
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR

AVOCET,

A SUBDIVISION IN GALVESTON COUNTY, TEXAS

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This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is made by Avocet Oceanfront Villas, LP ("Declarant"), a Colorado limited partnership.

RECITALS

A. Declarant has caused 148.20 acres of the Land to be subdivided and platted into a subdivision in Galveston County, Texas, known as "AVOCET, a Subdivision in Galveston County, Texas" (the "Subdivision"), in accordance with the Final Plat of said subdivision prepared by Sidney Bouse, a registered professional Land Surveyor of the State of Texas, and recorded under Clerk's File No. 2006030170 of the Plat Records of Galveston County, Texas (the "Plat"). The Subdivision as platted consists of 413 lots, 50 reserves and 148.20 acres, situated in the James Shaw League, Abstract No. 179, Galveston County, Texas (notwithstanding the reference to 412 lots and 51 reserves printed on the Plat).

B. Declarant desires to: (i) dedicate the easements for utilities and drainage shown and reflected on the Plat; (ii) reserve in favor of itself and/or the Association herein established the rights described herein and certain easements on and across the Common Area and Lots in the Subdivision; and (iii) impose the protective and restrictive covenants set forth herein on the Lots in the Subdivision and on the Common Area of the Subdivision.

C. The Owners of Lots 369, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384 and 385 in the Subdivision, have or will record separate writings that subject said Lots to the terms and provisions of this Declaration.

NOW, THEREFORE, the Declarant hereby adopts the Plat of the Subdivision, dedicates the easements for utilities and drainage shown and reflected on the Plat and imposes on the Lots in the Subdivision and on the Common Area of the Subdivision the basic restrictions set forth on the Plat.

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Lots in the Subdivision, and for the purpose of providing for the

orderly development, use and enjoyment of the Lots in the Subdivision, Declarant and the others joining in this Declaration hereby declares that all of the land in the Subdivision shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions hereinafter set forth, which shall constitute covenants running with the land and shall be binding upon all parties having any right, title or interest in the land, or any part thereof, and upon such parties' respective heirs, legal representatives, successors, and assigns, and shall inure to the benefit of such parties and their respective heirs, legal representatives, successors, and assigns.

ARTICLE 1
DEFINITIONS

1.1 General. As used throughout this Declaration, the following terms shall have the meanings set forth below, or as otherwise defined herein, regardless of where such terms first appear:

"Affiliate" means any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power or authority to direct or cause the direction of a Person's management or policies, whether through the ownership of voting securities, by contract, or otherwise. For purposes of this Declaration, David M. Birdsall is deemed to be an Affiliate of Declarant.

"Architectural Guidelines" means the architectural, design, and construction guidelines and review procedures adopted pursuant to Article 6, as they may be amended from time to time.

"Association" means the Avocet Owners Association, a Texas non-profit corporation, its successors and assigns.

"Beach Club" means a beach club, which will include two swimming pools and related improvements and amenities, to be constructed by Declarant and to be accessible by Lot Owners.

"Board" or **"Board of Directors"** means the body responsible for the general governance and administration of the Association, selected as provided in this Declaration and the By-Laws.

"Business Day" means any day that is not a Saturday, Sunday, or national holiday as defined by TEX. GOV'T CODE ANN. § 662.003(a) (as amended).

"By-Laws" means the by-laws of the Association, as they may be amended and/or amended and restated from time to time.

"Common Area" means and includes any real property (including all improvements now or hereafter placed, erected, constructed, installed or located thereon) owned by the Association for the common use and enjoyment of the Owners.

- (a) The Common Area is owned by the Association and includes all of the property in the Subdivision, excluding:
 - (1) the Lots shown and reflected on the recorded Plat or Plats of the Subdivision and the improvements located thereon, and
 - (2) the easements for all water, sanitary sewer, storm sewer, electric, telephone, cable television and other utility lines (and all appurtenances thereto) now or hereafter lying, installed and maintained within (i) any easements for Private Streets, (ii) any utility or drainage easements reflected on the recorded Plat of the Subdivision, or (iii) any utility or drainage easements herewith or hereafter granted, conveyed or dedicated on or across any Lots in the Subdivision or the Subdivision Common Area, which lines and appurtenances are owned and maintained, or are to be owned and maintained, by Utility Provider.

- (b) Without limitation of the foregoing, the Common Area includes:
 - (1) all Private Streets, roads, alleys and access ways indicated on the Plat;
 - (2) all Reserves indicated on the Plat, and all improvements located within the Reserves, including, without limitation, the Beach Club;
 - (3) the dune walkover areas indicated on the Plat (each indicated as "6' Dune Walkover"), and all improvements located with such areas;
 - (4) the beach area located to the south of the 200' Wide Dune Protection Zone, running east and west, designated on the Plat as "Reserve 1Z"; and
 - (5) all other improvements now or hereafter constructed, placed, erected or installed within any easement for the benefit of the

Subdivision or the Association and/or within the Private Streets, exclusive, however, of any aerial easements, water, sanitary sewer, electric, telephone, cable television and other utility lines (and all appurtenances thereto) now or hereafter lying, installed and maintained within any easements and/or Private Streets, to the extent that such lines and appurtenances are owned and maintained, or are to be owned and maintained, by any Utility Provider.

“County” means Galveston County, Texas.

“Declarant” means Avocet Oceanfront Villas, LP (as reflected in the Preamble) and its successors and assigns. However, as used in this paragraph, the term "assigns" shall not be construed to mean, refer to or include any person or entity which shall acquire from Avocet Oceanfront Villas, LP, or its successor, one or more of the Lots in the Subdivision, whether improved or unimproved, for occupancy or resale, unless Avocet Oceanfront Villas, LP, or its successor, expressly assigns to such assignee all of its rights and privileges as "Declarant" under this Declaration.

“Development Period” means the time period set forth below. The Development Period shall commence upon the recordation of this Declaration and shall automatically expire upon the latest to occur of:

- (a) 12:00 midnight on the 10th anniversary of the recordation date of this Declaration; or
- (b) 12:00 midnight on the 10th anniversary of the recordation date of the last recorded Supplemental Declaration.

Notwithstanding the foregoing, Declarant can voluntarily terminate the Development Period at any time prior to its expiration by recording a written termination notice. The termination notice may specify a future date and time (not later than the latest date established under (a) or (b) above) at which the termination shall become effective. However, if the termination notice fails to specify a future effective date and time, the Development Period shall terminate at 12:00 midnight on the date the termination notice is recorded. The Development Period is for a term of years and is not dependent upon Declarant owning any land in the Subdivision.

“Governing Documents” means the governing documents of the Association as contemplated by TEX. BUS. ORG. CODE § 1.002(36), as amended.

“Governmental Authority” means any federal, state, county, city, municipal or other governmental or quasi-governmental department, entity, authority, agency or

instrumentality having or asserting jurisdiction over the Subdivision or any portion thereof, including the jurisdiction to establish and/or enforce Governmental Regulations.

“Governmental Regulations” means any and all federal, state, county, municipal and local laws, statutes, codes, regulations, rules, ordinances or similar requirements applicable to the Subdivision or any portion thereof.

“Indemnitee” means the party to whom an express release and/or indemnity obligation is owed pursuant to the terms of this Declaration and includes: (i) with regard to a natural person, his or her executors, administrators, personal representatives, heirs and assigns; (ii) with regard to a corporation, its shareholders, directors, officers, employees, agents, successors and assigns; (iii) with regard to a limited liability company, its members, managers, officers, employees, agents, successors and assigns; (iv) with regard to a general or limited partnership, its general partners, limited partners, employees, agents, successors and assigns; and (v) with regard to any other type of entity, its owners, officers, employees, agents, successors and assigns.

“Indemnitor” means the party who owes an express release and/or indemnity obligation pursuant to the terms of this Declaration and includes: (i) with regard to a natural person, his or her executors, administrators, personal representatives, heirs and assigns; and (ii) with regard to an entity, its successors and assigns.

“Lots” means all of the platted lots shown and reflected upon the recorded Plat of the Subdivision, and “Lot” includes any or each of the Lots in the Subdivision.

“Mortgage,” “Deed of Trust” or “Trust Deed” means a pledge of a security interest in or the creation of a lien upon a Lot (or Lots), together with any improvements thereon, to secure repayment of a loan made to the Owner(s) of such Lot or Lots (or made to another, but secured by such Lot or Lots).

“Mortgagee” means the beneficiary of, or secured party in, a Mortgage on a Lot or Lots.

“Owner” means the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Subdivision, including contract sellers, but excluding (i) those holding title merely as security for the performance of an obligation, or (ii) those holding title to, or an interest in, the mineral estate only, with no title to, or interest in, the surface estate.

"Person" means any natural person or entity, including a corporation, limited liability company, general partnership, limited partnership, trust, unincorporated association or other legally recognized form of entity.

"Private Streets" means as reflected on the Plat, Avocet Avenue, Beardsley Avenue, Birdsall Boulevard East, Birdsall Boulevard West, Bronson Avenue, Cabernet Place, Charley Way, Charest Avenue, Churchill Place, Clyde Court, Common Place, Dinjar Avenue, Doyle Avenue, Dunline Drive, Ellis Court, Everett Circle, Jackson Lane, Mackenzie Avenue, Paprika Lane, Patricia Leigh Avenue, Pepper Road, Sunset Drive, Susana Street, Sweetser Street and Zephyr Drive.

"Supplemental Declaration" means any supplemental or supplementary declaration of covenants, conditions and restrictions bringing additional property within the scheme of this Declaration and within the jurisdiction of the Association, as provided in Article 2 hereof.

"Utility Provider" means any Governmental Authority, quasi-Governmental Authority, or private provider of Utility Services to the Subdivision.

"Utility Services" means any utility servicing the Subdivision including without limitation, water, sewer, electricity, gas, telephone, cable television, and similar services.

"Wetland" means any area within the Subdivision identified or designated as habitat for wetland species of plants and/or animals by the County, the United States Army Corps of Engineers, or by any other Governmental Authority.

1.2 Additional Definitions. The following additional words and phrases are defined in the corresponding Sections of this Declaration, as indicated below.

Word or Phrase	Section
AAA	13.4
Additional Property	2.2
Affected Lot	12.3
Arbitration Rules	13.4
Commence Construction	12.1
Commencement Period	12.1
Commercial Vehicle	3.25
Committee	6.1
Complete Construction	12.2
Construction Period	12.2
Director	4.2

Existing Property	2.1
First Mortgage	5.13
Lienholder	13.3
Member	4.3
Permanent Basis	3.15
Plans	6.1
Reserves	3.37
Restricted Vehicle	3.15
Repurchase Notice	12.3
Repurchase Option	12.3
Repurchase Price	12.3
Second Request	6.5
Short-Term Rentals	3.11

1.3 Interpretation and Construction. Whenever the context requires, the singular will include the plural, the masculine gender will include the feminine and neuter genders, and vice versa.

ARTICLE 2 PROPERTY SUBJECT TO DECLARATION

2.1 Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to the terms, covenants, conditions, restrictions, easements and reservations contained in this Declaration is AVOCET, a Subdivision in Galveston County, Texas, as shown and reflected on the Plat, which property may be sometimes referred to herein as the "Existing Property."

