, hotel, or motel, or (b) within a shopping center, office building, Industrial Site, office/warehouse facility, or other commercial building on a Privately Owned Site. For example, if a shopping center, or office building or other commercial building on a Privately Owned Site. For example, if a shopping Center, or office building, or other commercial building contains 102,000 square feet of enclosed floor area, then the owner of such shopping center, office building or other commercial building shall be entitled to forty-one (41) votes for such Privately Owned Site. Prior to the development of improvements on such Privately Owned Sites, each Class A member shall be entitled to one (1) vote for each acre or fraction thereof of the aggregate of unimproved property on such Class A Member's Privately Owned Sites, other than Residential Sites restricted to single family use. The Improvements on such Privately Owned Site shall be deemed to be completed, with an appropriate change in such Owner's voting

Rights being made, on the date that the Owner delivers a Notice of Completion to the Architectural Committee provided that such improvement is, in fact, completed as of the date of delivery of such Notice of Completion.

Declarant shall be the sole Class B Member, and Declarant shall be entitled to three (3) times the number of votes for each Privately Owned Site Owned by Declarant that a Class A Member would be entitled to exercise if such Class A Member owned such Privately Owned Site, except for Declarant Owned Acreage and Privately Owned Sites (other than Residential Sites Restricted to single family use) owned by Declarant on which Improvements to property have not been completed. Declarant shall be entitled five (5) votes for each acre or fraction thereof of the aggregate of Declarant Owned Acreage or Privately Owned Sites (other than residential Sites restricted to single family use) on which Improvements to Property have not been completed in which Declarant holds and interest required for membership by Article IV hereof. All Declarant Owned Acreage which is not included in a Delegate District created by a Supplemental Declaration shall be deemed to constitute a separate Delegate District (The "Declarant's Delegate District"), until such Declarant Owned Acreage is Annexed into the Community Association, at which time such Declarant Owned Acreage shall be transferred into the Delegate District referred to in such Supplemental Declaration. Declarant's Status as a Class B Member in each such Delegate District shall cease and be converted to a Class A Membership (with Declarant being entitled to three (3) times the number of votes for each Privately Owned Site within such Delegate District Owned by Declarant that all other Class A Members are entitled to exercise by virtue of their ownership of Privately Owned Sites) on the happening of either of the following events, whichever event first occurs: (i) when the total votes outstanding in the Class A Membership for such Delegate District equal or exceed the total votes outstanding in the Class B Membership for such Delegate District; (ii) Ten (10) years from the date of Recordation of the Supplemental Declaration or other written instrument creating the Delegate District; (iii) at the option of Declarant by written Notice thereof to the Board of Directors. No Member, other than Declarant, shall be a Class B Member. The Delegate Elected by Members holding a majority of the voting power in such Delegate District. The Bylaws of the Community Association shall provide for the manner, time, place, conduct and voting, procedures for Member Meetings for the purpose of Electing a Delegate in any such Delegate District.

**Section 4.6. Voting Rights of Delegates.** Each Delegate may cast (1) one vote for each vote held by the Owners of Privately Owned Sites within such Delegate's Delegate District as determined pursuant to Section 4.5 of this Community Declaration.

The Delegate may cast votes for each Privately Owned Site, as described above, as long as the voting rights of the Owner of Such Privately Owned Site have not been suspended pursuant to Article XII of the Bylaws, the provisions of any Supplemental Declaration or any other instrument, whichever is applicable.

Each Delegate shall cast the votes which he represents in such a manner as he may, in his sole discretion, deem appropriate, acting on behalf of all the Members owning Privately Owned Sites in his Delegate District; provided, however, that in the event that at least a majority in interest of the Members in any Delegate District shall determine at any duly constituted meeting of the Members in such Delegate District to instruct their Delegate as to the manner in which he is to vote on any issue to be voted on by the Delegates, then the Delegate representing such Delegate District shall cast all of the voting power in such Delegate District in the same proportion, as nearly as possible without counting fractional votes, as the members in such Delegate District shall have cast their voting power "for" and "against" such issue in person or by proxy. A Delegate shall have the authority, in his sole discretion, to call a special meeting of the members owning Privately Owned Sites in his Delegate District, in the manner provided in the Bylaws, for the purpose of obtaining instructions as to the manner in which he is to vote on any issue to be voted on by the Delegates. When a Delegate is voting in his own discretion, without instruction from the Members whom he represents, then such Delegate may cast all of the votes which he represents as a unit or such Delegate may apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It will be conclusively presumed for all purposes of Community Association business that any Delegate casting votes on behalf of the Members owning Privately Owned Sites in his Delegate District will have acted with the authority and consent of all such Members. All agreements and determinations lawfully made by the Community Association in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding on all Members, and their successors and assigns.

**Section 4.7. Delegates as Advisory Committee for Recreation Cost Center.** The Delegates representing those Members who are entitled to use any Recreation Cost Centers shall act as an advisory committee to the Board, with respect to the operation and maintenance of such Recreation Cost Center. Such Delegates, representing the applicable percentage of the Owners of such Privately Owned Sites, may propose to the Board (i) rules and regulations respecting the use and operation of the Recreation Cost Center, (ii) increases or reductions in RFCA's attributable to the Recreation Cost Center, (iii) Improvements to Property relating to the Recreation Cost Center, or (v) any other authorized action under this Communication Declaration pertaining to such Recreation Cost Center. The Board shall adopt any such proposal, unless it determines, in its sole discretion, that the proposal, if adopted,

Would Substantially and adversely affect any Member or group of Members not represented by such Delegates. Those Delegates making any such proposal must represent a percentage of Owners of Privately Owned Sites entitled to use such Recreation Cost Center, which equals or exceeds the percentage set forth elsewhere in this Community Declaration for similar action or approvals by the Membership of the Community Association at large; provided, however, if no percentage is stated in this Community Declaration for similar action or approvals by the Membership of the Community Association at large, then the Board shall adopt any proposal made by those Delegates representing a majority in interest of the Owners of Privately Owned Sites entitled to use such Recreation Cost Center.

## ARTICLE V

### **DUTIES AND POWERS OF COMMUNITY ASSOCIATION**

**Section 5.1. General Duties and Powers of Association.** The Community Association has been formed to further the common interests of the Members. The Community Association, acting through the Board or Persons to whom the Board had Delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Community Association Properties and to improve and enhance Community Association Properties and to improve and enhance the attractiveness, desirability and safety of the Community Association Area.

**Section 5.2. Duty to Accept Property and Facilities Transferred by Declarant.** The Community Association shall accept title to any property, including any improvements thereon and personal property transferred to the Community Association by Declarant, And equipment related thereto, together with the responsibility to perform any and all Administrative Functions, and Recreation Functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Community Declaration. Property interests transferred to the Community Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Community Association by Declarant shall be within the boundaries of the Annexable Area. Any Property or interest in Property transferred to the Community Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Community Association free and clear to all liens and mortgages (other than the lien of the property taxes and assessments not then due and payable), but shall be subject to the terms of this Community Declaration, the terms of the Supplemental Declaration annexing such property

To the Community Association Area, and easements, covenants, conditions, restrictions and equitable servitudes or other encumbrances which do not materially affect the use and enjoyment of such property by the Community Association or by Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interests in property transferred to the Community Association by Declarant shall impose upon the Community Association any obligation to make monetary payments to Declarant or any affiliate of Declarant including, but not limited to, any purchase price, rent, charge, or fee. The Property on interest in property transferred to the Community Association by Declarant shall not impose any unreasonable or special burden on the Community Association other than the normal burdens of ownership of property, including the management, maintenance, replacement and operation thereof.

**Section 5.3. Duty to Manage and Care for Property.** The Community Association shall manage, operate, care for, maintain, and repair all Community Association Property and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

**Section 5.4. Duty to Pay Taxes.** The Community Association shall pay all taxes and assessments levied upon the Community Association Properties and shall have the right to contest any such taxes or assessments provided that the Community Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and provided that the Community Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

**Section 5.5. Duty to Maintain Casualty Insurance.** The Community Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire and extended coverage insurance with respect to all insurable Improvements and personal property owned by the Community Association including coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake and war risk. Casualty, fire and extended coverage insurance with respect to insurable Improvements shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost.

**Section 5.6. Duty to Maintain Liability Insurance.** The Community Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury and property damage including, if the Community

Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Public liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, have limits of not less than Three Million Dollars (\$3,000,000.00) combined single limit coverage.

**Section 5.7. General Provisions Respecting Insurance.** Insurance obtained by the Community Association may contain such deductible provisions as good business practice may dictate. Insurance obtained by the Community Association shall, to the extent reasonably possible without undue cost, cover each Member without each Member necessarily being specifically named. Insurance obtained by the Community Association shall, to the extent reasonably possible without undue cost, contain a waiver of rights of subrogation as against the Community Association, each Member and any person claiming by, through or under such Member and as against any officer, director, agent or employee of any of the foregoing. Insurance obtained by the Community Association shall, to the extent reasonably possible, and provided Declarant reimburses the community Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Directors to ascertain whether coverage under the policies is sufficient in the light of the current values of the Community Association Properties and in light of the possible or potential liabilities of the Community Association. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Community Association Properties and property of Declarant.

**Section 5.8. Fidelity Bonds Required.** The Community Association shall obtain and keep in force at all times a fidelity bond or bonds for any person handling funds of the Community Association including, but not limited to, employees of the Manager. Each such bond shall name the Community Association as obligee and shall not be less than the estimated maximum of funds, including reserve bonds, in the custody of the Community Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event say the aggregate amount of such bonds be less than a sum equal to six (6) months aggregate "AFCA's" and "RFCA's" (as hereinafter defined) assessments on all Units plus the amount then deposited in all Reserve Funds.

**Section 5.9. Other Insurance and Bonds.** The Community Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Community Association shall deem necessary or desirable.

**Section 5.10. Insurance and Bonds Required by Government Mortgage Agencies.** The Community Association shall obtain and keep in full force and effect such insurance and bonds as may be required by Government Mortgage Agencies to the extent that any such Government Mortgage Agency holds, or has agreed to insure or to guarantee, any Mortgage of any privately owned site within the Community Association Area, except to the extent such insurance or bond is not available or has been waived in writing by such Government Mortgage Agency

**Section 5.11. Duty to Prepare Budgets.** The Community Association shall prepare Budgets for the Community Association as elsewhere provided in this Community Declaration

**Section 5.12. Duty to Levy and collect Assessments.** The Community Association shall levy and collect Assessments as elsewhere provided in this Community Declaration.

**Section 5.13. Duty to provide Audit.** The Community Association shall provide for an annual independent audit of the accounts of the Community Association. Copies of the report of the audit shall be made available to any Member who requests a copy of the same upon payment of such Member of the reasonable cost of copying the same.

**Section 5.14. Duties with Respect to Architectural Approvals.** The Community Association shall perform functions to assist the Architectural Committee as elsewhere provided in Article X of this community Declaration.

**Section 5.15. Power to Acquire Property and Construct Improvements.** The Community Association may acquire property or an interest in property for the common benefit of owners including improvements and personal property. The Community Association may construct improvements on property and may demolish existing Improvements.

**Section 5.16. Power to Adopt Rules and Regulations.** The Community Association may adopt, amend, repeal and enforce Rules and Regulations, fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of the Community Declaration, the operation of the Community Association, the use and enjoyment of the Community Association Properties and the use of any other property within the Community Association Area, including Privately owned sites. Any such Rules and Regulations shall be reasonable and uniformly applied (as to all owners, if applicable, and to Owners of similarly restricted Privately Owned Sites). Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment or repeal of any Rule and Regulation shall be given by posting any such Rule or Regulation for thirty (30) days after

the date of adoption in the Association office, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Community Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Community Declaration, the provisions of this Community Declaration shall prevail.

**Section 5.17. Power to Enforce Declaration and Rules and Regulations.** The Community Association shall have the power to enforce the provisions of this Community Declaration and of Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each person claiming by, through or under such Member ("Related User"). Without limiting the generality of the foregoing, the Community Association shall have the power to enforce the provisions of this Community Declaration and of Rules and Regulations of the Community Association by any one or more of the following means: (i) by entry upon any property within the Community Association Area after Notice and Hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice [written or oral] to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the Improvements situated thereon by the owner or any other person), without liability by the Community Association to the Owner thereof, for the purpose of enforcement of this Community Declaration or Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Community Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (iii) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Community Declaration or the Rules and Regulations; (iv) by exclusion, after Notice and Hearing, of any Member or Related User from use of any recreation facilities on the community Association Properties during and for up to sixty (60) days following any breach of this Community Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case such exclusion shall continue for so long as such breach continues; (v) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of such Member of this community Declaration or such Rules and Regulations, unless the breach as a continuing breach in which case such suspension shall continue for so long as such breach continues; (vi) by levying and collecting, after Notice and Hearing, a Reimbursement Assessment against any Member



for breach of this Community Declaration or such Rules and Regulations by such Member or a Related User of such Member; and (vii) by levying and collecting, after Notice and Hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Community Association, from any Member or Related User for breach of this Community Declaration or such Rules and Regulations by such Member or a Related User of such Member.