2.2 Additions of Property. Declarant, at its sole election, shall have the right, but not the obligation, to make subject to and bring within the scheme of this Declaration and within the jurisdiction of the Association, at any time prior to expiration of the Development Period any or all of the following properties:

- (a) any contiguous property;
- (b) property any portion of which is within one-half (½) mile of any portion of the Subdivision (including any property separated from the Subdivision by a public street, body of water or other property); and/or
- (c) any other property with a reasonable relationship to the Subdivision.

Land made the subject of subsections (a)-(c) above is referred to herein as the "Additional Property." The foregoing shall be effected by executing and filing of record in the office of the County Clerk of Galveston County, Texas, a Supplemental

Declaration describing such Additional Property and expressly subjecting such Additional Property to the scheme of this Declaration and to the jurisdiction of the Association, together with a plat of such additional property. Such Supplemental Declaration may contain complementary and supplementary provisions, conditions, covenants, restrictions and reservations, and may amend and modify the provisions, conditions, covenants, restrictions and reservations contained herein as they relate to or affect such Additional Property, but such Supplemental Declaration shall not in any manner revoke, modify or add to the covenants established by this Declaration as to the Existing Property. After any Additional Property is brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of this Section 2.2, the term "Subdivision" as used herein, shall be deemed to mean, refer to and include the Existing Property, together with such Additional Property.

2.3 Duration. This Declaration and any Supplemental Declarations shall exist in perpetuity, unless amended or terminated as provided herein.

2.4 Notice of Change. This Declaration discloses characteristics of the Subdivision that may cease to exist or apply. If the change in circumstances is of public record or is capable of independent verification by any interested person, the Board of Directors may, but is not obligated to, record a Notice of Change that references the provision of this Declaration that ceases to apply to the Subdivision. Such notice does not constitute an amendment of the Declaration. The Association will notify Owners of the existence of the notice and will make it available to Owners as an Association record.

ARTICLE 3 USE RESTRICTIONS

3.1 General. The following restrictions are covenants running with the land and shall apply to the Subdivision until such time as they are amended, modified, repealed or limited pursuant to the procedures set forth in this Declaration.

3.2 Rules and Regulations. The Board may from time to time adopt additional rules and regulations, or amend previously adopted rules and regulations, governing the details of the operation, use, maintenance and control of the Lots and Common Area and any facilities or services made available to the Owners. This right shall include without limitation, the right to approve rental agents, contractors and sub-contractors who do business within the Subdivision. Rules and regulations shall take effect immediately upon approval by the Association, or at a later date selected by the Association. If requested in writing by at least 10% of all Owners, a membership meeting may be called and any rule or regulation may be repealed or modified by majority vote of the Owners.

3.3 Single Family Residential Use. Except as expressly set forth in this Section 3.3, no Lot in the Subdivision shall be used for any purpose except for single family residential purposes. The foregoing restriction shall not be construed or applied to prevent Declarant and homebuilders from operating one or more information centers and/or sales offices and related parking facilities within the Subdivision.

3.4 Use of Common Area. Nothing shall be done in the Common Area which could increase the rate of insurance (whether of fire and casualty insurance or liability insurance), without the prior approval of the Board of Directors.

3.5 No Construction on Less Than a Platted Lot. No dwelling shall be constructed on a building site consisting of less than one platted Lot. Except as expressly provided herein, no Lot shall be subdivided in any manner. Nothing contained herein shall prohibit the construction of a dwelling on a building site consisting of two (2) or more full platted Lots. Any such composite building site, if same meets the foregoing requirements, shall be deemed to constitute a "Lot" under the terms and provisions of this Declaration. However, for the purposes of assessments by the Association pursuant to Article 5 of this Declaration, any such composite building site (even though considered a "Lot" for other purposes hereunder) shall be assessed based on the number of originally platted Lots, or portions thereof, comprising the building site, and not as a single Lot. Notwithstanding the foregoing provision, Declarant shall have the right, exercisable at its sole discretion, to subdivide any Lot.

3.6 Minimum Set Back Lines.

- (a) Front Lines. No dwelling or other structure shall be constructed on any Lot nearer to the front of the Lot than the building set back line shown on the recorded Plat of the Subdivision
- (b) Back Lines. No dwelling or other structure shall be constructed on any Lot nearer than five feet (5') from the back property line of the Lot.
- (c) Side Lines. No dwelling or other structure shall be constructed on any Lot nearer than five feet (5') from any side property line of the Lot. In the event the side property line is adjacent to a Private Street, no dwelling or other structure shall be constructed on such Lot nearer than the building set back line applicable to such Private Street as shown on the recorded Plat of the Subdivision.

3.7 Driveway Access.

- (a) Susana Street Lots. The following Lots shall have a single driveway access point to Susana Street: Lots 38-92, 96-105 and 115-124.
- (b) Other Lots. All Lots not included in subsection (a) above (including corner Lots), shall have a single driveway access point to the street in front of the respective Lot.
- (c) Prohibitions. No Lot shall have driveway access to or through a Reserve, dune, wetland or other protected area.

3.8 Utility Service. All Lots shall use the Utility Provider designated by Declarant and no Lot shall procure Utility Services privately or from Utility Providers not designated by Declarant. All connection, installation, impact, or tap fees and similar fees, if any, charged or imposed by a Utility Provider for establishing Utility Service to the Lot shall be payable by the Lot Owner in accordance with the requirements of the Utility Provider.

3.9 Prohibited Acts. No Owner shall do, or permit to be done by any members of his family or his guests or tenants, any act on any Lot or on the Common Area which shall be in violation of (i) any Governmental Regulations, (ii) the provisions of this Declaration, (iii) the By-Laws of the Association, or (iv) the rules and regulations of the Association relating to the use of the Common Area.

3.10 Nuisance. No Owner shall do, or permit to be done by any members of his family or his guests or tenants, any act on any Lot or on the Common Area which is considered a nuisance or shall otherwise constitute any noxious or offensive activity, noise or odor which may become an annoyance or nuisance to the other Owners or their tenants.

3.11 Compliance with Laws. All construction must be performed in a good and workmanlike manner and in compliance with all applicable Governmental Regulations.

3.12 Time Sharing. Establishment of any time-share ownership of a Lot requires consent of the Board of Directors. Such consent may be withheld in the Board's sole discretion.

3.13 Leasing. An Owner may lease the dwelling on his Lot and the tenants may use the Association's recreational facilities. Every lease shall be subject to this Declaration and the rules and regulations of the Association, regardless of whether the

lease so provides. The Association may prohibit the rental or leasing of any dwelling while the Owner is in default in the payment of Assessments and may attach rentals if the dwelling is rented or leased while the Owner is in default. "Short-Term Rentals" (i.e., rentals of 90 consecutive days or less) shall be coordinated exclusively through a property management company (which may be an Affiliate of Declarant) or the Association, as designated by Declarant and the Owner shall pay applicable fees for such property management services. If a tenant or his invitees fails to comply with this Declaration and/or the rules and regulations of the Association, such failure shall be deemed to be a default under the lease, regardless of whether the lease so provides. The Association shall notify an Owner (verbally or in writing) of such default and the Owner shall promptly (i) obtain his tenant's compliance, or (ii) exercise his rights as a landlord for tenant's breach of lease, including eviction if such is necessary to secure compliance. If the tenant's default continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association shall have the authority to pursue any of the remedies of a landlord under the lease or applicable state law, including eviction of the tenant. The Owner shall be liable to the Association for all expenses (including legal fees) incurred by the Association in enforcing its rights hereunder. The Association shall not be liable to the Owner for any damages, including lost rents, suffered by the Owner arising from or in relation to the Association's enforcement of its rights hereunder.

3.14 Construction in Accordance with Architectural Guidelines and Plans. All dwellings and other improvements shall be constructed or made strictly in accordance with (i) the Architectural Guidelines and (ii) the Plans submitted to and approved or deemed approved by the Committee or its representative, or in strict accordance with Plans submitted to the Committee, as provided in of Article 6.

3.15 Temporary Structures. No structures of a temporary character such as a mobile home, manufactured home, trailer, tent, recreational vehicle, garage, or other accessory building shall be used on any Lot at any time as a dwelling, either temporarily or permanently. The Board of Directors shall have the authority to temporarily suspend enforcement of the provisions of this Section 3.13 as necessary or appropriate during times of emergency or natural disaster.

3.16 Hazardous Materials. The storage, sale, use or disposal of hazardous materials within the Subdivision is strictly prohibited. However, the on-site storage of gasoline, heating and other fuels in a reasonable amount for emergency purposes and for the ordinary operation of boats, lawnmowers, hot tub heaters and similar equipment is permissible. The Association is authorized to store fuel for the operation of maintenance vehicles, generators and similar equipment.

3.17 Parking or Storage of Boats. Etc. No boats, other watercraft, trailers, campers, buses, motor homes, golf carts, motorcycles, all-terrain vehicles, dune buggies, recreational vehicles, trucks (except for pickup trucks or vans having a manufacturer's rated carrying capacity of not more than three-quarter ($\frac{3}{4}$) ton), inoperable vehicles, or similar vehicles (any of the foregoing being herein referred to as a "Restricted Vehicle") may be parked or stored upon any Lot on a Permanent Basis (as that term is defined below in this Section), except wholly within an enclosed garage or other fully enclosed accessory building approved by the Committee, nor may any Restricted Vehicle be parked or allowed to remain on a Permanent Basis on any Private Street in the Subdivision. No vehicle of any type (including, but not limited to, a Restricted Vehicle or a Commercial Vehicle) shall be parked or left unattended on any portion of the Common Area, whether or not on a Permanent Basis. A "Permanent Basis", as that term is used herein, shall mean any period or periods aggregating to 14 days during any six (6) month period. No commercial trucks, vans, tractor-trailers or trailers (any of the foregoing being herein referred to as a "Commercial Vehicle") shall be parked or left unattended on any Lot or in any Private Street in the Subdivision, except for the limited time period(s) during which the owner or operator of the Commercial Vehicle is (i) making deliveries to the Declarant, the Association or a Lot Owner (or to their respective employees, agents, representatives or contractors), or (ii) performing maintenance, repairs or construction on a Lot or the Common Area for the Declarant, the Association or a Lot Owner (or for their respective employees, agents, representatives or contractors). As used in this Section, the terms "commercial trucks," "vans," "tractor-trailers" or "trailers" means any truck or van having a manufacturer's rated carrying capacity in excess of three-quarter ($\frac{3}{4}$) tons, any truck-tractor, any tractor-trailer or any trailer that is owned, leased or operated for commercial purposes and that bears some indicia (whether by way of a sign, logo, color scheme or distinctive markings) that it is owned, leased or operated for commercial purposes, including any such vehicle that is owned, leased to or operated by the Owner of a Lot in the Subdivision. No servicing or repairs shall be made to any Restricted Vehicle or Commercial Vehicle on the Lot or on any Common Area, except as necessary to complete short-term, emergency-type repairs. No tarps, cloth covers, plastic covers, or similar coverings shall be placed on any vehicle while in the Subdivision (except to the extent the vehicle is stored wholly within an enclosed garage or other fully enclosed accessory building approved by the Committee).

3.18 Garage Sales. No garage sales, rummage sales, sidewalk sales, estate sales, auctions, or similar activities or events (even though not commercial in nature) shall be conducted on any Lot or on the Common Area, except as may be authorized by the Board on a Subdivision-wide basis.

3.19 Soliciting. The Board may regulate or prohibit soliciting within the Subdivision.

3.20 Signs. No sign of any kind shall be displayed to public view on any Lot in the Subdivision, except (i) one sign of not more than five feet (5') square advertising a property for sale, or (ii) a sign used by Declarant, a builder or a commercial lender to advertise the property during the construction phase or sales period. No "for lease," "for rent," or similar signs shall be constructed, installed, or placed on any Lot or within any dwelling visible from a street. Permanent house names may be installed or placed on a Lot with prior approval of the Committee.

3.21 Oil and Mining Operations. No gas or oil drilling, gas or oil development operations, oil refining or storage, quarrying or mining operations, or like activities of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot, nor shall any derrick or other structure or machinery designed for use in boring or drilling for gas or oil be erected, maintained or permitted on any Lot.

3.22 Antennas and Dishes. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any portion of the Lot or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt rules governing the types of antennae and restrictions relating to safety, location and maintenance of antennae. The Association may also adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to certain specified locations, not visible from the street or neighboring properties and integrated with the property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible dishes or antennae. Notwithstanding the foregoing, no permissible dishes or antennae shall be installed on, over or through the Common Area. Any approved antennae shall be installed in compliance with all Governmental Regulations. This Section shall not apply to Declarant.

3.23 Livestock, Poultry and Household Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot in the Subdivision, except that domesticated cats, dogs and birds, along with animals weighing less than five (5) pounds that are not specifically prohibited by Governmental Regulations that are contained inside the dwelling in an aquarium, terrarium or cage and that are not poisonous or otherwise hazardous if they were to escape. The Association may

further regulate the number and size of pets and may prohibit the keeping of particular breeds of dogs or other animals that it deems to create unreasonable danger or nuisance. If the Association or any Governmental Authority finds cats to be a threat to wildlife, the Association may by rule prohibit or restrict cats. Pets shall not be permitted to roam loose within the Subdivision and shall not create unreasonable noise or odor. The Association may designate specific areas within the Common Area where pets may be walked, may prohibit pets on other areas, may require Owners to collect and dispose of animal waste and may require pets to be on a leash.

3.24 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, refuse or other waste materials. Trash, garbage and other waste shall be kept in sanitary closed containers pending collection thereof; and garbage cans and other receptacles shall (except when placed on a Private Street for regular collection purposes) be hidden or screened from public view. No Lot shall be used for the open storage of any materials whatsoever, except for materials used or to be used in the construction of improvements upon a Lot, and then only for so long as such construction progresses. Upon completion of the improvements, any remaining materials, together with all rubble, rubbish, trash and debris shall be promptly removed from such Lot.

3.25 Yard Landscaping. The front yard, side yards and rear yard of a Lot must be planted with grass and landscaped in a manner acceptable to the Committee before any dwelling constructed on the Lot may be occupied as a dwelling. The Committee has adopted, or will adopt, guidelines and minimum standards for landscaping, and such guidelines and minimum standards will be utilized by the Committee as the basis for approval (or disapproval) of landscaping plans. No gardens shall be constructed or maintained on any Lot unless approved in writing by the Committee. Further, no fountains or other yard decorations shall be constructed, installed or placed on any Lot without the prior approval of the Committee.

3.26 Screening. The Board may require that the following items must be screened from the view of the public and neighboring Lots and dwellings, if any of these items exist on the Lot: (a) satellite reception equipment; (b) yard maintenance equipment; (c) garbage cans and refuse containers; and (d) anything determined by the Board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. As used in this section, "screened from view" refers to the view of a person in a passenger vehicle driving on a street or alley, or the view of a person of average height standing in the middle of a yard of an adjoining lot.

3.27 Sprinkler Systems. Sprinkler or irrigation systems which draw upon water from lagoons, creeks, streams, rivers, ponds, Wetlands, canals, or other ground or surface waters within the Subdivision are prohibited, except that Declarant, its designees, and the Association shall have the right to draw water from such sources.

3.28 Exterior Lights and Decorations. A reasonable number of holiday and religious lights and decorations may be displayed on a Lot for up to 30 days prior to a publicly observed holiday or religious observance and up to 15 days thereafter without prior approval, subject to the right of the Association or Declarant to require removal or modification of any such lights and/or decorations which it deems to: (i) be excessive in number, size, or brightness, relative to other Lots in the area; (ii) draw excessive attention or traffic; (iii) unreasonably interfere with the use and enjoyment of neighboring properties; or (iv) cause a dangerous condition to exist. The Association shall have the right, upon five (5) days prior written notice, to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association and the individuals removing the lights and decorations shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence.

3.29 Flags. One United States flag and one State of Texas flag, each not exceeding 36" x 60" in size may be mounted on the exterior facade of the dwelling at a location approved by the Committee.

3.30 Conflict Between Declaration and Governmental Regulations. In the event of any conflict between the restrictions contained in this Article 3 and any applicable Governmental Regulations, then such Governmental Regulations shall control; except, however, that if the restrictions contained herein are in any respect more restrictive than such Governmental Regulations, then the restrictions contained herein shall control.

3.31 Dune Protection Zone. The Dune Protection Zone indicated on the Plat is protected by Governmental Regulations. It may not be trespassed on or altered in any manner, unless authorized in writing, by the appropriate Governmental Authority. No dune walkovers shall be constructed by any Lot Owner.

3.32 Firearms. No discharge of firearms shall be permitted in, on, or from, any part of the Subdivision. No owner, director, officer, employee or other representative of Declarant or the Association shall have any duty to exercise self-help or to become physically involved to prevent the discharge of a firearm.

3.33 Wildlife. No hunting, capturing, trapping or killing of wildlife within the Subdivision (other than by or on behalf of the Declarant, Association or Governmental Authority) shall be permitted. Permanent visible lighting visible from the beach which interferes with the nesting patterns of sea turtles is prohibited.

3.34 Environmental Protection. Any activities by persons other than Declarant or its designees which materially disturb or destroy the vegetation, wildlife, Wetlands, or air quality within the Subdivision, or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution are prohibited.

3.35 Water Use. Swimming, boating, use of personal flotation devices, or other active use of lagoons, ponds, streams, or other bodies of water within the Subdivision are prohibited, except those uses allowed in certain bodies of water as established by Declarant or the Association. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams, or other bodies of water within or adjacent to the Subdivision. The foregoing prohibitions apply to persons and animals, but do not apply to the Gulf of Mexico.

3.36 Infestation. No Owner shall permit or suffer the infestation of the Owner's Lot by pests, insects, rodents or other vermin. Failure to comply with the foregoing, or the failure to report such infestation to the Association as soon as the Owner is aware of same, will render such Owner liable for all costs and expenses incurred in having to eradicate such infestation.

3.37 Political Activities. Picketing, protest marches, sit-in demonstrations, protest speeches, or other forms of public protest or conduct, including, without limitation, displaying signs or placards on the Lot or any vehicle, apparatus or otherwise within public view in the Subdivision which tends to vilify, ridicule, denigrate, or impugn the character of Declarant, the Association, their respective officers, directors or employees, or any Owner are prohibited. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on such Owner's constitutional right of free speech.

3.38 Use of Reserves. Attached hereto as Exhibit A is a list identifying each Reserve and its intended use under Declarant's current development plan. Notwithstanding the use identified on Exhibit A, Declarant shall have the right, but not the obligation, exercisable from time to time during the Development Period at Declarant's discretion, to change the intended and/or actual use of any Reserve in the Subdivision, provided that such changed use is consistent with the single family residential purpose limitations set forth under Section 3.3. "Reserves" refers to the areas designated as reserves on the recorded Plat of the Subdivision.

3.39 Adjacent Land Use. Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Subdivision. Declarant and the Association cannot and do not guaranty the availability of schools or shopping, scenic views, noise levels, volumes of traffic on streets around and through the Subdivision, or any other aspect of the Subdivision that is affected by the uses or conditions of adjacent or nearby land, water or air.

ARTICLE 4 THE ASSOCIATION

4.1 Governance. The affairs of the Association shall be administered and managed by its Board of Directors in accordance with this Declaration and its Governing Documents. Any act or decision of the Association may be made by or at the direction of a majority of its Directors. The Board may designate the performance of certain functions to one or more persons, entities, committees and/or managers of the Association. The Board may authorize such designees to be paid reasonable compensation for the services rendered.

4.2 Directors. "Director" means a member of the Association's Board of Directors. Declarant shall have the right to appoint a majority of the Directors to the Association's Board of Directors until the expiration or termination of the Development Period. All Directors not so appointed shall be selected in the manner specified in the By-Laws.

4.3 Members. A "Member" means a member of the Association, each Member being an Owner of a Lot. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot. The Association shall have only one class of members.

4.4 Voting. Each Lot shall have only one membership and one indivisible vote in the Association, even though ownership of the Lot may be divided among two or more Owners. Cumulative voting shall not be permitted.

4.5 Notice and Quorum for Action by Members. Written notice of any meeting called for the purpose of taking any action of the Members shall be sent to all Members not less than 10 days or more than 60 days in advance of such meeting. If applicable, such notice shall state that the purpose (or one of the purposes) of the meeting is to vote upon a special assessment, specifying the purpose of the proposed special assessment. At the first such meeting called, the presence of Members, either in person or by proxy, entitled to cast 25% or more of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at such second meeting

shall be one-half (½) of the required quorum for the first meeting. No such second meeting shall be held more than 60 days after the first called meeting.

4.6 Conflict. In the event of an irreconcilable and incurable conflict between the terms and provision of this Declaration (including any Supplemental Declaration) and the terms and provisions of the Governing Documents of the Association, this Declaration shall control.

4.7 Indemnity. The Association indemnifies every officer, director, committee chair and committee member (each being an Indemnitee) against expenses, including attorney's fees, reasonably incurred by or imposed on the Indemnitee in connection with an action, suit, or proceeding to which the Indemnitee is a party by reason of being or having been an officer, director, committee chair or committee member. An Indemnitee shall not be liable for a mistake of judgment, negligent or otherwise. However, an Indemnitee shall be liable for willful misfeasance, malfeasance, misconduct or bad faith. This right to indemnification does not exclude any other rights to which Indemnitees may be entitled. The Association may maintain general liability and directors and officers liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

ARTICLE 5 ASSESSMENTS

5.1 Lien and Personal Obligation. Declarant, for each Lot owned by it in the Subdivision, hereby covenants, and each Owner of a Lot in the Subdivision by acceptance of a deed to such Lot, is hereby deemed to covenant (whether or not it shall be so expressed in such deed), to pay to the Association (i) regular assessments, (ii) special assessments for capital improvements, and (iii) additional Lot assessments. Such assessments shall be established and collected in the manner hereinafter provided. The regular assessments, special assessments for capital improvements, and additional Lot assessments, together with interest, costs and reasonable attorney's fees thereon, shall be a charge upon the land and a continuing lien on each Lot against which an assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees thereon, shall also be the personal obligation of the Person or Persons who owned the Lot at the time the assessment became due, but such personal obligation shall not pass to the successors in title unless expressly assumed by them. Declarant hereby reserves and assigns to the Association, without recourse, a vendor's lien on each Lot (including all improvements

now or hereafter constructed, erected or developed thereon) to secure the payment of all assessments levied on such Lot pursuant to this Article 5, together with interest, costs and reasonable attorney's fees thereon.