**Section 5.18. Power to provide Public Functions.** The Community Association shall have the power, but no obligation, to acquire, construct, operate, manage, maintain, repair and replace utilities, roads and other public facilities, and to provide other public functions as more particularly described in this Community Declaration.

**Section 5.19. Power to Provide Services to Subassociations.** The Community Association shall have the power, but no obligation, to provide services to Subassociations. Such services to any Subassociation shall be provided pursuant to an agreement in writing between the Community Association and such Subassociation which shall provide for the payment by such Subassociation to the Community Association of the reasonably estimated expenses of the Community Association of providing such services to the Subassociation. Such services may include, without limitation, (i) the construction, care, operation, management, maintenance, repair, and replacement of Community Association Properties; (ii) the providing of public functions to the area owned by the Community Association; (iii) the enforcement of the provisions of any Supplemental Declaration for, on behalf of, and in the name of the Subassociation; (iv) the collection of assessments for, in the name of, and on behalf of a Subassociation; (v) the payment of taxes for Subassociation with funds of the Subassociation; (vi) the obtaining of insurance for a Subassociation; (vii) the collection of charges for use of facilities of a Subassociation; (viii) the appointment and supervision of a Manager or Managers for a subassociation; and (ix) the collection from the Subassociation of the Subassociation's fair share of the Community Association's overhead expenses with respect to such services.

**Section 5.20. Power to provide Special Services for Members.** The Community Association shall have the power, but no obligation, to provide services to a Member or group of Members. Any service or services to a Member or group Members shall be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations, which shall provide for payment to the Community Association by such Member or group of Members of the reasonably estimated costs and expenses of the Community Association of providing such services, including a fair share of the overhead expenses of the Community Association and shall contain reasonable provisions assuring that the obligation to pay

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

**Section 5.21. Power to charge for Facilities and Services.** The Community Association shall have the power to establish reasonable and uniformly applied (as to each group of Members, Related Users, guests or invitees using the particular facilities or receiving such services) charges for the use of facilities and services. The charges may include reasonable admission or other fees for any special or extraordinary use of property or facilities or services of the Community Association such as special parking privileges, special recreation facilities, conference rooms, instruction, day-care or child-care services or similar uses beyond the ordinary use of Community Association Properties, facilities and services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Board of Directors.

**Section 5.22. Power to Grant Easements.** In addition to any blanket easements described in a Supplemental Declaration, the Community Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under Community Association Properties. Additionally, the Community Association, from and after the termination of the Declarant's rights and reservations described in Article VII of this Community Declaration, shall have the power to grant access, utility drainage, water facility and other such easements in, on, over and under Privately owned Sites provided that such easements do not unreasonably interfere with the rights of the owner of such Privately owned Sites.

**Section 5.23. Power to convey and Dedicate Property to Government Agencies.** In addition to the power to convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority, which power may be exercised by the Board of Directors of the Community Association or Board of Directors of the Subassociation in which such property is located, the Community Association, with the approval of Delegates representing not less than two-thirds (2/3rds) of the entire voting power within the Community Association, shall have the power to grant, convey, dedicate or transfer any Community Association Properties or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Community Association shall deem appropriate, subject to the provisions elsewhere contained in this Community Declaration for approval of the same, by Declarant with respect to property transferred to the Community Association by Declarant, and by Delegates representing the owners of Residential Sites within any particular Recreation Cost Center.

**Section 5.24. Power to Borrow Money and Mortgage Property.** The Community Association shall have the power to borrow money and to encumber Community Association Properties as security for such borrowing, subject to provisions elsewhere in this Community Declaration and the Bylaws with respect to required approvals and consents to such action. With respect to any mortgage encumbering Community Association Properties, the Lender's rights thereunder shall be limited to a right, after taking possession of such Community Association Properties, to charge reasonable admission and other fees as a condition to the continued enjoyment by the Members and, if necessary, to open the enjoyment of such Community Association Properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such Community Association Properties shall be returned to the Community Association and all rights of the Members hereunder shall be fully restored.

**Section 5.25. Power to Employ Managers.** The Community Association shall have the power to retain and pay for the services of a Manager or Managers to undertake any of the management or Administrative Functions, Recreation Functions or Public Functions for which the Community Association has responsibility under this Community Declaration to the extent deemed advisable by the Community Association, and may delegate any of its duties, powers or functions to any such Manager. Any contract or agreement with any such Manager shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Community Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Community Association, the Community Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

**Section 5.26. Power to Engage Employees, Agents and Consultants.** The Community Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, accounting and other professional services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Community Association under this Community Declaration.

**Section 5.27. General Corporate Powers.** The Community Association shall have all of the ordinary powers and rights of Texas non-profit corporation formed under the Texas Non-Profit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Community Declaration or in the Articles of incorporation or Bylaws. The

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

## ARTICLE VI

### COMMUNITY ASSOCIATION PROPERTIES

**Section 6.1. Members' Rights of Use and Enjoyment, Generally.** Each Supplemental Declaration shall specify, in the manner set forth in Section 3.3 of this Community Declaration, which Members or other persons may utilize which community Association Properties, or portion thereof, and the manner in which such Members shall contribute to the cost of operating and maintaining such Community Association Properties. All Members may use the community Association Properties, unless otherwise provided in the Supplemental Declaration governing the site of any such Member or in the Supplemental Declaration governing a particular Community Association Property, or both.

**Section 6.2. Right of Association to Regulate Use.** The Community Association, acting through the Board, shall have the power to regulate use of Community Association Properties by Members to further and enhance the overall rights of use and enjoyment of all Members, including imposing reasonable limits on the times of use and numbers of guests permitted to use Community Association Properties (subject to the right of the Delegates described in Section 4.7 hereof to propose rules, regulations and other matters affecting Recreation Cost Centers).

**Section 6.3. Right of Association to allow Public Use.** The Community Association, acting through the Board, shall have the right to allow members of the general public to use Community Association Properties, subject to reasonable limitations, and provided that use by the general public does not unreasonably interfere with or impair the rights of use and enjoyment of Owners.

**Section 6.4. No Partition of Community Association Properties.** No Owner shall have the right to partition or seek partition of the Community Association Properties or any part thereof.

**Section 6.5. Liability of Owners for Damage by Member.** Each Member shall be liable to the Community Association for any damage to community Association Properties or for any expense or liability incurred by the Community Association, to the extent

not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Member or Related User and for any violation by such Member or such Related User of this Community Declaration or any Rule or Regulation adopted by the Board. The Community Association shall have the power, as elsewhere provided in this Community Declaration to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Community Association on account of any such damage or any such violation of this Community Declaration or of such Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or any such violation.

**Section 6.6. Association Duties in the Event of Damage or Destruction to Community Association Properties.** In the event of damage to Community Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction or replacement of any Community Association Properties, the Community Association shall have the duty to repair, reconstruct or replace the same with comparable Improvements. Any insurance proceeds payable by reason of damage or destruction of Community Association Properties by fire or other casualty shall be paid to the Community Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements damaged or destroyed, or if the Community Association is required to make repairs, replacements or improvements by governmental authorities, the Community Association may, as elsewhere provided in this Community Declaration, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement or improvement, levy a Special Assessment on all owners, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the Member or group of Members responsible therefor, to provide the necessary additional funds. Repair, reconstruction or replacement of Community Association Properties shall be done under such contracting and bidding procedures as the Community Association shall determine are appropriate. If insurance proceeds available to the Community Association on account of damage or destruction exceed the cost of repair, reconstruction and replacement, the Community Association may use the same for future maintenance, repair, improvement and operation of other community Association Properties.

**Section 6.7. Association Powers in the Event of Condemnation.** If any Community Association Properties or interest therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Community Association, except to the extent payable to any other person with an interest

in such property including any Mortgagee of such Property. The Community Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners therein. Any award or funds received by the Community Association shall be held by the Community Association in the appropriate Maintenance Fund as determined by the Board, as a reserve for future maintenance, repair, reconstruction or replacement of Community Association Properties or may be used for Improvements or additions to, or operation of, Community Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

**Section 6.8. Title to Community Association Properties on Dissolution of Community Association.** In the event of dissolution of the Community Association, the Community Association Properties shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies to be used for the common benefit of Owners for similar purposes for which the particular Community Association Property was held by the Community Association, or to a non-profit corporation, association, trust or other organization. To the extent the foregoing is not possible, the Community Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members in proportion to the number of AFCA Units of each Member, as determined in Section 8.9 of this Community Declaration; provided, however, that the proceeds from the sale or disposition of any recreational facilities in a separate Recreation Cost Center shall be distributed to those Members entitled to use such facility in proportion to the number of RFCA Units of such Members.

## ARTICLE VII

### **DECLARANT'S RIGHTS AND RESERVATIONS**

**Section 7.1. Period of Declarant's Rights and Reservations.** Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Community Association, Community Association Properties and Community Association Area from the date hereof, until the earlier to occur of (i) the time that all property in the Annexable area has become part of the Community Association Area and the last Privately owned site within the community Association Area has been sold and conveyed by Declarant or (ii) Declarant's written notice to the Community Association of Declarant's termination of the reservation and/or retention of one or more of the rights described in Article VII hereof. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Community Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Community Association Area is conveyed by Declarant. The rights, reservations and easements

hereinafter set forth shall be prior and superior to any other provisions of this Community Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Community Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.

**Section 7.2. Right to Construct Additional Improvements on Community Association Properties.** Declarant shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional Improvements on Community Association Properties at any time and from time to time in accordance with this Community Declaration for the improvement and enhancement thereof and for the benefit of the Community Association and Owners, so long as such construction does not directly result in the imposition of a Special Assessment or an increase in the then current and applicable Common Assessments by more than twenty percent (20%) provided however, if Declarant agrees, in writing, at the time such additional Improvements are constructed on Community Association Properties, to contribute to the Community Association the amount of money in excess of such twenty percent (20%) increase in the Common Assessments for the current calendar year and one (1) additional calendar year, then Declarant shall have the right, without the consent of any other Owner, to construct additional Improvements on Community Association Properties which would otherwise be prohibited by this sentence. Thereafter, Declarant shall not be obligated to continue to make such contributions to the Community Association, unless otherwise provided herein. Declarant shall convey or transfer such Improvements to the Community Association and the Community Association shall be obligated to accept title to care for and maintain the same as elsewhere provided in this Community Declaration.

**Section 7.3. Declarant's Rights to Use Community Association Properties in Promotion and Marketing of Project Area.** Declarant shall have and hereby reserves the right to reasonable use of community Association Properties and of services offered by the Community Association in connection with the promotion and marketing of property within the boundaries of the Project Area. Without limiting the generality of the foregoing. Declarant may erect and maintain on any part of the Community Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper connection with the promotion, development and marketing of real property within the Project Area; may use vehicles and equipment on Community Association Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Project Area, who are not Owners or Members of the Community Association, to use Community Association Properties at reasonable times and in reasonable numbers and may refer to the Community Association and to the Community Association Properties

and services offered by the Community Association in connection with the development, promotion and marketing of property within the boundaries of the Project Area.

**Section 7.4. Declarant's Rights to Complete Development of Project Area.** No provision of this Community Declaration shall be construed to prevent or limit Declarant's right (or require Declarant to obtain any approval) to (i) complete development of property within the boundaries of the Project Area; (ii) construct, alter, demolish or replace Improvements on any property owned by Declarant within the Project Area; (iii) maintain model homes, storage areas, offices for construction, initial sales, resales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Community Association within the Project Area; (iv) post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Project Area; (v) excavate, cut, fill or grade any property owned by Declarant; or (vi) require Declarant to seek or obtain the approval of the Architectural Committee or of the Community Association for any such activity or Improvement to Property by Declarant on any property owned by Declarant. Nothing in Article VII of this Community Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Community Declaration.

**Section 7.5. Declarant's Approval of Conveyances or Changes in Use of Community Association Properties.** Until Declarant has lost the right to appoint a majority of the members of the Architectural Committee, the Community Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of any of the Community Association Properties, Mortgage the Community Association Properties or use Community Association Properties other than solely for the benefit of Members.