5.2 Purpose of Regular Assessments. The regular assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Subdivision and for the performance of the Association's maintenance obligations hereunder. The regular assessments shall be used to pay, and the Association shall acquire and pay for out of the funds derived from the regular assessments, the following:

- (a) costs of maintaining and repairing the Common Area and any and all improvements now or hereafter constructed, erected or installed thereon;
- (b) costs of maintaining, repairing and operating all Subdivision amenities, including, without limitation, the Beach Club;
- (c) costs of maintaining, repairing and operating the gated entries constructed or installed, or to be constructed or installed, near the intersections of Birdsall Boulevard West and Birdsall Boulevard East with Texas State Highway 87;
- (d) costs of maintaining, repairing and operating the Private Streets;
- (e) costs of maintaining, repairing and operating the Reserves indicated on the Plat, and all improvements and landscaping located within the Reserves;
- (f) costs of maintaining and repairing any improvements located within the 6' Dune Walkover areas indicated on the Plat;
- (g) costs of maintaining, repairing and operating any improvements owned by the Associated located in any easements that benefit the Association, including, without limitation, any sidewalks and any sanitary sewer lift station for which the Association may be responsible;
- (h) costs of maintaining, repairing and operating the Subdivision identification sign(s), including any lighting and landscaping therefor, constructed or installed, or to be constructed or installed, on any Common Area;
- (i) costs of landscaping, mowing, edging and maintaining the Common Area;

- (j) taxes and assessments levied by any taxing authorities on the Common Area (and any improvements thereon) and the premium cost of maintaining (i) fire and extended coverage insurance on any insurable improvements on the Common Area, together with any equipment, fixtures or other personal property of the Association, and (ii) if determined by its Board of Directors to be prudent or necessary for the protection of the Association and its Members, liability insurance in favor of the Association, including premises liability coverage on the Common Area, all with such limits and deductibles as the Board of Directors shall determine from time to time;
- (k) costs of Utility Services for the Common Area;
- (l) any expenses which the Association is required to incur or pay pursuant to the terms of this Declaration (or any Supplemental Declaration) or the Association's By-Laws, or which shall be necessary or proper in the opinion of the Board of Directors for (i) the administration of the affairs of the Association, (ii) the performance of the duties of the Association, or (iii) the enforcement of the provisions of this Declaration, the Association's By-Laws or any rules and regulations of the Association; and
- (m) any other costs or expenses which are determined by a vote of the Association Members, from time to time, to be a common expense of the Association.

5.3 Power to Fix and Reject Regular Assessments. The power and authority to fix and levy the regular assessments shall rest exclusively with the Board of Directors and when the same are determined and fixed by the Board except as herein provided, same shall be final, conclusive and binding upon each Owner, his heirs, legal representatives, successors and assigns, including contract purchasers. If requested in writing by at least 10% of all Owners, a membership vote may be called to reject or accept the regular assessment. Upon the affirmative vote of Owners (including Declarant) representing 75% of the Lots (in number), the regular assessment shall be rejected and the Board shall promptly establish a revised regular assessment.

5.4 Special Assessments for Capital Improvements. In addition to the regular assessments authorized and provided for above, the Association may fix and levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying the costs of construction, reconstruction, repair or replacement of any capital improvement on the Common Area. Any such special assessment, before

becoming effective and a binding obligation of the Owners, must be approved by a two-thirds ($\frac{2}{3}$) vote of each class of Members who are voting, either in person or by proxy, at a meeting duly called for that purpose.

5.5 Uniform Rate of Assessment. Regular assessments and special assessments for capital improvements (but not the additional Lot assessments provided for later herein) must be fixed at a uniform rate for all Lots in the Subdivision.

5.6 Collection of Assessments. The regular assessments shall be collected by the Association on a quarterly basis. Special assessments for capital improvements shall be collected on such basis as shall be determined by the vote of the membership in approving the establishment and levy of such special assessments.

5.7 Establishment and Notice of Regular Assessment. At the organizational or any subsequent meeting of the Board of Directors, the regular assessment for the first calendar year shall be fixed and established by the Board and written notice thereof (including the basis upon which such regular assessment is to be collected) shall be forthwith given to each Owner subject thereto. The first such regular assessment shall be adjusted according to the number of months remaining in the annual (calendar year) assessment period. Thereafter, not less than 30 days prior to the commencement of each calendar year assessment period, the Board of Directors shall fix and establish the regular assessment for the ensuing assessment year and shall give written notice thereof (including the basis upon which such regular assessment is to be collected) to every Owner subject to such regular assessment. Upon a Person becoming the Owner of a Lot in the Subdivision (and upon notification of such fact given to the Board of Directors), it shall be the duty of the Board of Directors to notify such new Owner of the regular assessment charged upon his Lot (in the same manner as notice is given to those Owners owning Lots as of the commencement of any annual assessment period). The failure of the Board of Directors to give written notice to any Owner, as herein required, shall not in any manner exempt or relieve such Owner from his obligation to pay the regular assessment on his Lot, or exempt his Lot from the assessment lien provided for herein, but such Owner shall not be in default for failure to pay his regular assessment (on the due date or dates thereof) until notice of such regular assessment is given to such Owner in the manner herein provided. Each Owner (including Declarant) covenants and agrees to give written notice to the Board of Directors upon the sale or transfer by such Owner of his Lot, including the name and mailing address of the Lot purchaser(s) and the date upon which the sale or transfer was or will be effected.

5.8 [Intentionally Deleted].

5.9 Date of Commencement of Regular Assessments. The regular assessments provided for in this Article shall commence as to each Lot on the first (1st) day of the calendar month next following:

- (a) recordation of this Declaration, with respect to Declarant-owned Lots and Lots having a conveyance recorded on a date prior to the recordation date of this Declaration; or
- (b) recordation of the conveyance of a Lot by Declarant to an Owner, with respect to Lots having a conveyance recorded on or after the recordation date of this Declaration.

5.10 Certification of Payment of Assessments. Within 10 days after the date a written request for Subdivision information is received from an Owner, an Owner's agent, or a title insurance company or its agent acting on behalf of an Owner, the Association shall deliver to the Owner, the Owner's agent, or the title insurance company or its agent, (i) a current copy of the Declaration applying to the Subdivision, (ii) a current copy of the By-Laws and rules of the Association, and (iii) a resale certificate that complies with Tex. Prop. Code Ann. §207.003(b). A properly executed resale certificate shall be conclusive and binding upon the Association as of the date thereof. The Association may establish and collect a reasonable charge to assemble, copy and deliver the information required by Tex. Prop. Code Ann. §207.003.

5.11 Nonpayment of Assessments.

- (a) Any assessment (of whatever kind or character, whether a regular assessment, special assessment for capital improvements, or additional Lot assessment) not paid within 10 days of the due date thereof shall be delinquent. Any delinquent assessment shall bear interest from the due date thereof at the rate of 18% per annum. All unpaid assessments, together with interest thereon as provided above, shall constitute a lien upon the Lot (together with all improvements thereon) against which the unpaid assessments were levied by the Association. To evidence such lien, the Association may, but is not required to, prepare and file for record in the office of the County Clerk of Galveston County, Texas, a written notice, signed by an officer of the Association, setting forth the amount of the unpaid assessments, the name of the Lot Owner, and a description of the Lot upon which such assessments are unpaid.
- (b) The Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien upon such Lot in the manner hereinafter provided. No Owner may exempt himself or otherwise escape liability for the assessments herein provided by

abandoning his Lot, his use of the Common Area, or in any other manner. Suit to recover a money judgment against a defaulting Owner shall be maintainable without foreclosing or waiving the lien securing the assessments owing by such defaulting Owner.

- (c) The assessment lien may be enforced by the Association by judicial proceedings or non-judicial proceedings (pursuant to the provisions of Section 5.12) to foreclose the lien on the defaulting Owner's Lot (including all improvements thereon) in like manner as a mortgage with a power of sale on real property upon the recording of a notice of lien as provided in subsection (a) above. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including (in the case of a non-judicial foreclosure) a reasonable trustee's fee not to exceed five percent (5%) of the gross sales proceeds, together with the costs of preparing and filing the notice of lien, and all other expenses of foreclosure, including reasonable attorney's fees. The Association shall have the power to bid on the Lot at foreclosure sale (whether judicial or non-judicial) and to acquire and hold, lease, mortgage or convey the same.

5.12 Nonjudicial Foreclosure. To secure and enforce the payment of all assessments provided for in this Article 5, together with all interest accrued or accruing thereon and attorney's fees and other costs reasonably incurred by the Association in collecting the same, and for the auxiliary and cumulative enforcement of said lien, and in consideration of the sum of \$1.00 to Declarant in hand paid by the Trustee hereinafter named, and for the further consideration of the uses, purposes and trusts hereinafter set forth, Declarant has granted, sold, and conveyed, and by these presents does grant, sell, and convey unto Taylor V. Cooksey, Trustee, of Harris County, Texas, whose mailing address is 6363 Woodway, Suite 610, Houston, Texas 77057, and any substitute or successor trustee appointed hereunder, each of the Lots in the Subdivision, to have and to hold the said Lots unto the said Trustee, and to his substitutes or successors forever. Declarant does hereby bind itself, its successors and assigns, to warrant and forever defend the Lots unto the said Trustee, his substitutes, successors and assigns forever, against the claim or claims of all persons claiming or to claim the same, or any part thereof, subject to any superior liens, for and upon the following trusts, terms, covenants, and agreements, to-wit:

- (a) This conveyance, however, is made in trust to secure the payment of all assessments provided for in this Declaration (whether now owed or hereafter ever accruing to the Association). Should Declarant, its successors and assigns, make full payment of the assessments hereby secured as the same shall become due and payable, then this

conveyance shall become null and void and of no further force and effect.

- (b) In the event, however, of default in the payment of any assessment hereby secured, in accordance with the terms of this Declaration, it shall thereupon, or at any time thereafter, be the duty of the Trustee or his successor or substitute, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust against the Lot against which the assessment is due and owing in the manner provided in TEX. PROP. CODE ANN. §51.002, as then amended, and, after giving notice and advertising the sale as provided in said Property Code Section 51.002 (but without any other action than is required by said Property Code Section 51.002 as then amended) and otherwise complying with that statute, the Trustee shall sell the Lot (including any improvements thereon) at public sale as provided in said Property Code Section 51.002 and make due conveyance to the purchaser or purchasers thereof, with covenants of general warranty binding upon the then Owner of such Lot and such Owner's heirs, executors, administrators and successors.
- (c) Out of the money arising from such sale, the Trustee acting shall first pay all expenses of advertising said sale and making the conveyance (including a reasonable Trustee's fee not to exceed five percent (5%) of the gross sales proceeds), and then to the Association the full amount of assessments owing, together with interest thereon and reasonable attorney's fees, rendering the balance of the sale price, if any, to the Owner of said Lot prior to such sale, his heirs or assigns, or to such other Person as may be legally entitled thereto. The recitals in the conveyance to the purchaser or purchasers of such Lot shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner of such Lot prior to such sale, his heirs, executors, administrators, successors and assigns.
- (d) It is agreed that in the event foreclosure should be commenced by the Trustee, or his substitute or successor, the Association, as beneficiary hereunder, may at any time before the sale of the Lot direct the abandonment of the sale and may then institute suit for the collection of the assessments, interest and collection costs then owing to the Association and, at the election of the Association, for judicial foreclosure of the assessment lien. It is further agreed that if the Association should institute suit for collection of the assessments and for judicial foreclosure of the assessment lien, the Association may, at any time prior to the

entry of a final judgment in said suit, dismiss the same and require the Trustee, or his substitute or successor, to sell the Lot against which the assessment is then owing in accordance with the provisions of this Section 5.12.

- (e) In case of the absence, resignation, death, inability, failure or refusal of the Trustee herein named or of any substitute trustee appointed hereunder to act, or in the event that the Association shall deem it desirable to remove with or without cause the Trustee or any substitute trustee and appoint another to execute this trust, then in any of such events, the Association shall have the right and is hereby authorized and empowered to appoint a successor and substitute without any formality other than an appointment and designation in writing, and this appointment shall vest in him, as substitute or successor trustee, the estate and title in and to all said Lots, and he shall thereupon hold, possess, and execute all the rights, title, powers and duties herein conferred upon the Trustee named herein. The right to appoint a successor or substitute trustee shall exist as often and whenever from any of said causes any trustee, original or substitute, cannot or will not act, resigns, or has been removed with or without cause.
- (f) The exercise or attempted exercise of the power of sale herein contained shall not exhaust the power of sale and shall not prevent and subsequent exercise thereof.
- (g) The Association, as beneficiary hereunder, if it is the highest bidder, shall have the right to purchase at any sale of a Lot pursuant hereto and to have the amount for which such Lot is sold credited against the indebtedness then owing on such Lot to the Association.
- (h) It is specially agreed that in the event of a foreclosure under the powers granted herein, the person in possession of the Lot sold shall thereupon become a tenant at will of the purchaser or purchasers at the foreclosure sale. Should such tenant then refuse to surrender possession of the Lot upon demand, the purchaser or purchasers shall be entitled to institute and maintain a statutory action for forcible detainer of said Lot in the justice of the peace court for the justice precinct in which the Lot is situated. The bringing of an action for forcible detainer shall not preclude the bringing of any other action for the possession of said Lot, and the bringing of one character of action shall not preclude the other and same may be exercised separately or simultaneously.

5.13 Subordination of Assessment Lien to Mortgages. The assessment lien provided for in this Article 5 shall be and remain subordinate to the lien of any perfected First Mortgage. A "First Mortgage" is defined as (i) a Mortgage which has first and paramount priority under applicable law, (ii) a Mortgage securing an "equity loan" pursuant to §50(a)(6) of Article XVI of the Texas Constitution, or (iii) a Mortgage securing a "reverse mortgage" pursuant to §50(a)(7) of Article XVI of the Texas Constitution. A sale or transfer of a Lot shall not affect the assessment lien thereon. However, the sale of a Lot pursuant to the foreclosure of a First Mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to unpaid charges which accrued prior to such foreclosure sale or transfer in lieu thereof. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due and payable or from the lien thereof. The holder of any First Mortgage shall be entitled, upon written request made to the Association, to written notification from the Association of any default by such holder's mortgagor (or grantor under a Deed of Trust or Trust Deed) in any obligation under this Declaration or the By-Laws of the Association which is not cured within 60 days from the date upon which such default occurred. Any Mortgagee holding a First Mortgage on a Lot may pay any unpaid assessment payable with respect to such Lot, and upon such payment such Mortgagee shall have a lien on such Lot for the amounts paid to the Association of the same rank as the lien of its Mortgage.

5.14 Additional Lot Assessments. Separately and apart from the regular assessments and special assessments provided for above in this Article, the Board of Directors shall have the right to make a special assessment against any Lot Owner and his Lot for the costs incurred by the Association in:

- (a) making any repairs or replacements, or in performing any maintenance which an Owner, although otherwise obligated to make or perform under this Declaration, fails to make or perform within 30 days after the Association has given such Owner written notice specifying the repairs or replacements to be made or maintenance to be performed by the Owner;
- (b) performing any lawn mowing or lawn maintenance which an Owner, although otherwise obligated to perform under this Declaration, fails to perform within five (5) days after the Association has given such Owner written notice specifying the lawn mowing or other lawn maintenance to be performed by the Owner; or
- (c) enforcing compliance by an Owner with any covenants, limitations, prohibitions or restrictions contained in this Declaration or the By-Laws of the Association or any rules or regulations adopted by the Association, where any such non-compliance continues for more than 10 days after

the Association has given such Owner written notice specifying such non-compliance;

- (d) plus an administrative charge equal to the greater of (i) 25% of the costs incurred by the Association in performing the obligations of the non-performing Owner or in enforcing compliance by the non-complying Owner, or (ii) the sum of \$100.00.

5.15 Levy and Collection of Additional Lot Assessments. Any additional Lot assessment pursuant to Section 5.14 shall be fixed and levied by the Board of Directors, and written notice thereof shall be given to the Owner of the Lot against which assessment is made. Such notice shall specify the nature and amount of the additional Lot assessment and the date upon which the same shall be due and payable (which due date shall be not less than 10 days from the date of such notice). Collection of any such additional Lot assessment shall be made in the same manner as the regular assessments provided for herein, and a lien therefor shall exist in favor of the Association upon the Lot (together with the improvements thereon) of the Owner against whom the assessment is made.

5.16 Acceptance of Lot Subject to Lien. Each Owner, by acceptance of a deed to a Lot, (i) accepts such Lot subject to and encumbered with the assessment lien (with power-of sale) set forth in this Article 5, (ii) grants and confirms to the Association a contractual lien upon his Lot (together with all improvements thereon) to secure all assessments then or thereafter made against such Lot, and (iii) expressly vests in the Association or its agents the right and power to bring all actions against such defaulting Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for foreclosure and enforcement of such lien, including, without limitation, non-judicial foreclosure pursuant to the provisions of this Article 5.

5.17 Books and Records. Proper books and records shall be kept by the Association with respect to all assessments made by the Association, and each Owner shall at all reasonable times have access to such books and records. The books and records shall be kept in such a manner as to separately identify the assessments and payments thereof on each Lot in the Subdivision. No payment made on any individual assessment account shall be transferred or credited to another account without the express written consent of the party making such payment.

ARTICLE 6 ARCHITECTURAL CONTROL

6.1 General. Except for work done by or on behalf of Declarant or its Affiliate, no building, fence, wall, screening device, patio, patio enclosure, swimming

pool, spa, tennis court, driveway, sidewalk or other improvements (of whatever kind or description) shall be commenced, constructed, erected, placed or reconstructed on any Lot in the Subdivision; nor shall any exterior addition to or change or alteration of any structure or improvement on any Lot in the Subdivision be commenced or made, nor shall any exterior repainting or re-roofing involving any change in the exterior color scheme be commenced or performed, except in compliance with this Article and any Architectural Guidelines, and until two (2) complete sets of plans and specifications therefor (collectively the "Plans") have been submitted to and approved by the Architectural Control Committee (the "Committee") showing:

- (a) exterior elevations;
- (b) exterior materials and colors;
- (c) structural design;
- (d) a topographical map showing existing contour grades and showing the location of all proposed improvements. Existing and finished grades shall be shown at lot corners. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the lot contours is contemplated;
- (e) landscaping plan, including walkways, fences, and walls, elevation changes, watering systems, lighting, vegetation and ground cover;
- (f) decks and porches;
- (g) parking area, driveway and sidewalk plan;
- (h) screening, including size, location and method;
- (i) design and materials for construction of interconnect (including the size and type of any culvert or related facility) between driveways and any walkway or street; and
- (j) exterior illumination, if any, including location and method.

Any Owner may remodel, paint or redecorate the interior of any structure on such Owner's Lot without approval hereunder. However, modifications to the interior of screened porches, patios and any other portions of a Lot or structure visible from outside a structure are subject to approval under this Article. All aspects of a visible yard are within the purview of the Committee.

Improvements shall be constructed only by qualified Persons acceptable to the Committee as set forth in Section 6.7. Owners shall be responsible for obtaining all permits and approvals from all applicable Governmental Authorities and ensuring compliance with such permits/approvals, including, without limitation, stormwater management requirements. Neither Declarant nor any Affiliate of Declarant has made any representations ensuring or guaranteeing the availability of such permits or approvals.

This Article 6 does not apply to the Association's activities, nor to Declarant's, or its Affiliates' activities, during the Development Period, nor to improvements made by the Declarant or the Association in any Common Area.

This Article 6 establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Subdivision. The Committee is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other Governmental Regulations, or for ensuring that every dwelling is of comparable quality, value, size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners. All Lots may be affected by flooding due to the occurrence of tropical storms and hurricanes. Therefore, these conditions may necessitate the use of special construction techniques to build on or use Lots. Owners are encouraged to seek professional advice and assistance prior to the design and commencement of construction on any Lot, including, without limitation, testing of soils.

6.2 Architectural Review Committee. The Committee shall consist of one or more Persons and shall have exclusive authority to administer and enforce architectural controls and to review and act upon all Plans for improvements within the Subdivision. Members of the Committee need not be members of the Association or representatives of Members and may, but need not, include architects, landscape architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Committee may establish. Until termination of the Development Period, unless Declarant earlier terminates its rights in a recorded instrument, Declarant retains the right to appoint all members of the Committee, who shall serve at Declarant's discretion. In reviewing and acting upon any Plans, Committee members appointed by Declarant act solely in Declarant's interest and owe no duty to any other Person. There shall be no surrender of this right prior to expiration of the Development Period, except in a written instrument in recordable form executed by Declarant. Upon the expiration, termination or surrender of such right, the Board shall appoint the members of the Committee, who shall thereafter serve and may be removed in the Board's discretion.

Declarant or the Committee may, from time to time, delegate or assign all or any portion of its rights under this Article to any other Person or committee. Any such

delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) the right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) the right to veto any decision which the delegator determines, in the delegator's discretion, to be inappropriate or inadvisable for any reason. The jurisdiction of any other entities shall be limited to such matters as may be specifically delegated. Unless and until such time as Declarant or the Committee delegates any of its reserved rights to the Association or Declarant's rights under this Article terminate, the Association shall have no power over matters governed by this Article.

6.3 Fees. The Committee may establish and charge reasonable fees for its review of Plans and may require that such fees be paid in advance by the Lot Owner. Such fees may include, without limitation, the reasonable costs incurred in having any Plans reviewed by architects, landscape architects, engineers or other professionals the Committee employs or with whom it contracts. The Board may include additional compensation of such Persons in the Association's annual operating budget to fund services provided to the Association which are not included in the aforementioned fees.

6.4 Architectural Guidelines. Declarant may prepare and make available the initial Architectural Guidelines, which may contain general provisions applicable to all of the Subdivision as well as specific provisions that may vary according to, among other factors, location within the Subdivision, proximity to or visibility from the beach, product type or intended use. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Committee. The Architectural Guidelines are not the exclusive basis for the Committee's decisions and compliance with the Architectural Guidelines does not guarantee approval of Plans.