**Section 7.6. Declarant's Rights to Grant and create Easements.** Declarant shall have and hereby reserves the right, without the consent of any other Owner, to grant or create temporary Or permanent easements, for access, utilities, drainage, water and other purposes incident to development, sale, operation and maintenance of the Project Area, located in, on, under, over and across (i) Privately owned sites owned by Declarant and (ii) the Community Association Area.

**Section 7.7. Declarant's Rights to convey Additional Property to Community Association.** Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Community Association at any time and from time to time in accordance with this Community Declaration, without the consent of any other



Owner. so long as any conveyance does not directly result in an increase in the then current and applicable Common Assessments by more than twenty percent (20%); provided, however, if Declarant agrees, in writing, at the time such additional real property and Improvements thereon are conveyed to the Community Association, to contribute to the Community Association the amount of money in excess of such twenty percent (20%) increase in the Common Assessments for the current calendar year and one (1) additional calendar year, then Declarant shall have the right, without the consent of any other Owner, to convey such additional real property and Improvements thereon to the Community Association which would otherwise be prohibited by this sentence. Thereafter, Declarant shall not be obligated to continue to make such contributions to the Community Association, unless otherwise provided herein.

ARTICLE VIII

ASSESSMENTS, BUDGETS AND FUNDS

**Section 8.2. Maintenance Funds to be Established.** The Community Association shall establish and maintain at least the following separate Maintenance Funds:

- (a) an Administrative Functions Operating Fund; and
- (b) a Recreation Functions Operating Fund for each Recreation Cost Center which has been completed and is available to be used by Owners entitled to use the same.

Each of the Maintenance Funds shall be established as one or more savings or checking accounts at any financial institution in which deposits are insured by an agency of the federal government or may be invested in any manner permitted by the Bylaws.

**Section 8.2. Establishment of Other Funds.** The Community Association may establish other funds as and when needed; for example, a fund for receipts and disbursements relating to services provided by the Community Association for a Subassociation or a subdivision created by a Supplemental Declaration. Nothing herein shall limit, preclude or impair the authority of the Community Association to establish other funds for specified purposes authorized by this Community Declaration or by any Supplemental Declaration. If the Community Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Community Association.

**Section 8.3. Deposits of common Assessments to Maintenance Funds.** Monies received by the Community Association from Common Assessments shall be deposited in the Maintenance Funds in accordance with the following provisions: (i) there shall be deposited to the Administrative Functions Operating Fund the Administrative Functions Common Assessments ("AFCAs") which, according to the Community Association Budget for the year, was budgeted for operating costs and expenses of the Administrative Functions and the Reserve Fund for Administrative Functions; and (ii) there shall be deposited to each Recreation Functions Operating Fund that portion of Recreation Function Common Assessments ("RFCAS") received from Owners entitled to use Recreation Cost Center which was budgeted for operating costs and expenses of that Recreation Cost Center and the Reserve Fund for that Recreation Cost Center.

**Section 8.4. Other Deposits to Maintenance Funds.** The Community Association shall deposit monies received by the Community Association from sources other than Common Assessments in the Maintenance Fund determined by the Board of Directors to be most appropriate. For example, Reimbursement Assessments shall be deposited to the Maintenance Fund from which the costs and expenses were or will be paid which form the basis for the Reimbursement Assessment; Special Assessments for capital repairs, maintenance, replacement and improvements shall be deposited to the Reserve Fund from which such capital costs have been or will be paid; and insurance proceeds for damage to, or condemnation awards for the taking of, a Recreation Cost Center shall be deposited to the Reserve Fund for that Facility. Interest and late charges received on account or delinquent assessments may be allocated among the Maintenance Funds in the same proportions as the delinquent assessments were allocated or, at the discretion of the Board of Directors, may be allocated to any one or more of the Maintenance Funds or other funds.

**Section 8.5. Disbursements from Maintenance Funds.** All amounts deposited in the Maintenance Funds shall be used solely for purposes authorized by this Community Declaration. Disbursements from particular Maintenance Funds shall be limited to specified purposes as follows: (i) disbursements from the Administrative Functions Operating Fund may be made for such purposes as are necessary or proper under this Community Declaration, except those purposes for which disbursements are to be made from other Maintenance Funds; and (ii) disbursements from a Recreation Function Operating Fund shall be made solely for the purpose of operating the particular Recreation Cost Center for which the Fund was created, including construction, repairs, replacements, painting and other restorative work to the particular Recreation Cost Center for which the Fund was created.

**Section 8.6. No Commingling of Maintenance Funds.** The Community Association shall not commingle any amounts deposited

in any one Maintenance Fund for Administration Functions with amounts deposited in any Maintenance Fund established for Recreation Functions, or vice-versa, or commingle any amounts deposited in any one Maintenance Fund or other fund with amounts deposited in any other Maintenance Fund or other fund.

**Section 8.7. Authority for Disbursements.** The Board shall have the authority to make or to authorize an agent to make disbursements of any monies in the Maintenance Funds.

**Section 8.8. Common Assessments.** For each calendar year, the Community Association shall levy Common Assessments against Owners of the Privately owned Sites; provided, however, Declarant owned Acreage which is not platted or, if platted, constitutes a Reserve, shall not be subject to common Assessments or Special Assessments. The Common Assessments shall include: (i) the AFCAs; (ii) any RFCAs necessary for any Recreation Cost Center; and (iii) any other Assessments authorized to be made under this Community Declaration or any Supplemental Declaration. Each Owner shall be obligated to pay the Common Assessments levied against, and allocated to, such Owner and the Privately owned site of such Owner as hereinafter more particularly set forth.

**Section 8.9. Apportionment of Administrative Functions Common Assessments.** For purposes of the AFCAs, each Residential site (other than Residential Site improved as a residential apartment) on which single family dwellings are constructed shall constitute one (1) AFCA Unit regardless of the size, value or location of such Residential Site. Each other type of privately Owned Site shall be deemed to constitute the following number of AFCA Units: (i) each three (3) apartment units located on a Privately owned site shall constitute one (1) AFCA Unit, regardless of the size, value or location of such apartment units with a full AFCA Unit assigned for any extra one (1) or two (2) apartments not constituting a multiple of three (3) apartment units, in lieu of assigning any fractional AFCA Units); (ii) each three (3) individually numbered hotel or motel guest rooms for any extra one (1) or two (2) individually numbered hotel or motel guest rooms) on a Privately owned site shall constitute one (1) AFCA Unit regardless of the size, value or location of such hotel or motel rooms; (iii) each two thousand five hundred (2,500) square feet [or extra part thereof] (a) of enclosed floor area of common rooms and facilities, service rooms or administrative offices within an apartment complex, hotel or motel, or (b) within a shopping center, office building, Industrial site, office/warehouse facility, or other commercial building on a Private Owned Site shall constitute one (1) AFCA Unit regardless of the size value or location of such improvement [with the square footage of the completed Improvements described in (iii) (a) and (b) above determined by the Completed Plans]; and (iv) each one (1) acre or fraction thereof of privately owned Sites (other than Residential Sites restricted to single family use)

owned by Owners, other than Declarant, on which Improvements to Property have not been completed shall constitute one (1) AFCA Unit. An appropriate adjustment of the number of AFCA Units assigned to such Privately Owned Sites (other than Residential Sites restricted to single family use) owned by Owners, other than Declarant, on which Improvements to Property are being constructed shall be made when such improvements to Property have been completed, which dates shall be established by the date such Owners deliver Notices of completion to the Architectural Committee if such Improvements to Property are, in fact, completed as of the date of delivery of such Notice of Completion. For example, if an office building contains ten thousand two hundred (10,200) square feet of enclosed floor area (on one (1) or more floors), then such office building shall be assigned five (5) AFCA Units. The amount of the AFCAS for any one (1) year payable by an Owner for each Privately Owned Site of such Owner shall be computed by multiplying the "AFCA Unit Assessment" (as hereinafter defined) established by the Board for Each year by the number of AFCA Units assigned to such Owner's Privately Owned Sites.

**Section 8.10. Obligation for Recreation Function Common Assessments - How Established.** If the owner of any Privately owned Site is to be obligated to pay a RFCA with respect to any Recreation Cost Center, the Supplemental Declaration covering the Privately Owned site shall: (i) identify the Recreation Cost Center, if existing, or describe the same in general terms, if proposed; (ii) identify the privately owned sites covered by the supplemental Declaration which are entitled to use and which shall be obligated to pay RFCAs with respect to such Recreation Cost Center; and (iii) specify the number of RFCAS Units which shall be assigned to each such Privately owned site (which, in the case of Residential Sites, shall be assigned on the same basis as AFCA Unite, as described in Section 8.9 of this Community Declaration); otherwise, the Board shall specify the RFCA Units for such Sites after the Improvements are completed. It is contemplated that the owners in one (1) or more Delegate Districts or Subassociations will be entitled to use the same Recreation Cost Center. Although it is not anticipated that Owners of Commercial sites, Industrial sites or Miscellaneous Use Sites will be entitled to use any Recreational cost Center, Supplemental Declaration covering any such site may provide otherwise, in which case the Supplemental Declaration shall specify the number of RFCA Units which shall be assigned to each such Site which shall, in no case, be less than one (1) RFCA Unit for each such Site.

**Section 8.11. Apportionment of Recreation Function Common Assessments.** No owner of a Privately owned Site shall be charged with any RFCA unless the Supplemental Declaration covering such Site provides, as stated, in the preceding Section of this Community Declaration, that the site is entitled to use a

Recreation Cost Center and specifies the number of RFCA Units assigned to that site. If a site and an Owner are to be charged with a RFCA, the amount of the RFCA for any year payable by an Owner for each Privately owned Site of such Owner shall be computed by multiplying the "RFCA Unit Assessment" (as hereinafter defined) established by the Board for such year by the number of RFCA Units assigned to the Site entitled to use the pertinent Recreation Cost Center.

**Section 8.12. Annual Budgets and Common Assessments.** The Board of Directors shall cause to be prepared and approved, at least sixty (60) days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies and deposits into the Maintenance Funds and Reserve Funds and the Common Assessments, including the AFCAs per AFCA Unit (the "AFCA Unit Assessment") and RFCAs per RFCA Unit (the "RFCA Unit Assessment"), for such calendar year. The AFCA Unit Assessment until January 1, 1983 shall be Seven Hundred Twenty and No/100 Dollars (\$720.00). The Budget shall show, in reasonable detail the categories of expenses and the amount of expenses in each Maintenance Fund, and shall reflect any expected income of the Community Association for the coming calendar year and any expected surplus from the prior year. The Budget may include an amount of contingencies and amounts deemed necessary or desirable for deposits to create, replenish or add to the Reserve Fund for major capital repairs, replacements and improvements for Association Properties. The Board shall cause a copy of the Budget to be distributed to each Delegate promptly after the Budget is prepared and approved by the Board and shall cause a copy of the Budget to be posted at the principal office of the Community Association. In the event the Community Association does not have an address for any Delegate, such posting shall be deemed delivery to any such Delegate. At such time as the Community Association publishes a newsletter for Members, the Budget shall be published in such newsletter. Copies of the Budget shall be made available by the Community Association to any Members requesting a copy of the same upon payment of the reasonable expense of copying the same.

**Section 8.13. No Disbursement to Abate Adjoining Nuisances.** Nothing in this Community Declaration shall be construed so as to permit the Community Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community Association Area, without the approval of Delegates representing not less than sixty-six percent (66%) of the entire voting power within the Community Association (inclusive of the voting power exercisable by Declarant) at any meeting of the Delegates called for such purpose in accordance with the Bylaws.

**Section 8.14. Payment of Common Assessments by Declarant.** Recognizing that, to some degree, the cost of administration and maintenance of the Community Association Areas is

related to the use of the Community Association Areas, which is in turn related to the number of Privately Owned Sites which are occupied, the Declarant may pay the Community Association, until the January 1, 1988, in lieu of any common Assessments with respect to all Privately owned Sites which Declarant continues to own subject to Assessment hereunder, the amount, if any, by which the "Actual Operating Expenses" (as hereinafter defined) incurred for any fiscal year or part thereof of the Community Association exceed the aggregate of the common Assessments payable during such period by other owners of Privately owned sites, less any portion thereof that is deposited or budgeted for deposit in a Reserve Fund during such period. If the amounts collected as Common Assessments from owners other than Declarant, less any portion of thereof that is deposited or budgeted for deposit in a Reserve Fund, exceed such Actual Operating Expenses for such period, then such excess shall be taken into consideration in determining the Budget for the next fiscal year. For purposes of this Section 8.14, the term "Actual Operating Expenses shall mean those expenses reasonably necessary for the normal maintenance and operation of the Community Association Area, but shall not include (i) capital expenditures (determined in accordance with generally accepted accounting principles), (ii) any amounts paid into a Reserve Fund or (iii) prepaid items, inventory or similar expenses that are attributable to periods after such fiscal year or part thereof.