If the same exist, Declarant shall have sole and absolute and full authority to amend the Architectural Guidelines, from time to time, during the Development Period. Declarant's right to amend shall continue even if its reviewing authority is delegated to the Committee, unless Declarant also delegates the power to amend to the Committee. Upon termination or delegation to the Committee of Declarant's right to amend, the Board may amend the Architectural Guidelines, subject to Declarant's veto right under Section 6.2 (if still applicable).

If the same exist, amendments to the Architectural Guidelines shall be prospective only. They shall not require modifications to or removal of structures, improvements, and other things previously approved, once the approved construction or modification has begun. However, any new work or improvements must comply with the Architectural Guidelines as amended.

6.5 Procedures. In reviewing Plans, the Committee may consider any factors it deems relevant, including without limitation, harmony of the proposed design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Committee shall have the discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with required procedures, if any.

The Committee shall make a determination within 30 days after receipt of Plans and all other information the Committee requires. The Committee may permit or require that an application for approval be submitted or considered in stages, in which case, a final decision shall not be required until 30 days after the final, required submission stage. The Committee may (i) approve the Plans, with or without conditions, (ii) approve a portion of the Plans, with or without conditions, and disapprove other portions, or (iii) disapprove the Plans. The Committee shall notify the applicant in writing of a final determination.

After the initial 30 day period has elapsed, if the Owner has not received notice of the Committee's determination, the Owner may make a second written request for approval of the Plans previously submitted which shall be marked "Second Request." If the Committee fails to respond within seven (7) Business Days from receipt of the Second Request, approval shall be deemed given. However, no approval (or improvement governed by such approval), whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines, unless a written variance has been granted pursuant to Section 6.9.

Notwithstanding anything to the contrary in this Declaration or the By-Laws, Owners shall send any such Second Request *via* (i) the U.S. Postal Service by certified mail, return receipt requested, (ii) by messenger delivery that obtains a signed receipt upon delivery, or (iii) by commercial overnight carrier that obtains a signed receipt upon delivery. A Second Request shall be deemed made, and the seven (7) business day time period shall commence running, on the date of the Committee's actual receipt of the Second Request, as evidenced by its signature on the return receipt provided by the U.S. Postal Service or in the records of the messenger or overnight carrier, as applicable.

As part of any approval, the Committee may require that construction, landscaping and other approved activities in accordance with approved Plans commence and be completed within a specified time period. If such actions do not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities within the scope of this Article. Once

commenced, such activities must be diligently pursued to completion. All elements of the approved activities and/or Plans shall be completed within the time period specified in the Architectural Guidelines unless the Committee, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless written approval to modify any application has been obtained.

Declarant or the Committee, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

6.6 Delinquent Assessments and Other Charges. Notwithstanding the provisions of Section 6.5 above, any Plans submitted for approval pursuant to this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid by the Owner submitting such Plans for approval. Subsequent to the approval of Plans pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in the Governing Documents.

6.7 Builder and Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Subdivision, all builders and contractors must be approved by the Committee prior to engaging in any construction activities within the Subdivision. The Committee may implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of any Plans may be withheld until such time as the Owner's builder or contractor has been approved by the Committee. Approval of a builder or contractor may be conditioned upon an agreement with the Committee to maintain certain insurance coverages required by the Committee, pay construction deposits to ensure completion of a project without damage to the Subdivision, and pay fees established by the Committee, from time to time. Both the criteria and the application form are subject to change in the sole discretion of the Committee. Approval of builders and contractors may not be construed as a recommendation of a specific builder or contractor by the Committee, Declarant or any Affiliate of Declarant, nor a guarantee or endorsement of the work of such builder or contractor. The criteria and requirements established by the Committee for approval of builders and contractors are solely for Declarant's, Declarant's Affiliates' and the Committee's

protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved builder or contractor. Owner's selection of a builder or contractor shall be (i) at Owner's sole risk and (ii) conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such builder or contractor.

6.8 No Waiver of Future Approvals. Each Owner acknowledges that the Committee members reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines may vary accordingly. In addition, each Owner acknowledges that it may not always be feasible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. However, the Committee may refuse to approve similar proposals in the future. Approval of applications or Plans shall not constitute a waiver of the Committee's right to withhold approval of similar Plans or other matters subsequently or additionally submitted for approval.

6.9 Variances. The Committee may authorize variances from compliance with the Architectural Guidelines and any procedures when unique circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require or permit. No variance shall (i) be effective unless in writing, (ii) be contrary to other Articles of this Declaration, or (iii) prevent the Committee from denying a variance in other circumstances. A variance requires Declarant's written consent during the Development Period.

6.10 Release of Liability.

(a) **Plan Approval, Disapproval and Modification.** Pursuant to Sections 6.10(d)-(g), each Owner (as Indemnitor) releases, indemnifies and agrees to hold harmless Declarant, Declarant's Affiliates, the Association and the Committee (collectively as Indemnitees) from any and all claims arising from or related to the Committee's treatment of such Owner's Plans under Section 6.5, including without limitation:

- (1) the Committee's failure or refusal to review the Plans;
- (2) the Committee's approval (whether complete or partial) of the Plans (either with or without conditions);
- (3) the Committee's disapproval (whether complete or partial) of the Plans (either with or without conditions);

- (4) the Committee's suggestions to cure objections to the Plans;
 - (5) the Committee's failure to make suggestions to cure objections to the Plans; and
 - (6) any combination of the foregoing subsections (1)-(5).
- (b) Builder and Contractor Approval. Pursuant to Sections 6.10(d)-(g), each Owner (as Indemnitor) releases, indemnifies and agrees to hold harmless Declarant, Declarant's Affiliates, the Association and the Committee (collectively as Indemnitees) from any and all claims arising from or related to the Committee's approval or disapproval of any builder or contractor under Section 6.7.
- (c) Use of the Plans and Construction. Pursuant to Sections 6.10(d)-(g), each Owner (as Indemnitor) releases, indemnifies and agrees to hold harmless Declarant, Declarant's Affiliates, the Association and the Committee (collectively as Indemnitees) from any and all claims arising from or related to:
- (1) the Committee's use of the Plans, including claims of actual or alleged copyright infringement by a holder of a copyright on the Plans; and
 - (2) Owner's use of the Plans (including any suggestions made by the Committee to cure objections to the Plans) in constructing, repairing, maintaining or replacing any improvements on a Lot.
- (d) Waiver. INDEMNITOR DOES HEREBY UNCONDITIONALLY WAIVE ANY AND ALL CLAIMS AGAINST INDEMNITEE ARISING UNDER SECTIONS 6.10(a)-(c) OF THIS DECLARATION.
- (e) Release. INDEMNITOR DOES HEREBY UNCONDITIONALLY RELEASE INDEMNITEE FROM ANY AND ALL CLAIMS ARISING UNDER SECTIONS 6.10(a)-(c) OF THIS DECLARATION.
- (f) Indemnity. INDEMNITOR DOES HEREBY UNCONDITIONALLY AGREE TO INDEMNIFY AND HOLD INDEMNITEE HARMLESS FROM ANY AND ALL CLAIMS ARISING UNDER SECTIONS 6.10(a)-(c) OF THIS DECLARATION.
- (g) Negligence. INDEMNITOR DOES HEREBY UNCONDITIONALLY AGREE THAT THE WAIVERS, RELEASES AND INDEMNITIES

ARISING UNDER THE FOREGOING SECTIONS 6.10(a)-(c) OF THIS DECLARATION ARE VALID AND ENFORCEABLE, NOTWITHSTANDING ANY NEGLIGENCE OF INDEMNITEE. HOWEVER, INDEMNITOR SHALL NOT BE REQUIRED TO PAY THAT PORTION OF ANY CLAIM FOR WHICH RESPONSIBILITY OR FAULT HAS BEEN JUDICIALLY APPORTIONED TO INDEMNITEE. JUDICIAL APPORTIONMENT INCLUDES, WITHOUT LIMITATION, AN ARBITRATION AWARD.

6.11 Enforcement. Any construction, alteration, improvement or other work done in violation of this Article or the Architectural Guidelines is subject to enforcement action pursuant to Article 8, which actions may be taken by the Association, Declarant, or the Committee. Any act of any contractor, subcontractor, agent, employee or invitee of an Owner shall be deemed to be an act done by or on behalf of such Owner.

ARTICLE 7 MAINTENANCE AND REPAIR

7.1 Owner's Obligation to Maintain and Repair. Each Owner, at his sole cost and expense, shall perform such maintenance and make such repairs and replacements to his dwelling and all other buildings, structures, installations and improvements (including front and side yard privacy fences) located upon his Lot, as shall be required to keep his dwelling and all such other buildings, structures, installations and improvements in substantially the same condition as at the completion of the original construction thereof, excepting only ordinary wear and tear. Additionally, except where an obligation for maintenance has been imposed by this Declaration on the Association or has been assumed by the Association, each Owner, at his sole cost and expense shall (i) regularly mow and maintain his yard, including all landscaping thereon (whether planted by the Declarant, the Association or the Owner), and keep his yard in a neat and attractive condition, and (ii) maintain in good repair and condition all driveways serving his Lot, even though such driveways may be located partly within the street easement(s) for the Private Street(s) abutting his Lot. If any Owner fails to perform the maintenance or make the repairs required of such Owner hereunder, the Association, after giving such Owner written notice specifying the required maintenance or repairs, may perform such maintenance or make such repairs if the Owner does not, within the applicable time periods after notice specified in Section 5.14 above, perform the maintenance or make the repairs or replacements specified in such notice. The costs incurred by the Association in performing such maintenance or making such repairs or replacements (together with the administrative charge specified in Section 5.14(d) above) shall, at the election of the Board of Directors which authorized the maintenance, repairs or replacements, be the basis for levying an additional Lot assessment against such Owner and his Lot pursuant to the provisions of Section 5.14.

7.2 Owner's Obligation to Rebuild. If any dwelling or other improvement on any Lot in the Subdivision is damaged or destroyed by fire or other casualty, it shall be the duty and obligation of the Owner thereof to repair, restore or reconstruct such dwelling or other improvement to substantially the same condition as before such damage or destruction. Architectural Control Committee approval of the Plans for making such repairs, restoration or reconstruction must be obtained prior to commencement thereof. The Owner of such damaged or destroyed dwelling or other improvement shall commence such repairs, restoration or reconstruction within a reasonable period of time after the occurrence of such damage or destruction and thereafter prosecute the work of repair, restoration or reconstruction of such dwelling or other improvement with due diligence and shall complete such repairs, restoration or reconstruction within 18 months from the occurrence of such damage or destruction, subject only to delays occasioned by matters beyond the reasonable control of such Owner.

7.3 Maintenance by Association. It shall be the duty and obligation of the Association to:

- (a) maintain and repair the Common Area and any and all improvements now or hereafter constructed, erected or installed thereon;
- (b) maintain, repair and operate all Subdivision amenities, including, without limitation, the Beach Club;
- (c) maintain, repair and operate the gated entries constructed or installed, or to be constructed or installed, near the intersections of Birdsall Boulevard West and Birdsall Boulevard East with Texas State Highway 87;
- (d) maintain, repair and operate the Private Streets;
- (e) maintain, repair and operate the Reserves indicated on the Plat, and all improvements and landscaping located within the Reserves;
- (f) maintain and repair any improvements located within the 6' Dune Walkover areas indicated on the Plat;
- (g) maintain, repair and operate any improvements owned by the Association located in any easements that benefit the Association, including, without limitation, any sidewalks and any sanitary sewer lift station for which the Association may be responsible;

- (h) maintain, repair and operate the Subdivision identification sign(s), including any lighting and landscaping therefor, constructed or installed, or to be constructed or installed, on any Common Area;
- (i) landscape, mow, edge and maintain the Common Area;
- (j) perform any other maintenance and/or repairs as shall be determined, from time to time, by the Association's Board of Directors.