**Section 8.15. Maximum Administrative Functions and Recreation Functions Common Assessments.** The Community Association, without the approval of the Delegates described in Section 8.17 hereof, shall not levy, for any year, an AFCA in excess of the Maximum AFCA hereinafter specified. The Maximum AFCA shall not exceed One Thousand two Hundred and No/100 Dollars (\$1,200.00) per AFCA Unit per year until January 1, 1983, increased for 1983 and any year thereafter by twenty percent (20%) per year over the previous year. The Maximum RFCA for each Residential Site or Other Privately Owned Site subject to an RFCA shall be set forth in the Supplemental Declaration covering such Residential site or other Privately Owned Site.

If the Board of Directors, by majority vote, determines that the important and essential functions of the Community Association may be properly funded by a Common Assessment less than the Maximum AFCA or RFCA, it may levy such lesser AFCA or RFCA. The levy of an AFCA or RFCA less than the Maximum AFCA and Maximum RFCA in any year shall not affect the right of the Board to levy an AFCA or RFCA in the full amount of the respective Maximum AFCA or RFCA in any subsequent year.

**Section 8.16. Supplemental Common Assessments.** Subject to the provisions of Section 8.15 of this Community Declaration, if the Board levies an AFCA Or RFCA in an amount less than the Maximum AFCA or applicable Maximum RFCA for any calendar year, the Board by majority vote may thereafter levy one or more supplemental AFCA's or RFCA's during such calendar year,

if it determines that the important and essential functions of the Community Association cannot be funded by such lesser AFCA or applicable RFCA. The sum of the initial and supplemental AFCA or applicable RFCA, as the case may be, for a calendar year, shall not exceed the Maximum AFCA or applicable Maximum RFCA permitted for that year, except as permitted by the provisions of Section 8.17 of this community Declaration. Such Supplemental Common Assessment shall be assessed against the owner of each Privately Owned Site, in the same manner Common Assessments are originally assessed each year by the Board with respect to the particular Maintenance Fund. Written notice of any change in the amount of any annual Common Assessment or the levy of a Supplemental Common Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

Section 8.17. Delegate Approval of Increase in Maximum Common Assessment. If the Board of Directors, by majority vote, determines that the important and essential functions of the Community Association will not be properly funded in any one (1) year or in any one (1) year and subsequent years by the amount of the Maximum AFCA or applicable RFCA, it may call a meeting of appropriate Delegates requesting approval of a specified increase in the Maximum AFCA, applicable Maximum RFCA, or both, for either one (1) year or for that one (1) year and one or more of all subsequent years. An increase in the Maximum AFCA for one year or for any one year and all subsequent years shall require the approval of Delegates representing not less than fifty-one percent (51%) of the entire voting power within the community Association (inclusive of the voting power exercisable by Declarant), and any such increase in the Maximum RFCA shall require the approval of Delegates representing not less than fifty-one percent (51%) of the voting power of the Owners of privately Owned Sites located in the applicable Recreation Cost Center (inclusive of the voting power exercisable by Declarant).

**Section 8.18. Commencement of Common Assessments - Assessment Areas.** Subject to the provisions of Section 8.14 of this Community Declaration, Common Assessments shall commence as to each Privately Owned Site within an Assessment Area on the first day of the first month following the date of Recordation of the first deed from the Declarant conveying a Privately Owned Site within that Assessment Area. The Common Assessments for the then such calendar year shall be prorated within an Assessment Area on the basis of the number of months in such calendar year remaining from the date of commencement of such Common Assessments to the end of such calendar year.

**Section 8.19. Payment of Assessment.** Common Assessments shall be due and payable in advance to the Community Association by the assessed Member during the calendar year in equal semi-annual installments, on or before January 1 and July 1 of each calendar year, or in such other manner and on such other

dates as the Board of Directors may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Member prior to January 1 of each year.

**Section 8.20. Failure to Fix Common Assessment.** The failure by the Board of Directors to levy a common Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Community Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the Common Assessment per AFCA Unit Assessment and RFCA Unit Assessment established for the previous period until the new RFCA Unit Assessment and RFCA Unit Assessment are established. The new AFCAs and RFCAs established by the Board shall be applied retroactively to the commencement of the then current calendar year and any deficit shall be paid within thirty (30) days after receipt of a statement therefor.

**Section 8.21. Special Assessment for Capital Expenditures.** In addition to common Assessments, the Board of Directors may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds, not otherwise provided under the Budget from Common Assessments, to construct or reconstruct, repair or replace capital improvements upon Community Association Properties, including necessary personal property related thereto; to add to the Community Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Community Declaration. The Board of Directors shall not, in any one (1) year, levy Special Assessments which, in the aggregate, exceed five percent (5%) of the estimated gross expenses of the Community Association attributable to the particular Administrative or Recreation Function related to the capital Improvements as set forth in the Budget for such year, without the approval of Delegates representing not less than sixty-six percent (66%) of the voting power of the Owners of Privately Owned Sites subject to the Special Assessment (inclusive of the voting power exercisable by Declarant). Special Assessments for capital improvements which may be used by all Members of the Community Association shall be levied solely on the basis of, and in proportion to the AFCA Units attributable to Privately owned Sites of the Members. Special Assessments for capital improvements relating to a Recreation Cost Center which may not be used by all Members shall be levied solely against the Member or group of Members who own Privately owned sites entitled to use the Recreation Cost Center and such special Assessments shall be levied solely on the basis of, and in proportion to the RFCA Units attributable to such sites. The Community Association shall notify Members in writing of the amount of any special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay



any such Special Assessment in the manner so specified. In the event that the Board shall levy a Special Assessment, the Board shall specify whether the Special Assessment is to provide Recreation Functions or Administrative Functions and the Special Assessment shall be apportioned accordingly.

**Section 8.22. Reimbursement Assessments.** The Board of Directors may, subject to the provisions hereof, levy an Assessment against any Member if the willful or negligent failure of the Member or Related User to comply with this Community Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations shall have resulted in the expenditure of the funds or the determination that funds will be expended by the Community Association to cause such compliance. Such Assessment and the Assessment established in Section 6.5 hereof shall be known as a Reimbursement Assessment and shall be levied only after Notice and Hearing. The amount of the Reimbursement Assessment shall be due and payable to the Community Association thirty (30) days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is owing.

**Section 8.23. Late Charges and Interest.** If any Common Assessment, Special Assessment or Reimbursement Assessment or any installment thereof is not paid within thirty (30) days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board Any Assessment or installment of an Assessment which is not paid within thirty (30) days after it is due shall bear interest from the due date at the highest rate permitted by law.

**Section 8.24. Attribution of Payments.** If any installment of a common Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that owner shall be credited in the following order of priority: (i) the Administrative Functions Reserve Fund until that portion of the Common Assessment has been satisfied, (ii) to the respective Recreation Functions Reserve Fund until that portion of the Common Assessment has been satisfied, (iii) to the Administrative Functions Operating Fund until that position of the Common Assessment has been satisfied, and then (iv) to the respective Recreation Functions Operating Fund. In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

**Section 8.25. Notice of Default and Acceleration of Assessments.** If any common Assessment, Special Assessment or Reimbursement Assessment or any installment thereof is not paid

within thirty (30) days after its due date, the Board of Directors may mail a notice of default to the Owner and to each first Mortgagee of the Privately owned Site who has requested a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent; (ii) the action required to cure the default; (iii) a date, not less than thirty (30) days from the date the notice is mailed to the Member, by which such default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year and the filing and foreclosure of the lien for the Assessment against the Privately owned Site of the Member. The notice shall further inform the Member of any right to cure the default after acceleration. If the delinquent Assessment or installment and any late charges or interest thereon are not paid in full on or before the specified in the notice, Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or by this Community Declaration, subject to the protection afforded to Mortgagees under this Community Declaration.

Section 8.26. Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common Special or Reimbursement, the Board may, in addition to any other remedies provided under this community Declaration or by law, enforce such obligation on behalf of the Community Association by suit and/or by filing and foreclosure of a lien as hereinafter provided. In order to secure the payment of the Assessments hereby levied, a vendor's lien is hereby reserved in each Deed from the Declarant to the owner of each Privately owned Site, which lien shall be enforceable through appropriate judicial proceedings by the Community Association. As additional security for the payment of the Assessments hereby levied, each Owner of a Privately Owned Site, by such party's acceptance of a Deed thereto, hereby grants the Community Association a lien on such Privately owned site which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Article 3810 of the Texas Revised Civil Statutes (or any successor statute); and each such Owner hereby expressly grants the Community Association a power of sale in connection therewith. The Community Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Article 3810 (or any successor statute) and said power of sale, designate a nominee or trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The trustee may be changed at any time and from time to time by the Community Association by

means of a written instrument executed by the President or any Vice-President of the Community Association and filed for record (either prior to or following any action by such trustee) in the Official Public Records of Real Property of Galveston County, Texas. In the event that the Community Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Article 3810 (or any successor statute) and to exercise the power of sale hereby granted, the Community Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale no less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the United States Postal Service, postage prepaid, registered and certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Community Association. Out of the proceeds of such sale, there shall first paid all expenses incurred by the Community Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Maintenance Fund an amount equal to the amount in default; and, third, the remaining balance shall be paid to such owner. Following any such foreclosure, each occupant of any such Privately Owned Site foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means, including a judgment for possession and any action of forcible detainer and the issuance of writ of restitution thereunder.

**Section 8.27. Lawsuit to Enforce Assessments.** The Board may bring a suit at law to enforce any Assessment obligation Any judgment rendered in such action shall include any late charge, interest and other costs of enforcement including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

**Section 8.28. Lien to Enforce Assessments.** In addition to the right of the Board to enforce the Assessments in the manners described in Sections 8.26 and 8.27 hereof, the Board may elect to file a claim or lien against the Privately Owned Site of the delinquent Owner or Member by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency. (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Privately owned Site against which the lien is claimed and (d) the name of the Record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Community Association or other duly authorized agent of the Community Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or

satisfied, the Community Association shall execute and Record a notice releasing the lien upon payment by the owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and Recordation of the release of such lien.

**Section 8.29. Estoppel Certificates.** Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, and upon the written request of any Member and any person with, or intending to acquire, any right, title or interest in the Privately Owned Site of such Member, the Association shall furnish written statement setting forth the amount of any Assessments or other amount, if any, due and accrued and then unpaid with respect to a Privately Owned Site and the Owner thereof and setting forth the amount of any Assessment for the current year levied against such Site which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the community Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

**Section 8.30. No offsets.** All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Community Association or the Board of Directors is not properly exercising its duties and powers under this Community Declaration or claim by the Owner of non-use of the Community Association Properties or abandonment of his Privately Owned Site or claim by the Owner of inconvenience or discomfort arising from the making of repairs or Improvements to Community Association Properties or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

**Section 8.31. Subdivision of Subassociation Assessments.** In addition to being liable for the Assessments described in this Article VIII, each owner of a Privately owned Site within a subdivision created by a Supplemental Declaration ("Subdivision") or a Subassociation shall be obligated to pay assessments, fees, or maintenance charges established by such Subdivision or Subassociation.

## ARTICLE IX

### **GENERAL RESTRICTIONS APPLICABLE TO PROPERTY**

All real property within the Community Association Area shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions of Declarant set forth in this Community Declaration.

Section 9.1. Maintenance of Property No property within the Community Association Area shall be permitted to fall into disrepair, and all property within the Community Association Area, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair. Maintenance, repair and upkeep of each Privately Owned Site shall be the responsibility of the Owner of the Privately Owned Site. Maintenance, repair and upkeep of Community Association Properties shall be the responsibility of the Community Association. Violation of this provision by an Owner (or any person occupying such Privately Owned Site through such Owner) shall permit the community Association, after Notice and Hearing, to enter onto the Privately Owned Site of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner or occupant thereof unless a clear emergency exists.

**Section 9.2. No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any property within the Community Association Area nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance or annoyance to others.

**Section 9.3. Annoying Sounds or Odors.** No sound or odor shall be emitted from any property within the Community Association Area which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security devices used exclusively for security purposes and intercoms, shall be located or used on any property except with the prior written approval of the Architectural Committee or as permitted by the Rules and Regulations.

**Section 9.4. No Hazardous Activities.** No activity shall be conducted on and no Improvements shall be construed on any property within the Community Association Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior or exterior fireplace.

**Section 9.5. No Unsightliness.** No unsightliness shall be permitted on any Privately Owned Site which is visible from any other Privately Owned Site or from the Community Association Properties. Without limiting the generality of the foregoing, all unsightly conditions, structures, facilities, equipment, and

objects and conditions shall be enclosed with a structure including snow removal equipment and garden or maintenance equipment except when in actual use.