ARTICLE 8 ENFORCEMENT

8.1 Enforcement. In the event of any violation or breach, or attempted violation or breach, of any of the terms or provisions of this Declaration, Declarant (during the Development Period) and the Association (after the Development Period) shall be authorized to enforce the terms, covenants and restrictions hereof by any proceedings at law or in equity against the Person(s) violating or breaching, or attempting to violate or breach, the same, including actions for prohibitive or mandatory injunctive relief; and it shall not be a prerequisite to the granting of any such injunctive relief that there be any showing that irreparable damage or harm will result if such injunctive relief is not granted. Additionally, any Person entitled to enforce the terms, covenants or restrictions of this Declaration may recover such damages, both actual and punitive, as such party may show that he or it is entitled by reason of any such violation or breach. In any action for enforcement of the terms, covenants or restrictions hereof, whether for injunctive relief or damages, if the party prosecuting such action is successful, he or it shall be entitled to recover, in addition to any damages awarded, reasonable attorney's fees and all costs of court.

8.2 Forbearance Not a Waiver. The forbearance of enforcement of any restriction herein contained for any violation or proposed or attempted violation of any restriction herein contained shall not constitute a waiver of the right of Declarant or the Association to thereafter enforce such restriction as to any subsequent violation or proposed or attempted violation.

8.3 Time for Enforcement. Any action for enforcement of the restrictions or other covenants contained herein shall be commenced within one year after such violation, or attempted violation was actually discovered, or through the exercise of reasonable diligence should have been discovered, by the Declarant (during the Development Period) or the Association (after the Development Period).

**ARTICLE 9
EASEMENTS AND RESERVATIONS**

9.1 Owners' Easements of Enjoyment in Common Area. Each and every Owner of a Lot or Lots shall have a right and easement of use and enjoyment in and to the Common Area, subject, however, to the provisions, limitations and restrictions contained in this Declaration, the By-Laws of the Association and in any rules and regulations adopted by the Association, from time to time, relating to the use of the Common Area. Such right and easement shall be appurtenant to and pass with the title to every Lot, whether or not so stated in any deed or other instrument of conveyance or encumbrance affecting such Lot.

9.2 Platted Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage are shown and designated as such on the recorded Plat or Plats of the Subdivision. Except as provided in this Article 9, no Owner shall construct or erect any building or structure of a permanent nature within these easements, nor shall any structure, planting or other material be placed by an Owner, or permitted by an Owner to remain, in any such easements which may damage or interfere with the installation and maintenance of Utility Service or drainage in the easements. Easements for installation and maintenance of underground Utility Service and drainage may be crossed with sidewalks and driveways, provided that (i) there are prior arrangements made for such crossings with the Governmental Authority and the Utility Provider providing services therein, and (ii) neither the Declarant, the Association or any Governmental Authority or Utility Provider using such easements shall be liable for any damage done by them, or their respective agents, employees, representatives or contractors, to such sidewalks or driveways in the course of installing, repairing, maintaining, relocating or removing any Utility Service or drainage lines or other installations, or any appurtenances thereto, within any of such easements.

9.3 Blanket Utility Easement. There is hereby reserved on and across each Lot in the Subdivision a 10' wide blanket underground utility easement in favor of each Utility Provider for the purpose of installing, operating and maintaining Utility Service to the dwelling constructed on that Lot. The utility easements reserved herein include the right to remove all trees within the easements, as well as the right to trim overhanging trees or shrubs located on the Lot.

9.4 Other Blanket Easements. An easement over and upon every Lot in the Subdivision is hereby reserved by Declarant in favor of itself and the Association, and their respective representatives, agents, employees and contractors, to enter in and upon any Lot for the purpose of exercising any rights or performing any obligations herein granted to or imposed on the Declarant or the Association. Further, Declarant hereby grants the following blanket easements:

- (a) to all law enforcement, fire protection and emergency medical service agencies and personnel, an easement over each Lot in the Subdivision and the Private Streets in the Subdivision for the performance of their official duties;
- (b) to all Governmental Authorities and Utility providers having sewer or utility lines or services in the Subdivision, an easement over the Common Area for the purpose of accessing, maintaining, repairing, replacing or operating their respective lines and appurtenances constructed or installed in any utility or drainage easements shown on any recorded Plat or Plats of the Subdivision, or within the easements for the Private Streets in the Subdivision; and
- (c) to any Governmental Authority or Person providing trash collection services to the Lots pursuant to a contract with the Association, or with the Owners of the Lots themselves, an easement for ingress and egress purposes over the Private Streets in the Subdivision.

9.5 Sidewalk Easements.

- (a) Principal Streets. There is hereby reserved upon each Lot in the Subdivision which is bounded in the front by Avocet Avenue, Birdsall Boulevard East and Birdsall Boulevard West, a five foot (5') wide easement located next to those streets, for the purpose of installing and maintaining a sidewalk within such area. The sidewalk easement granted hereunder shall fall within and overlay the utility easement described in Sections 9.2 and 9.3, as applicable.
- (b) Other Streets. There is hereby reserved a five foot (5') wide easement within each side of the right-of-way of each Private Street within the Subdivision (except as to Avocet Avenue, Birdsall Boulevard East and Birdsall Boulevard West) for the purpose of installing and maintaining a sidewalk within such area.
- (c) General. The reservations of easements under this Section 9.5 shall not impose any duty on the Declarant or the Association to install any sidewalk. However, if any such sidewalk is installed, the easements hereby reserved are for the benefit of the Declarant and the Association (as to installation, maintenance, repair and use) and for the benefit of the Owners (as to use).

9.6 Express Easement for Encroachment. The Association, by a majority vote of each class of its Members, may grant an Owner an express easement for an inadvertent encroachment by such Owner's improvements onto the adjacent Common Area, provided that such Owner's improvements are otherwise constructed in accordance with this Declaration. The encroaching improvements for which an express easement of encroachment is granted pursuant to this Article 9 shall remain the property of the Owner of such improvements and shall be maintained by the Owner in accordance with the later provisions of this Declaration.

9.7 Mineral Reservations. Some or all of the Subdivision may be subject to a prior reservation or conveyance of oil, gas, or mineral rights, including but not limited to rights to all oil, gas, or other minerals lying on, in or under the Subdivision, as well as surface rights to ingress and egress. Such interests are superior and are not affected by this Declaration. By accepting a deed to a Lot, each Owner acknowledges the existence of the mineral rights and/or reservations referenced in this section and the attendant rights in favor of the owner or owners of such mineral interests.

ARTICLE 10 TERM AND AMENDMENT

10.1 Term of Covenants. The covenants and restrictions contained in this Declaration shall be binding for a period of thirty (30) years from the date of this Declaration. Upon the expiration of such thirty (30) year period, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless expressly amended or modified as provided herein.

10.2 Amendment or Termination. This Declaration may be amended, or the covenants and restrictions herein contained may be terminated, in whole or in part as follows.

- (a) For so long as Declarant and its Affiliates own 25% or more (in number) of the Lots in the Subdivision, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than a majority of the Lots in the Subdivision.
- (b) For so long as Declarant and its Affiliates own less than 25% (in number) of the Lots in the Subdivision, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than 66.67% of the Lots in the Subdivision.
- (c) Any amendment or termination under this Section 10.2 shall be duly recorded in the office of the County Clerk of Galveston County, Texas.

For the purposes of calculating the foregoing respective percentages of Lots in the Subdivision, there shall be taken into account not only the Lots in the Existing Property, but also any additional Lots located within Additional Property brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of Section 2.2 of this Declaration.

**ARTICLE 11
ADDITIONAL RIGHTS RESERVED BY DECLARANT**

11.1 Assignment of Rights Reserved to Declarant. The Declarant (or its successors) shall have the express right to assign, by written instrument executed by Declarant (or its successors) and filed for record in the office of the County Clerk of Galveston County, Texas, all or a portion of its rights as Declarant under this Declaration.

11.2 Commercial Use of Images. The Declarant shall have (i) the exclusive right to grant permission for the Common Area to be photographed, sketched, painted or otherwise reproduced for promotional, publishing, academic or commercial use (including without limitation its use as a background for the display of fashions or other goods), and (ii) the right to grant permission for similar reproduction of the exteriors of any other part of the Subdivision that can be viewed from any street or Common Area. Such exteriors may be reproduced without the consent of, or payment to, the Owner, but the right in clause (ii) is not intended to prevent any Owner from granting independent permission for any part of the Subdivision owned exclusively by that Owner, in which case the consent of the Declarant shall not be required.

The exercise of these rights shall not interfere with normal and customary rights of architects as to structures designed by them. The Declarant may collect a fee for its consent to the use of Common Area images, or for the providing of support services to photographers or others.

11.3 Change of Name. The Declarant shall have the right to change the name "Avocet" for all or any part of the property subject to this Declaration. Declarant may, but is not required to, amend this Declaration to reflect the name change.

11.4 Trademark. The Declarant reserves the right to trademark the name "Avocet" or other name of the Subdivision as a trade name owned by the Declarant, along with any graphic logo. An Owner may use the trademarked name to describe the location of his or her dwelling. All permissions must be in writing. If requested by the Declarant, the Owner shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name. An Owner may not use the trademarked name in any other manner without the express permission of the Declarant, which permission may be withheld at the sole discretion of Declarant.

ARTICLE 12 CONSTRUCTION REQUIREMENTS AND REPURCHASE RIGHT

12.1 Failure to Timely Commence Construction. Except as provided in Section 12.4, if an Owner fails to Commence Construction of a single family dwelling on any unimproved Lot within 24 months after the later to occur of (i) the date Owner acquired the unimproved lot or (ii) the date of substantial completion of Declarant's improvements in the phase of the Subdivision in which the Lot is located ("Commencement Period"), as extended for up to three (3) months if such failure to Commence Construction is beyond Owner's reasonable control (but Owner's failure to Commence Construction because of financial inability shall not be deemed to be beyond Owner's reasonable control), then Declarant shall have the option, by written notice to the Owner at any time after the end of the Commencement Period, to require the Owner to convey such Lot to Declarant or Declarant's designee pursuant to the terms and conditions of Section 12.3. "Commence Construction" or "Commences Construction" means the setting of the piers or pilings for a single family dwelling. Declarant shall maintain a record of the dates of substantial completion of Declarant's improvements for each phase of the Subdivision and such date(s) shall be provided to any Owner upon request.

12.2 Failure to Timely Complete Construction. Except as provided in Section 12.4, if Owner fails to Complete Construction on any unimproved Lot within 14 months from the date Owner Commences Construction ("Construction Period"), as extended for up to three (3) months if such failure to Commence Construction is beyond Owner's reasonable control (but Owner's failure to Commence Construction because of financial inability shall not be deemed to be beyond Owner's reasonable control), then Declarant shall have the option, by written notice to Owner at any time after the end of the Construction Period, to require Owner to convey such Lot and any improvements thereon to Declarant or Declarant's designee pursuant to the terms and conditions of Section 12.3. "Complete Construction" means the issuance of a certificate of occupancy by the applicable Governmental Authority.