**Section 9.6. Restrictions on Garbage and Trash.** No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Privately owned site except within an enclosed structure or appropriately screened from view, except that any such container may be placed in a designated area for garbage or trash pickup no earlier than 6 p.m. on the day preceding trash pickup of such garbage and trash and shall be returned to an enclosed structure or an area appropriately screened from view no later than 12:01 p.m. on the day following the pickup of such garbage and trash.

**Section 9.7. No Temporary Structures.** No tent, shack, temporary structure or temporary building shall be placed upon any property within the Community Association Area except with the prior written consent of the Architectural Committee obtained in each instance or except as permitted by Section 7.3 hereof.

Section 9.8. Restrictions on Antennae, Pipes and Utility Lines Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antennae of any type shall be erected or maintained in the Community Association Area except that on Commercial Sites or Industrial Sites an Owner may erect an antenna if such antenna is necessary to carry on the business conducted by Owner on the site and provided that the Architectural Committee gives its consent to the erection of such antenna in accordance with the provisions of Article X hereof. A master antenna or cable television antenna or antennae may, but need not, be provided by the Community Association for use of all Owners or a group of Owners, and Declarant may grant easements for such purposes.

Section 9.9. Restrictions on Signs and Advertising Devices. No sign, Poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the community Association Area so as to be evident to public view except signs as may be approved in writing by the Architectural Committee. A sign advertising a Privately owned Site for sale or for lease may be placed on such Privately owned Site; provided, however, that the Rules and Regulations shall determine the dimensions, color, style and location of such signs and no sign

not complying with the Rules and Regulations may be placed or maintained in the Community Association Area.

**Section 9.10. Restrictions on Mining or Drilling.** No property within the Community Association Area shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth except (i) drilling, exploring for or removing underground water by Declarant or any person designated by Declarant for the purpose of providing water service to property within the boundaries of the Project Area and (ii) mining, drilling or exploring by Declarant or other owners of mineral interests reserved prior to the Recordation of this Community Declaration or any supplemental Declaration only at the drill sites designated in such recorded instruments, and (iii) if approved by the Architectural Committee, the necessary digging or removal of earth or other surface or subsurface material in conjunction with the landscaping or construction of improvements within the community Association Area.

**Section 9.11. Maintenance of Drainage.** There shall be no interference with the established drainage pattern over any property within the Community Association Area except as approved in writing by the Architectural Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern, which exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the Architectural Committee. The established drainage pattern may include the drainage pattern from Community Association Properties over any Privately Owned Site, from any Privately Owned Site over the Community Association Properties, or from any Privately Owned Site over another Privately Owned Site.

**Section 9.12. Compliance with Insurance Requirements.** Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Community Association Area which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Community Association.

**Section 9.13. Compliance with Laws.** Nothing shall be done or kept on any property within the Community Association Area in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

**Section 9.14. Restrictions on Sewage Disposal Systems.** No septic or other sewage disposal system shall be installed within the Community Association Area without the prior written consent of the Architectural Committee, except a central sewer disposal system installed and maintained by a water district, municipal utility district or similar governmental agency. Any

sewage disposal system installed for property within the community Association Area shall be subject to applicable laws, rules and regulations of any governmental authority having jurisdiction.

**Section 9.15. Restrictions on Water Systems.** No individual water supply or water softener system shall be installed or maintained for any property within the Community Association Area unless such system is approved in writing by the Architectural Committee and is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water and sanitation district or other governmental authority having jurisdiction.

**Section 9.16. Restoration in the Event of Damage or Destruction.** Except as otherwise provided in a Supplemental Declaration, Condominium Declaration or Townhouse Declaration, in the event of damage or destruction of any Improvement on any Privately Owned Site, the owner thereof shall promptly cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Architectural Committee or the owner shall promptly cause the damaged or destroyed Improvement to be demolished and the Privately Owned Site to be suitably landscaped subject to the approval of the Architectural Committee so as to present a pleasing and attractive appearance.

## ARTICLE X

### **ARCHITECTURAL APPROVAL**

**Section 10.1. Approval of Improvements Required.** The approval by a majority of the members of the Architectural Committee shall be required for any Improvement to Property before commencement of construction of such Improvement to property, other than an Improvement to Property made by Declarant.

**Section 10.2. Improvement to Property Defined.** "Improvement to Property," requiring approval of the Architectural Committee, shall mean and include, without limitation: (i) the construction, installation, erection or expansion of any building, structure or other Improvement, including utility facilities; (ii) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (iii) the grading, excavation, filling or similar disturbance to the surface of the land in the Community Association Area including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; and (iv) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color or texture not expressly permitted by a Supplemental Declaration or the Rules and Regulations.



**Section 10.3. Membership of Committee.** The Architectural Committee shall initially consist of three (3) members, all of whom shall be appointed by Declarant. Declarant shall have the continuing right to appoint three (3) members during the "Appointment Period" (as hereinafter defined) of the Project Area the Community Association shall have the right to appoint two (2) members during the Appointment Period, which appointment shall be made at the initial organization meeting of the Board of Directors. Thereafter, the Community Association shall have the right to appoint all members. The "Appointment Period" shall mean the period of time commencing as of the date of Recordation of this community Declaration and continuing until the earliest occurrence of the following events:

- (a) At such time as Declarant no longer has authority to unilaterally annex real property in the Annexable Area to the Community Association Area without the consent of the Delegates as authorized in Section 3.2 of this community Declaration; or
- (b) December 31, 2010; or
- (c) Thirty (30) days after the Community Association receives written notice from Declarant of Declarant's unilateral termination of the Appointment Period.

Members of the Architectural committee may, but shall not necessarily be Members of the Community Association. Members of the Architectural Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the architectural Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation removal by the Board. During the Appointment Period, Declarant and the community Association shall each give written notice to the other of the appointment or removal of any member of the Architectural Committee. After the Appointment Period, the Community Association may at any time, and from time to time, change the authorized number of members of the Architectural Committee, but the number of members shall always be an odd number and shall not be less than three (3).

**Section 10.4. Address of Committee.** The address of the Architectural Committee shall be at the principal office of the Community Association.

**Section 10.5. Required Approval by any Subassociation Architectural Committee.** In addition to approval of improvement to Property by the Architectural Committee of the Community Association, architectural approval of an improvement to Property shall also be required by the Architectural Committee of any Subassociation if and to the extent set forth in the Supplemental Declaration or other instrument creating such Subassociation.

**Section 10.6. Submission of Plans.** Prior to commencement of work to accomplish any proposed improvement to Property, the Person proposing to make such improvement to Property ("Applicant") shall submit to the Architectural Committee at its offices two copies of such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Architectural Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed improvement to property. The Applicant shall be entitled to receive a receipt for the same from the Architectural Committee or its authorized agent. The Architectural Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Architectural committee of all required materials in connection with the proposed Improvement to property, the Architectural Committee may postpone review of any materials submitted for approval.

**Section 10.7. Criteria for Approval.** The Architectural Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community Association Area as a whole; that the appearance of the proposed improvement to Property will be in harmony with the surrounding areas of the Community Association Area, including, without limitation, quality of materials and location with respect to topography and finished grade elevation; that the Improvement to Property will comply with the provisions of this instrument, the applicable Supplemental Declaration and any applicable plat, ordinance, governmental rule or regulation; that the Improvements to property will not detract from the beauty, wholesomeness and attractiveness of the Community Association Area or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the community Association. The Architectural Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Architectural Committee may deem appropriate.

**Section 10.8. Committee Guidelines or Rules.** The Architectural Committee shall issue guidelines or rules relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property.

**Section 10.9. Architectural Review Fee.** The Architectural Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed improvement to property. The Architectural Committee may provide that the amount of such fee shall be uniform for

similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the reasonable cost of the proposed Improvement to Property.

**Section 10.10. Decision of Committee.** The decision of the Architectural Committee shall be made within sixty (60) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefore shall be stated. The decision of the Architectural Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Architectural Committee.

**Section 10.11. Appeal to Association Board.** If the Architectural Committee denies or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Community Association and the Architectural committee within twenty (20) days after such denial or refusal. The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Architectural Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement to Property shall be approved. The decision of the Board of Directors shall be final

and binding on all Persons.

**Section 10.12. Failure of Committee to Act on Plans.** Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or request for additional information or materials is transmitted to the Applicant by the Architectural Committee within sixty (60) days after the date of receipt by the Architectural Committee of all required materials, (which date shall be evidenced by the Architectural Committee issuing a receipt to the owner confirming that all required materials have been received by the Architectural Committee).

**Section 10.13. Prosecution of Work After Approval.** After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in strict conformity with the description of the proposed Improvement to Property and any materials submitted to the Architectural committee. Failure to complete the proposed Improvement to Property within one (2) year after the date of approval. subject to delays for causes beyond the reasonable control of the Owner (provided that the Owner takes reasonable steps to minimize the effects of any circumstance causing such delay ["force majeure delays"]), or to complete the improvements to Property in strict conformity with the description and materials furnished to the Architectural

Committee, shall operate automatically to revoke the approval of the proposed Improvement to Property.

**Section 10.14. Notice of Completion.** Promptly upon completion of the Improvement to Property, the Applicant shall deliver a Notice of completion to the Architectural committee for all purposes hereunder, the date of receipt of such Notice of completion by the Architectural Committee shall be deemed to be the date of completion of such improvement to Property, provided that the improvement to Property is, in fact, completed as of the date receipt of the Notice of Completion. The Owner's completion Plans, certified by the Owner's Architect as to the number of square feet of enclosed floor area, shall be delivered to the Architectural Committee at the time the Applicant delivers the Notice of Completion.

**Section 10.15. Inspection of Work.** The Architectural Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate sixty (60) days after the Architectural Committee shall have received a Notice of Completion from the Applicant.

**Section 10.16. Notice of Noncompliance.** result of inspections or otherwise, the Architectural Committee finds that any Improvement to Property has been done without obtaining the approval of the Architectural Committee or was not done in strict conformity with the description and materials furnished by the Applicant to the Architectural Committee or was not completed within one (1) year after the date of approval by the Architectural Committee, subject to force majeure delays, the Architectural Committee shall notify the Applicant in writing of the noncompliance which notice (the "Notice of Noncompliance") shall be given, in any event, within sixty (60) days after the Architectural Committee receives a Notice of Completion from the Applicant. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

**Section 10.17. Failure of Committee to Act after Completion.** If, for any reason other than the Applicant's act or neglect, the Architectural Committee fails to notify the Applicant of any noncompliance within sixty (60) days after receipt by the Architectural Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to Property was, in fact, completed as of the date of Notice of completion.

**Section 10.18. Appeal to Association Board of Finding of Noncompliance.** If the Architectural Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board

and the Architectural Committee within thirty (30) days after receipt of the Notice of Noncompliance by the Applicant. Additionally, if, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Architectural committee shall request a finding of noncompliance by the Board of Directors by giving written notice such request to the Community Association and the Applicant within thirty (30) days after delivery to the Applicant of a Notice of Noncompliance from the Architectural Committee. In either event, the Board of Directors shall hear the matter with reasonable promptness after reasonable notice of such hearing to the Applicant and the Architectural Committee and shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. The decision of the Board of Directors shall be final and binding on all persons.

**Section 10.19. Correction of Noncompliance.** If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may remove the noncomplying improvement to Property or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Community Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Community Association, the Board may levy a Reimbursement Assessment against the owner of the Privately owned Site for such costs and expenses. The right of the Community Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Community Association may have at law, in equity, or under this Community Declaration.

**Section 10.20. No Implied Waiver or Estoppel.** No action or failure to act by the Architectural Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Architectural Committee or the Board of Directors with respect to any Improvement to Property. Specifically, the approval by the Architectural Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property by such Person or otherwise.

**Section 10.21. Committee Power to Grant Variances.** The Architectural Committee may authorize variances compliance with any of the provisions of this Community Declaration or any

Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures (including set-back lines established on a plat(s) of the property comprising the Community Association Area), the time for completion of construction of Improvements to Property, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Committee. If any such variance is granted, no violation of the provisions of this community Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that granting of a variance shall not operate to waive any of the provisions of this Community Declaration or any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of any architectural control of a Subassociation or committee created by a Supplemental Declaration, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances or requirements imposed by any governmental authority having jurisdiction.

**Section 10.22. Compensation of Members.** The Members of the Architectural Committee shall be entitled to such compensation for services rendered and reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder as may, from time to time, be authorized or approved by the Board of Directors. All such sums payable as compensation and/or reimbursements shall be payable only out of the Administrative Functions Operating Fund or Administrative Functions Reserve Fund.

**Section 10.23. Meetings of Committee.** The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may, from time to time, by resolution in writing adopted by majority of the members, designate a committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the Architectural Committee, except the granting of approval to any Improvement to Property and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Architectural committee shall constitute action of the Architectural Committee for all purposes under this Community Declaration.

**Section 10.24. Records of Action.** The Architectural Committee shall report in writing to the Board of Directors all

final action of the Architectural Committee and the Board shall keep a permanent record of such reported action.

**Section 10.25. Estoppel Certificates.** The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Architectural Committee, furnish a certificate with respect to the approval or disapproval of any improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

**Section 10.26. Non-liability for Committee Action.** None of the Architectural Committee, any member of the Committee, any Committee Representative, the Community Association, any member of the Board of Directors or Declarant shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

**Section 10.27. Construction Period Exception.** During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Architectural Committee shall temporarily suspend the provisions of Article IX contained in this community Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided that, during the course of any such construction, nothing is done which will result in a violation of any of the provisions of this Community Declaration upon completion of construction and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Community Association Area.

## **ARTICLE XI**

### **MISCELLANEOUS**

**Section 11.1. Term of Declaration.** Unless amended as herein provided, each provision contained in this Community Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of twenty-one (21) years following the death of the survivor of Charles, Prince of Wales, of the British Royal Family. Brian C. Rider of Houston,

Texas, and Bruce W. Merwin of Houston, Texas, and the now living children of said Persons, or until this Community Declaration is terminated as hereinafter provided, whichever first occurs. Unless amended as herein provided, all other provisions, covenants, conditions, restrictions and equitable servitudes contained in this Community Declaration shall be effective until December 31, 2032, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by (i) the vote, by written ballot, Of Members holding at least seventy-five percent (75%) of the entire voting power of the Community Association (inclusive of the voting power exercisable by Declarant) present in person or by proxy at duly constituted meetings of the Delegate District or (ii) by written instrument, in recordable form, signed by Members of the Community Association holding at least seventy-five percent (75%) of the entire voting power of the Community Association (inclusive of the voting power exercisable by Declarant). The termination of this Community Declaration shall be effective upon the recordation of a certificate, executed by the President or a Vice President and the Secretary of an Assistant Secretary of the Community Association stating that this Community Declaration has been terminated by the vote or written agreement of Members as provided herein.

**Section 11.2. Amendment of Community Declaration by Declarant.**

Until the first privately owned Site subject to this Community Declaration has been conveyed by Declarant by Deed Recorded in the office of the County Clerk and Recorder of Galveston County, Texas, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Community Declaration may be amended or terminated by Declarant, without the joinder of any other Owner, by the Recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

Declarant reserves and shall have the continuing right until the termination of Appointment Period, without the consent of other Owners or the representatives of any Mortgagee (except as otherwise provided in this Section 11.2), to amend this Community Declaration or By-laws for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, provided that no such amendment shall change the voting rights of the Declarant or other members, annexation rights of Declarant, any Owner's proportionate share of Assessments, or the property description of any owner and such Owner's Mortgagee who do not join in the execution of such correction instrument. The amendment shall become effective upon the recordation of a written instrument setting forth such amendment.

**Section 11.3. Amendment of Community Declaration by Members.**

Except as otherwise provided in this community Declaration, and subject to provisions elsewhere contained in this Community Declaration requiring the consent of Declarant or



others, any provision, covenant, condition, restriction or equitable servitude contained in this community Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by (i) the vote, by written ballot, of Members of the Community Association holding at least seventy-five percent (75%) of the entire voting power of the Community Association (inclusive of the voting power exercisable by Declarant) present in person or by proxy at duly constituted meetings of the Delegate Districts or (ii) by written instrument, in recordable form, signed by Members of the Community Association holding at least seventy-five percent (75%) of the voting power of Members of the Community Association (inclusive of the voting power exercisable by Declarant). Sections 2.47 and 2.48 hereof, as well as those provisions of Sections 8.1, 8.3, 8.5, 8.10, 8.11, 8.18, 8.19, 8.20, 8.25 or of any other Section of this Community Declaration pertaining solely to the rights and obligations of Members entitled to use an Improvement of any particular Recreation Cost Center, may be amended or repealed at any time and from time to time only upon the approval of the amendment or repeal by Members holding at least seventy-five percent (75%) of the voting power within each Delegate District entitled to use such Recreation Cost Center present in person or proxy at duly constituted meetings of such Delegate Districts. The approval of any amendment or repeal of any provision of this Community Declaration shall be evidenced by the certification by the Delegates from the appropriate Delegate Districts to the Board of Directors of the Community Association of the votes or written agreement of Members in the Delegate District. The amendment or repeal shall be effective upon the Recordation in the office of the clerk and Recorder of Galveston County, Texas, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Community Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the Members and certified by the appropriate Delegates as set forth above. So long as there is a class B Membership, any amendment to this community Declaration must have the prior written approval of all required Government Mortgage Agencies.

**Section 11.4. Required Consent of Declarant to Amendment.**

Notwithstanding any other provision in this Community Declaration to the contrary, any proposed amendment or repeal of any provision of Article III or Article VII of this community Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate upon the earlier to occur of the time that all property in the Project Area has become part of the Community Association Area and the last Privately Owned Site within the Community Association Area

has been sold and conveyed by Declarant or Declarant's waiver of such right by delivery of written notice thereof to the Community Association.

**Section 11.5. Amendment of Articles and Bylaws.** The Articles of Incorporation and Bylaws may be amended in accordance with the provision set forth in such instruments or, in the absence of such provisions, in accordance with the applicable provisions of the Texas Nonprofit Corporation Act.

**Section 11.6. Special Rights of First Mortgagees.** Any First Mortgagee (meaning a Mortgagee with first priority over other Mortgagees) holding a Mortgage encumbering any privately Owned Site in the Community Association Area, upon filing a written request therefor with the Community Association, shall be entitled to (a) written notice from the community Association of any default by the Mortgagor of such Privately Owned Site in the performance of the Mortgagor's obligations under this Community Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the community Association learns of such default; (b) examine the books and records of the Community Association during normal business hours; (c) receive a copy of financial statements of the Community Association including any annual audited financial statement within ninety (90) days following the end of any fiscal year of the Community Association; (d) receive written notice of all meetings of Delegates or of Delegate Districts; (e) designate a representative to attend any meeting of Delegates or of Delegate Districts; (f) receive written notice of abandonment or termination of the Community Association or of the plan contemplated under this Community Declaration; (g) receive thirty (30) days written notice prior to the effective date of any proposed material amendment to this community Declaration, the Articles of Incorporation or the Bylaws; and (h) prompt written notice as soon as the Community Association receives notice or otherwise learns of any substantial damage to the Community Association Properties and as soon as the Community Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Community Association Properties. Notwithstanding the foregoing agreement of the Community Association to furnish certain notices to First Mortgagees, the failure of the Community Association to give such notices as provided above shall not impair or invalidate any action taken by Members or the community Association unless the prior written approval of the First Mortgagee to such action is expressly required by the provisions of this community Declaration.

No violation by an owner of the provisions of this Community Declaration or any Supplemental Declaration shall affect the lien of any mortgage presently or hereafter placed of record or otherwise affect the rights of the Mortgagee under any such Mortgage, holder of any such lien or beneficiary of any such

Mortgage; and any such Mortgage or lien may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions contained in this Community Declaration and the applicable Supplemental Declaration.

**Section 11.7. First Mortgagee Exemption from Rights of First Refusal.**

Any such First Mortgagee who obtains title to any Privately Owned site pursuant to the remedies provided in the Mortgage held by such First Mortgagee or pursuant to any foreclosure of the Mortgage or by deed or assignment in lieu of foreclosure shall be exempt from any right of first refusal contained in any Supplemental Declaration.

**Section 11.8. Priority of First Mortgage Over Assessments.** The liens described in Article VIII of this Community Declaration and the superior title herein reserved shall be subordinate to the liens of a First Mortgagee. Each First Mortgagee who obtains title to such Privately Owned Site pursuant to the remedies provided in the Mortgage or by judicial foreclosure shall take title to the Privately Owned Site free and clear of any claims for unpaid Assessments or charges against such Privately Owned site which accrued prior to the time such holder acquires title to such Privately Owned Site. No such sale or transfer shall relieve such holder acquiring title to a Privately Owned Site from liability for any Assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Privately Owned site shall not affect the community Association's lien for Assessments.

**Section 11.9. First Mortgagee's Right to Pay Taxes and Insurance Premiums.** Any such First Mortgagee or any such First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may or have become a charge against any of the Community Association Properties and may pay any overdue premiums on hazard Insurance policies for any community Association Properties, and the First Mortgagees making such payments shall be entitled to immediate reimbursement there for from the Community Association.

**Section 11.10. Agreements with Government Mortgage Agencies and Government Mortgage Agencies Approval.** If Declarant must obtain the approval of one or more Government Mortgage Agencies to one or more of the actions described in Section 3.4 hereof, then prior to any such proposed action, Declarant shall give written notice of such proposed action to the applicable Government Mortgage Agencies, and for thirty (30) days following the receipt of such notice, any of the applicable Government Mortgage Agencies shall have the power to prohibit such action by written notice to Declarant. If no written notice of veto is received by Declarant within such thirty (30) day period from any of the applicable Government Mortgage Agencies, then such approval shall be deemed given and Declarant may proceed as if

such approval was obtained with respect to the request contained in such notice. Any certificate of amendment or repeal shall state whether or not any such consent is required and, if required, shall state whether or not such consent has been obtained, and the statements and the certificates shall be binding and conclusive on all Persons. The Community Association may enter into such contracts or agreements on behalf of the Community Association as may be required in order to satisfy the requirements or guidelines of any Government Mortgage Agency so as to allow for the purchase, guarantee or insurance, as the case may be, by a Government Mortgage Agency of First Mortgages encumbering Privately owned sites. Each Owner hereby agrees that it will benefit the Community Association and the Member thereof, as a class of potential mortgage borrowers and potential sellers of Privately Owned sites, if Government Mortgage Agencies approve the Community Association Area or parts thereof as a qualifying subdivision under their respective policies, rules and regulations as adopted from time to time.

**Section 11.11. Association's Right to Mortgage Information.** Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Privately Owned Site to furnish information to the Community Association concerning the status of such First Mortgage and the loan which it secures.

**Section 11.12. Special Approvals by First Mortgagees.** Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Mortgage owned) of Privately Owned Sites in the Community Association have given their written approval, neither the Community Association nor any Member shall (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Association Properties or the improvements thereon which are owned, directly or indirectly, by the Community Association (except that the granting of access easements, utilities easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such property by the community Association shall not be deemed to be within the meaning of this provision); (ii) change the method of determining the obligations Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (iii) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of Improvement to Property including the architectural design of the exterior appearance of dwelling units, the exterior maintenance of dwelling units or the upkeep of lawns and plantings on the Community Association Properties; (iv) fail to maintain the casualty, fire and extended coverage insurance on insurable Community Association Properties as elsewhere provided in this Declaration; (v) use hazard insurance proceeds for losses to any Community Association Properties for other than the

repair, replacement or reconstruction of the improvements which were damaged or destroyed; and (vi) amend any material provision of this community Declaration, the Articles of Incorporation or the Bylaws.

**Section 11.13. Notices.** Any notice permitted or required to be given under this Community Declaration shall be in writing and may be given either personally or by mail, telephone or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any person at the address given by such Person to the Community Association for the purpose of service of such notice, or to the Privately owned Site of such Person if no address has been given to the community Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the community Association.

**Section 11.14. Persons Entitled to Enforce Declaration.** The Community Association, acting by authority of the Board, and any Member of the Community Association shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Community Declaration against any property within the Community Association Area and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Community Declaration.

**Section 11.15. Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this community Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Persons entitled to enforce the provisions of this community Declaration.

**Section 11.16. Enforcement by Self Help.** Declarant or the Community Association, or any authorized agent of either of them, may enforce, by self help, any of the provisions, covenants, conditions, restrictions or equitable servitudes contained in this Community Declaration, provided such self help is preceded by Notice and Hearing as set forth in the Bylaws.

**Section 11.17. Violations of Law.** Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Association Area is hereby declared to be a violation of this Community Declaration and shall be subject to any and all of the enforcement procedures set forth in this Community Declaration.

**Section 11.18. Community Declaration.** This Community Declaration shall have no force or effect and shall not constitute any encumbrance with respect to the Annexable Area which has not been made subject to the provisions of this Community Declaration by execution and Recordation of a Supplemental Declaration. No easements are hereby granted or reserved as to the Annexable Area which has not been made subject to the provisions of this Community Declaration, and no easement or other right referred to in this Community Declaration with respect to the Annexable Area or any part thereof shall be in any way affect or encumber the Annexable Area which has not been made subject to the provisions of this Community Declaration, unless set forth in a document executed by the owner or Owners of the part of the Annexable Area to be subject to such right or easement, which document or memorandum, is hereafter recorded with the County Clerk of Galveston County, Texas. Nothing herein contained shall obligate the Declarant to develop all or any portion of the Annexable Area which is not made subject to the Community Declaration in accordance with any of the provisions of this Community Declaration. The provisions of this Community Declaration do not impose any restrictions whatsoever on or otherwise encumber the Annexable Area which is not made subject to this community Declaration, but only benefit such Annexable Area.

**Section 11.19. Remedies Cumulative.** Each remedy provided under this community Declaration 1B cumulative and not exclusive.

**Section 11.20. Costs and Attorney's Fees.** In any action or proceeding under this Community Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees,

**Section 11.21. Limitation on Liability.** The Community Association, the Board of Directors, the Architectural Committee, Declarant, any Delegate or any agent or employee of any of the same acting within the scope of his duties described in this Community Declaration shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

**Section 11.22. No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Project Area, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 11.23. Liberal Interpretation. The provisions of this community Declaration shall be liberally construed as a whole to effectuate the purpose of this community Declaration.

Section 11.24. Governing Law. This Community Declaration shall be construed and governed under the laws of the State of Texas.

Section 11.25. Severability. Each of the provisions of this community Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 11.26. Number and Gender: Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 11.27. Captions for convenience. The titles, headings and captions used in this Community Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Community Declaration.

Section 11.28. Mergers or Consolidations Upon a merger or consolidation of the Community association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another 48sociation may, by operation of law, be added to the properties, rights and obligations of the Community Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Community Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.

IN WITNESS WHEREOF, Declarant has executed this community Declaration, the day and year first above written.

SOUTH SHORE HARBOUR DEVELOPMENT,  
a Texas joint venture,  
by its venturers:

South Shore Harbour Investors,  
a Texas general partnership

Attest:

\_\_\_\_\_

By: \_\_\_\_\_  
Jock Coogan, Managing General  
Partner

Anrem Corporation,  
a Texas corporation

Attest:

\_\_\_\_\_

By:

\_\_\_\_\_

Marc Cuenod, President

Continuation of Execution Page to

Community Declaration

Easements Restrictions and Covenants for

South Shore Harbour Community Association, Inc.



THE STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Jack Coogan, Managing General Partner of South Shore Harbour Investors, a Texas general partnership, which is a venturer of South Shore Harbour Development, a Texas joint venture, 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, in the capacity therein stated, as the act and deed of said general partnership, and that he was authorized to do so.

GIVEN under my hand and seal of office this the 6<sup>th</sup> day of August, 1982.

TYPE, PRINT OR STAMP NAME  
OF NOTARY AND COMMISSION  
EXPIRATION DATE BELOW

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

THE STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Marc Cuenod, President of Anrem Corporation, a Texas Corporation, which is a venturer of South Shore Harbour Development, a Texas joint venture, 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, in the capacity therein stated, as the act and deed of said corporation and that he was authorized to do so.

GIVEN under my hand and seal of office this the 6<sup>th</sup> day of August, 1982.

TYPE, PRINT OR STAMP NAME  
OF NOTARY AND COMMISSION  
EXPIRATION DATE BELOW

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

600039-A

**Exhibit "A"**

**ANNEXABLE AREA  
Tract I of 3 Tracts**

**METES AND BOUNDS DESCRIPTION  
OF A  
1,105.863 ACRE TRACT OF LAND  
OUT OF THE  
MICHAEL MULDOON TWO LEAGUE GRANT, ABSTRACT 18  
LEAGUE CITY, GALVESTON COUNTY, TEXAS**

BEGINNING at 12-inch iron pipe in the southerly right-of-way line of Texas F.M. 2094 (based on width of 80 feet), said point also being the northeasterly corner of the tract of land belonging to the clear Creek Consolidated School District;

THENCE North 37° 18' 51" East, along the south line of said F.M. 2094, 2747.68 feet to point for corner and the beginning point of a curve to the right;

THENCE along the arc of a curve to the right and the south line of F.M. 2094, having a radius of 1,869.85 feet, chord bearing North 65° 59' 18" East, 1,794.04 feet, central angle of 57' 20' 07", distance of 1,871.14 feet to point for corner;

THENCE South 85° 21' 00" East, along the south line of said F.M. 2094, 1029.30 feet to a point for corner;

THENCE South 04° 39' 00" West, along the south line of said F.M. 2094. 8.67 feet to point for corner;

THENCE South 85° 19' 00" East, along the southerly right-of-way line of Texas F.M. 2094 (based on a width of 88.67 feet, 4,408.13 feet to a point for corner:

THENCE South 14' 38' 26" East, along the easterly line of 180 foot Houston Lighting and Power Company right-of-way and the westerly line of 60 foot road right-of-way, 3,328.31 feet to point for corner in the centerline of Jarboe Bayou;

THENCE along the meanders of the centerline of Jarboe Bayou:

|                        |             |
|------------------------|-------------|
| South 57° 50' 17" West | 125.07 feet |
| South 26° 51' 58" West | 117.39 feet |
| South 83° 33' 42" West | 74.40 feet  |
| South 26° 17' 31" West | 243.67 feet |
| South 27° 26' 11" West | 200.01 feet |
| South 04° 13' 28" West | 153.19 feet |
| South 12° 52' 26" East | 110.27 feet |

THENCE South 72° 32' 43" West, 660.59 feet to point for corner;

THENCE South 16° 51' 40" East, 599.12 feet to a point for corner in the northerly right-of-way line of Texas F.M. 518 (based on a width of 120 feet);

THENCE South 73° 09' 03" West, along the northerly line of said F.M. 518, 891.90 feet to a point for corner and the beginning point of a curve to the right;

THENCE along the arc of curve to the right, and the northerly line of said F.M. 518, having a radius of 5,669.65 feet, a chord bearing South 77° 18' 20" West, 823.29 feet, a central angle of 08° 19' 38", distance of 824.01 feet to a point for corner;

THENCE South 81° 29' 06" West, along the northerly line of said F.M. 518, 2,582.40 feet to a point for corner and the beginning point of curve to the right;

THENCE along the arc of a curve to the right, and the northerly line of said F.M. 518, having a radius of 11,399.30 feet. a chord bearing South 82° 50' 54" West, 532.12 feet, a central angle of 02° 40' 29", a distance of 532.17 feet to point for corner:

THENCE South 84° 11' 50" West, along the northerly line of said F.M. 518, 2,981.81 feet to a point for corner;

THENCE North 15° 27' 40" West, along the east line of said Clear Creek Consolidated School District tract, 3,687.27 feet to the PLACE OF BEGINNING, containing 1,105.863 acres of land, more or less.

Exhibit "A"

Tract 2 of 3 Tracts

METES AND BOUNDS DESCRIPTION  
OF A  
357.547 ACRE TRACT OF LAND  
OUT OF THE  
MICHAEL MULDOON TWO LEAGUE GRANT, ABSTRACT 18  
LEAGUE CITY, GALVESTON COUNTY, TEXAS

BEGINNING at found 2-1/2 inch iron pipe at the intersection of the West line of Lakeside Drive and the North line of Texas F.M. 2094 (based on a width of 80 feet), said point being the southeast corner of a 547.56 acre tract described in Volume 1713, Page 518 the Deed Records of Galveston County:

THENCE North 85° 29' 07" West, along the North line of said F.M. 2094, 50.64 feet to a point for corner and the beginning point of a curve to the left;

THENCE along the arc of said curve to the left, and the North Line of said F.M. 2094, having a radius of 1,949.85 feet, a chord bearing South 65° 58' 06" West, 1,871.38 feet, a central angle of 57° 21' 17", a distance of 1.951.86 feet;

THENCE South 37° 18' 51" West, along the North line of said F.M. 2094, 3,003.62 feet to a point for corner:

THENCE North 18° 39' 23" West, 1,867.85 feet to point for corner;

THENCE North 05° 30' 56" East, 2,302.00 feet to point for corner;

THENCE North 49° 02' 56" West, 465.38 feet to point for corner on the bulkhead along the south shoreline of Clear Lake;

THENCE North 47° 24' 22" East, along said bulkhead, 22.29 feet to a point for corner on the end of said bulkhead;

THENCE along the meanders of the South Shoreline of Clear Lake:

|                        |             |
|------------------------|-------------|
| South 59° 34' 39" East | 11.15 feet  |
| North 36° 37' 44" East | 98.56 feet  |
| North 45° 29' 11" East | 100.50 feet |
| North 48° 20' 04" East | 100.12 feet |
| North 49° 04' 41" East | 100.07 feet |
| North 61° 47' 01" East | 46.07 feet  |
| North 42° 26' 59" East | 32.64 feet  |

THENCE North 37° 03' 57" East, across the mouth of an inlet of Clear Lake, 295.74 feet to point for corner on the South Shoreline of Clear Lake;

THENCE along the meanders of the South shoreline of Clear Lake:

|                        |             |
|------------------------|-------------|
| North 25° 43' 52" East | 100.02 feet |
| North 39° 39' 49" East | 102.57 feet |
| North 22° 00' 49" East | 106.22 feet |
| North 24° 14' 04" East | 95.03 feet  |
| North 34° 24' 36" East | 100.24 feet |
| North 26° 33' 19" East | 103.29 feet |
| North 47° 01' 15" East | 100.44 feet |
| North 25° 03' 24" East | 156.52 feet |
| North 41° 44' 33" East | 250.00 feet |
| North 39° 18' 43" East | 71.06 feet  |
| North 31° 40' 36" East | 29.45 feet  |
| North 29° 26' 46" East | 36.42 feet  |
| North 16° 14' 24" East | 29.16 feet  |
| North 30° 57' 55" East | 107.59 feet |
| North 16° 52' 11" East | 50.94 feet  |
| North 03° 31' 10" West | 18.46 feet  |
| North 11° 29' 38" East | 31.52 feet  |
| North 12° 14' 27" East | 82.21 feet  |
| North 30° 16' 20" West | 23.23 feet  |
| North 15° 35' 22" East | 100.60 feet |
| North 07° 50' 08" East | 104.76 feet |
| North 17° 05' 15" West | 59.39 feet  |
| North 43° 12' 41" East | 101.88 feet |
| North 78° 03' 16" East | 103.10 feet |
| North 79° 14' 02" East | 103.66 feet |
| North 80° 58' 42" East | 104.58 feet |
| North 77° 27' 31" East | 24.48 feet  |
| South 81° 19' 30" East | 52.53 feet  |
| North 38° 53' 43" East | 42.43 feet  |
| North 79° 46' 38" East | 100.26 feet |
| North 75° 31' 59" East | 101.07 feet |
| North 74° 44' 57" East | 101.29 feet |
| North 78° 11' 05" East | 100.50 feet |
| North 76° 29' 18" East | 100.84 feet |
| North 80° 18' 09" East | 26.06 feet  |
| North 82° 34' 45" East | 15.98 feet  |
| North 83° 07' 23" East | 93.37 feet  |
| North 88° 46' 52" East | 61.69 feet  |
| North 86° 40' 16" East | 102.46 feet |
| North 87° 06' 25" East | 102.63 feet |
| North 77° 15' 36" East | 81.62 feet  |
| North 34° 19' 29" East | 24.07 feet  |

THENCE South 88° 28' 49" East, 20.34 feet to point for corner:

THENCE South 11° 47' 20" East. 2,317.03 feet to point for corner:

THENCE North 78° 29' 18" East. 600.36 feet to point for corner;

Thence South 12° 08' 00" East, 45.00 feet to a point for corner:

THENCE North 78° 29' 18" East, 183.00 feet to a point for corner;

THENCE South 12° 08' 00" East, 1,130.88 feet to a point for corner;

THENCE South 01° 17' 12" East, 487.54 feet to a point for corner and the PLACE  
OF BEGINNING of the tract herein described, containing 357.547 acres of land,  
more or less.

Exhibit "A"

Tract 3 of 3 Tracts

METES AND BOUNDS DESCRIPTION  
OF A  
47.287 TRACT OF LAND  
OUT OF THE  
MICHAEL MULDOON TWO LEAGUE GRANT, ABSTRACT 18  
LEAGUE CITY, GALVESTON COUNTY, TEXAS

COMMENCING at a found 2-1/2 inch from pipe at the intersection of the west line of Lakeside Drive and the North line of Texas F.M. 2094 (based on width of 80 feet), said point being the southwest corner of 547.56 acre tract described in Volume 1713, Page 518 of the Deed Records of Galveston County:

THENCE North 85° 29' 07" West, along the North line of said F.M. 2094, 50.64 feet to a point for corner and the beginning point of a curve to the left;

THENCE along the arc of said curve to the left, and the North line of said F.M. 2094, having a radius of 1,949.85 feet, a chord bearing South 65° 58' 06" West, 1,871.38 feet, a central angle of 57° 21' 17", distance of 1,951.86 feet;

THENCE South 37° 18' 51" West, along the North line of said F.M. 2094, 3,003.62 feet to the PLACE OF BEGINNING of the tract herein described;

THENCE South 37° 18' 51" West, along the North line of said F.M. 2094 300.00 feet to a point for corner;

THENCE North 52° 41' 09" West, 89.35 feet to a point for corner and the beginning point of a curve to the right;

THENCE along the arc of a curve to the right having radius of 300.00 feet, chord bearing North 35° 40' 16" West, 175.57 feet, central angle of 34° 01' 46", - distance of 178.16 feet to a point for corner:

THENCE North 18° 39' 23" West, 2,303.13 feet to point for corner;

THENCE North 71° 20' 37" East, 312.62 feet to point for corner;

THENCE North 16° 47' 40" West, 707.61 feet to a point for corner on the high bank of an inlet of Clear Lake;

THENCE along a line projected into the Inlet of Clear Lake:

|                        |             |
|------------------------|-------------|
| South 73° 12' 20" West | 50.00 feet  |
| North 16° 47' 40" West | 271.43 feet |
| North 29° 29' 59" East | 257.12 feet |
| North 21° 54' 07" West | 731.56 feet |
| North 86° 05' 55" East | 140.87 feet |

to point for corner on the bulk headed South shoreline of Clear Lake;

THENCE North 56° 37' 27" East along said bulkhead, 315.17 feet to point for corner;

THENCE North 51° 45' 31" East along sold bulkhead, 122.05 feet to a point for corner;

THENCE North 47° 24' 22" East along said bulkhead, 61.86 feet to a point for corner;

THENCE South 49° 02' 56" East, 465.38 feet to a point for corner:

THENCE South 05° 30' 56" West, 2,302.00 feet to a point for corner;

THENCE South 18° 39' 23" East, 1,867.85 feet to point for corner and the PLACE OF BEGINNING of the tract here in described, containing 47.287 acres of land, more or less.



**FIRST AMENDMENT TO THE  
COMMUNITY DECLARATION  
OF EASEMENTS, RESTRICTIONS AND COVENANTS  
FOR  
SOUTH SHORE HARBOUR COMMUNITY ASSOCIATION, INC.**

This First Amendment to the Community Declaration is made as of this the 5th day of May, 1983 by South Shore Harbour Development, a Texas joint venture ("Declarant") in amendment of the Community Declaration of Easements, Restrictions and Covenants for South Shore Harbour Community Association, Inc. which is recorded under file code number 001-80-1952 of the Official Public Records of Real Property in Galveston County, Texas.

Section 5.8 is hereby amended to read **"Section 5.8. Fidelity Bonds Required.** The Community Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Community Association including, but not limited to, employees of the Manager. Each such bond shall name the Community Association as obligee and shall not be less than the estimated maximum of funds, including reserve bonds, in the custody of the Community Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event way the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate "AFCA'S and RFCA'S" (as hereinafter defined) assessments on all Units plus the amount then deposited in all Reserve Funds."

Section 5.13 is hereby amended to read **"Section 5.13. Duty to provide Review, Or Audit.** The Community Association shall provide for an annual Independent audit of the accounts of the Community Association by a certified public accountant, unless by the consent of 66-2/3 of the members of the Board, the Board of Directors of the Community Association waives the requirement of an audit and then the accounts shall be reviewed by a certified public accountant. Copies of the report of the audit or of the review shall be made available to any Member who requests o copy of the same upon payment of such Member of the reasonable cost of copying the same.

Section 8.9 is hereby amended read **"Section 8.9. Apportionment of Administrative Functions Common Assessments.** For purposes of the AFCAs, each Residential Site (other than Residential Site improved as a residential apartment) on which single family dwellings are constructed shall constitute one (1)

APCA Unit regardless of the size, value location of such Residential site. Each other type of Privately Owned Site shall be deemed to constitute the following number of AFCA Unite: (1) each three (3) apartment units located on a Privately Owned Site shall constitute one (1) AFCA Unit, regardless of the size, value or location of such apartment units with full AFCA Unit assigned for any extra one (1) or two (2) apartments not constituting a multiple of three (3) apartment units, in lieu of assigning any fractional AFCA Units); each three (3) individually numbered hotel or motel guest rooms for any extra one (1) or two (2) individually numbered hotel or motel guest rooms) on a Privately Owned Site shall constitute ore (1) APCA Unit regardless of the size, value or location of such hotel or motel rooms (iii) each two thousand five hundred (2,500) square feet for extra part thereof (a) of enclosed floor area of common room and facilities, service rooms administrative offices within an apartment complex, hotel or motel, or (b) within shopping center, building, Industrial office/Warehouse facility, or other commercial building on a Privately Owned Site shall constitute one (1) AFCA Unit regardless of the size, value or location of such Improvement (with the square footage of the completed Improvements described in (iii) (a) and (b) above determined by the Completed Plans, and (iv) each one (1) acre or fraction thereof of Privately Owned sites (other than Residential Sites restricted to single family Use) owned by Owners, other than Declarant, on which Improvements to Property have not been completed shall constitute one (1) APCA Unit. An appropriate adjustment of the number of AFCA Units assigned to such Privately Owned Sites (other than Residential Sites restricted to single family use) owned by Owners, other than Declarant, on which Improvements to Property are being constructed shall be made when such Improvements to Property have been completed, which dates shall be established by the earlier of: (i) the date such Owners deliver Notices of Completion to the Architectural Committee if such Improvements to Property are, in fact, completed as of the date of delivery of such notice of Completion, or (ii) the date upon which the Architectural Committee determines the Improvements on the Property have been substantially completed. For example, if an office building contains ten thousand two hundred (10,200) square feet of enclosed floor area [on one (1) or more floors], then such office building shall be assigned five (5) APCA Units. The amount of the APCAs for any one (1) year payable by an Owner for each Privately Owned Site of such Owner shall be computed by multiplying the "AFCA Unit Assessment (as hereinafter defined) established by the Board for such year by the number of APCA Units assigned to such Owner's Privately Owned Sites."

Section 8.19 is hereby amended to read **"Section 8.19. Payment of Assessment.** Common Assessments shall be due and payable in advance to the Community Association by the assessed

Member on a monthly basis with each such Payment being due and payable on the first day of each month of the calendar year, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion. Statements of the amount of the Common Assessment, due each month shall be prepared and mailed by or on behalf of the Community Association to each Member on or before the 20th day of the month Preceding the month for which such assessment is due. In lieu thereof, Members shall have the option to pay. Common Assessments in advance annually with payment on or before January 1 of the year for which such assessments are due, in an amount equal to the aggregate of the monthly installments for said year, provided that the Board of Directors shall have determined (1) to permit annual payment and (2) the amount of the annual payment, on or before December 1 of the preceding calendar year.

Section 8.26 is hereby amended to read as follows: **"Section 8.26. Remedies to Enforce Assessments.** Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof whether common, Special or Reimbursement, the Board may, in addition to any other remedies provided under this Community Declaration or by law, enforce such" obligation on behalf of the Community Association by suit and/or by filing and foreclosure of a lien as hereinafter provided. In order to secure the payment of the assessments hereby levied, a vendor's lien is hereby reserved in each Deed from the Declarant to the Owner of each Privately Owned Site, which lien shall be enforceable through appropriate Judicial proceedings by the Community Association. As additional security for the payment of the Assessments hereby levied, each Owner of a Privately owned site, by such party's acceptance of Deed thereto, hereby grants the Community Association a lien on such Privately Owned Site which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Article 3810 of the Texas Revised civil Statutes for any successor statute); and each such Owner by acceptance of the Deed, hereby and herein expressly conveys to the person who is the President of the Community Association on the date on which such owner accepts a deed to the privately Owned Site, said Privately Owned site in trust for the purposes of securing the payment of Assessments or other sums due hereunder and a power of sale in connection therewith. The Community Association shall, whenever It proceeds with non-judicial foreclosure pursuant to the provisions of said Article 3810 (or any successor statute) and said power of sale, designate said person as trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. Such trustee may be changed at any time and from time to time by the Community Association by means of a written instrument executed by the President or any

Vice-President of the Community Association and filed for record (either prior to or following any action by such trustee) in the Official Public Records of Real Property of Galveston County, Texas. In the event that the Community Association has determined to non-judicially foreclose the lien provided here in pursuant to the provisions of said Article 3810 (or any successor statute) and to exercise the power of sale hereby granted, the Community Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale no less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the United States Postal Service, postage prepaid, registered and certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Community Association, out of the proceeds of such sale, there shall first be paid all expenses incurred by the Community Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee, second, from such proceeds there shall be paid to the Maintenance Fund an amount equal to the amount in default) and, third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Privately Owned Site foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means, including a judgment for possession and any action of forcible detainer and the issuance of writ of restitution thereunder."

Section 8.29 is hereby amended to read as follows: **Section 8.29. Estoppel Certificates.** Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, and upon the written request of any Member and any Person with, or intending to acquire, any right, title or interest in the Privately owned site of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amount, 14 any, due and accrued and then unpaid with respect to a Privately owned site and the owner thereof and setting forth the amount of any Assessment for the current year levied against such Site which is not yet due and payable. Such statement shall, with respect to the person to whom it is issued, be conclusive against the Community Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied. The purchaser of any Privately Owned Site, except for purchasers by and through any foreclosure proceedings Instituted by the holder of the first Mortgage on such Site, shall be deemed to have assumed the payment of obligations with respect to the said Privately owned site for any Assessments (or any other sum then due or but for notice and/or the passage of time would be due the Community Association), unless such a purchaser has received an Estoppel Certificate stating that as of the date of

the purchase of said Privately Owned Site, no assessments or other sums were due for except for notice and/or the passage of time would be due) with respect to such Site.

Section 8.30 is hereby amended to read: "**Section 8.30. No Offsets.** All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Community Association or the Board of Directors is not properly exercising its duties and powers under this Community Declaration, or claim by the owner of non-use of the Community Association Properties or services or of abandonment of his Privately owned site, or claim by the owner of inconvenience or discomfort arising from the making of repairs or improvements to community Association Properties or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason."

Section 10.4 is hereby amended to read: "**Section 10.4. Address of Committee.** The address of the Architectural Committee shall at the principal office of the Community Association, or at such other address as the Board may from time to time determine and so notify Owners.

IN WITNESS WHEREOF Declarant has executed this First Amendment to the Community Declaration, the day and year first above written.

SOUTH SHORE HARBOUR DEVELOPMENT

Attest: By: SOUTH SHORE HARBOUR INVESTORS,  
a Texas general partnership

\_\_\_\_\_  
Secretary Jack Coogan  
Managing General Partner

Attest: By: ANREM CORPORATION,  
a Texas corporation

\_\_\_\_\_  
Secretary Marc Cuenod,  
President

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 24 day of May, 1983, by Jack Coogan, partner on behalf of South Shore Harbour Investors, a partnership.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Texas

\_\_\_\_\_  
Typed or Printed Name of Notary  
My Commission Expires: 6-7-86

STATE OF TEXAS

COUNTY OF GALVESTON

This instrument was acknowledged before me on the 23 day of May, 1983, by Marc Cuenos, President of Anrem Corporation,

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Texas

\_\_\_\_\_  
Typed or Printed Name of Notary  
My Commission Expires: 6-7-86

**THE STATE OF TEXAS**  
**County of Galveston**

I, JESSIE G. KIRKENDALL County Clerk, in and for Galveston County, State of Texas, do hereby CERTIFY that the above and foregoing is a true and correct copy of First Amendment to The Community Declaration of Easement, Restrictions and Covenants for

SOUTH SHORE HARBOUR COMMUNITY ASSOCIATION, INC.

as the same appears of record in my office, in the official Public Records of Real Property having Microfilm

Identification Number 002-28-1589 through Microfilm

Identification Number 002-28-1593-A, Incl..

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the impress of the official seal of said County Court, at my office, in the city and County of Galveston, State of Texas, on this the 15th day of June A.D., 1993

JESSIE G. KIRKENDALL,  
County Clerk, in and for  
Galveston County, Texas.

BY: \_\_\_\_\_ Deputy

Sydonia Muscat