12.3 Declarant's Right of Repurchase. In recognition of Declarant's need to control development of the Subdivision to advance its legitimate goal of encouraging the development of a single family dwelling on each Lot within the Subdivision, (i) upon Owner's failure to timely Commence Construction in accordance with Section 12.1, or (ii) upon Owner's failure to timely Complete Construction in accordance with Section 12.2 and (iii) upon written notice by Declarant as applicable under Sections 12.1 and/or 12.2 ("Repurchase Notice"), Declarant shall have the continuing option (but not the obligation) to reacquire one or more of the affected Lots ("Repurchase Option") from Owner by paying to Owner an amount ("Repurchase Price") equal to the lesser of fair market value established by appraisal as set forth below, or an amount equal to

the total of the following subsections with respect to the Lot being repurchased by Declarant pursuant to this Section 12.3 (whether one or more, the "Affected Lot"):

- (a) 100% of the purchase price paid to Declarant by the Owner for the Affected Lot;
- (b) the amounts actually spent by Owner for the construction and not the repair and/or maintenance of a single family dwelling on the Affected Lot, but only to the extent that such improvements were installed or constructed in accordance with the provisions of this Declaration;
- (c) all architectural and engineering fees actually incurred by Owner during its ownership of the Affected Lot, in connection with construction of a single family dwelling thereon, but only to the extent that such improvements were installed or constructed in accordance with the provisions of this Declaration, and in no event shall the architectural and/or engineering fees that are included in the Repurchase Price exceed 10% of the actual cost of constructing the improvements to which such fees pertain;
- (d) the connection, installation, impact, or tap fee and similar fees, if any, charged or imposed by a Utility Provider for establishing Utility Services to the Lot, but only to the extent actually paid by the Owner with respect to the Affected Lot;
- (e) The aggregate amount of all interest incurred by Owner (but not in excess of seven percent (7%) per annum) prior to Declarant's Repurchase Notice with respect to all amounts borrowed to fund the amounts referenced in subsections (a), (b) and (c) above; and
- (f) less (i) any amounts recovered by Owner from property insurance in the event of insured property damage; and (ii) any amounts paid to Owner in condemnation proceedings, including payments in lieu of condemnation.

Any appraisal under this Section 12.3 shall be conducted as provided by this paragraph. Each of the Declarant and the Owner of the Affected Lot may agree to use a single appraiser. If they so agree, such appraisal shall be conclusive as to the fair market value and Repurchase Price of the Affected Lot. If they cannot agree to use a single appraiser, each of the Declarant and the Owner of the Affected Lot shall appoint one independent appraiser, who acting jointly shall select a third appraiser. The fair market value of the Affected Lot determined by the three (3) appraisers shall be deemed the Repurchase Price for the Affected Lot. In the event that the three (3) appraisers do not agree, the Repurchase Price shall be the average of the two closest

appraisals. Declarant and the Owner of the Affected Lot each shall bear 50% of all fees and expenses incurred in connection with any such appraisals. The Repurchase Price determined by appraisal shall be final and conclusive as to all parties.

Upon payment of the Repurchase Price, title to each Affected Lot shall be conveyed to Declarant by Special Warranty Deed, free and clear of all liens and encumbrances other than those to which the original conveyance from Declarant to the Owner was subject and subsequent encumbrances created by or with the written consent of Declarant. Owner shall pay, or at Declarant's option, Declarant shall receive a credit against any sums that Declarant would otherwise pay to Owner in connection with the Repurchase Option, for any liens against the Affected Lot. In the event Owner shall have encumbered the Affected Lot, then in such event, at any time following Declarant's Repurchase Notice, Declarant shall give written notice thereof to the lien holder at the address to be furnished to Declarant, and provided Declarant has not acquired the lien pursuant to a right to do so or otherwise, such lien holder shall thereupon have a reasonable time within which to foreclose its lien, acquire title and possession of the Affected Lot, and comply with Owner's construction obligations in this Declaration. While such lien holder (if other than Declarant) is diligently attempting in good faith to accomplish the foregoing, Declarant shall not exercise the Repurchase Option.

12.4 Exemptions. The provisions of Sections 12.1 and 12.2 shall not apply to (i) any Lot while it is owned by Declarant or an Affiliate of Declarant, or (ii) Lots 369, 377, 378, 379, 380, 381, 382, 383 or 385.

ARTICLE 13 ARBITRATION

13.1 Arbitration. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY RECORDATION OF THIS DECLARATION AND BY SUCH OWNER'S ACCEPTANCE OF THE DEED TO HIS LOT, TO ABIDE BY THE FOLLOWING ARBITRATION PROVISIONS. FOR CLARITY, AS USED IN ARTICLE 13, THE PARTICIPANTS IN AN ARBITRATION PROCEEDING ARISING HEREUNDER SHALL BE REFERRED TO INDIVIDUALLY AS A "PARTY" AND COLLECTIVELY AS THE "PARTIES."

13.2 Broad Form Agreement To Arbitrate. ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG AN OWNER, THE DECLARANT AND/OR THE ASSOCIATION, ARISING OUT OF OR RELATING TO THIS DECLARATION, THE BY-LAWS, THE RULES AND REGULATIONS ADOPTED BY THE ASSOCIATION; THE BREACH OR VIOLATION THEREOF, OR RELATING DIRECTLY OR INDIRECTLY TO THE SUBDIVISION, A LOT, OR ANY COMMON AREA, OR THE PURCHASE OF A LOT, INCLUDING ANY AND ALL CLAIMS

AGAINST THE ASSOCIATION AND/OR THE DECLARANT AND/OR THEIR RESPECTIVE AGENTS, PARTNERS, SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIALMEN OR SUPPLIERS, SHALL BE SETTLED BY BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT, 9 U.S.C., § 1, *ET SEQ.* THE PARTIES ACKNOWLEDGE AND AGREE THAT THE SALE OF THE LOT AND THE OPERATION OF THE SUBDIVISION MATERIALLY INVOLVES AND AFFECTS INTERSTATE COMMERCE.

13.3 Waiver Of Jury Trial. DECLARANT, THE ASSOCIATION, AND EACH OWNER HEREBY EXPRESSLY ACKNOWLEDGE THAT BY THEIR ACCEPTANCE OF THESE ARBITRATION PROVISIONS, EACH WAIVES VALUABLE LEGAL RIGHTS, INCLUDING THE RIGHT TO TRIAL IN A COURT OF LAW AND THE RIGHT TO TRIAL BY JURY.

13.4 General. THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) IN ACCORDANCE WITH ITS CONSTRUCTION INDUSTRY ARBITRATION RULES OR COMMERCIAL DISPUTE RESOLUTION PROCEDURES, AS APPLICABLE (SUPPLEMENTED BY AAA SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, WHERE APPLICABLE) (“ARBITRATION RULES”) IN EFFECT AT THE TIME THE DEMAND FOR ARBITRATION IS FILED. WITHIN A REASONABLE TIME AFTER THE CONTROVERSY HAS ARISEN, THE PARTY REQUESTING RELIEF SHALL FILE A WRITTEN DEMAND FOR ARBITRATION. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED IN GALVESTON COUNTY, TEXAS, UNLESS OTHERWISE AGREED BY THE PARTIES. IN ALL INSTANCES, THE PARTIES MAY AGREE UPON ONE ARBITRATOR, BUT IN THE EVENT THE PARTIES CANNOT AGREE, THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES. IN THE EVENT THE APPLICABLE ARBITRATION RULES MANDATE THAT THE DISPUTE SHALL BE SUBMITTED TO A SINGLE ARBITRATOR AND THE PARTIES CANNOT AGREE AS TO THE SELECTION OF SUCH ARBITRATOR, THEN THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES. UNLESS THE APPLICABLE ARBITRATION RULES MANDATE OTHERWISE, ALL ARBITRATORS SHALL BE ATTORNEYS AT LAW, LICENSED TO PRACTICE IN THE STATE OF TEXAS, WITH SUBSTANTIAL EXPERIENCE IN THE RESIDENTIAL REAL ESTATE DEVELOPMENT INDUSTRY. IF THERE IS ONLY ONE ARBITRATOR, HIS CONCLUSIONS SHALL BE BINDING AND CONCLUSIVE ON THE PARTIES. IF THERE ARE THREE (3) ARBITRATORS, THE DECISION OF ANY TWO (2) SHALL BE BINDING AND CONCLUSIVE. COSTS OF ARBITRATION SHALL BE ALLOCATED BETWEEN OR AMONG THE PARTIES AS PROVIDED BY THE APPLICABLE ARBITRATION RULES, OR IN THE ABSENCE

OR INAPPLICABILITY OF SUCH RULES, AS DETERMINED BY THE ARBITRATOR(S). IF ANY PARTY COMMENCES LITIGATION IN VIOLATION OF THIS AGREEMENT, OR FAILS OR REFUSES TO TIMELY SUBMIT TO ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT, SUCH PARTY SHALL REIMBURSE THE OTHER PARTY FOR THE COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES: (A) INCURRED IN SEEKING A STAY, ABATEMENT OR DISMISSAL OF SUCH LITIGATION; OR (B) INCURRED IN JUDICIALLY COMPELLING ARBITRATION. THE FOREGOING DOES NOT PRECLUDE A PARTY FROM SEEKING EMERGENCY RELIEF FROM A COURT OF COMPETENT JURISDICTION AND THE PROSECUTION OF A REQUEST FOR EMERGENCY RELIEF WILL NOT BE DEEMED A WAIVER OF THE ARBITRATION PROVISIONS CONTAINED HEREIN.

13.5 Joinder. THE PARTIES AGREE THAT THEY MAY JOIN IN ANY ARBITRATION PROCEEDING CONDUCTED HEREUNDER, ONE OR MORE PERSONS (COLLECTIVELY WHETHER ONE OR MORE "THIRD-PARTY") WHERE: (I) THE SERVICES PROVIDED, WORK PERFORMED OR MATERIALS SUPPLIED BY SUCH THIRD-PARTY FORMS THE BASIS, DIRECTLY OR INDIRECTLY, IN WHOLE OR PART, OF THE CLAIMS MADE THE SUBJECT OF THE ARBITRATION PROCEEDING; (II) SUCH THIRD-PARTY IS SUBSTANTIALLY INVOLVED IN A COMMON QUESTION OF FACT OR LAW; OR (III) THE PRESENCE OF SUCH THIRD-PARTY IS REQUIRED TO ACCORD THE PARTIES COMPLETE RELIEF IN THE ARBITRATION.

13.6 Financial Capacity. THE DECLARANT, THE ASSOCIATION AND EACH OWNER REPRESENT THAT THEY HAVE ADEQUATE FINANCIAL CAPACITY TO AVAIL THEMSELVES OF THE ARBITRATION REMEDIES PROVIDED HEREIN AND THAT PARTICIPATION IN ARBITRATION WILL NOT CONSTITUTE A FINANCIAL HARDSHIP.

13.7 Reliance. EACH OWNER UNDERSTANDS AND AGREES THAT DECLARANT'S SALE OF A LOT TO SUCH OWNER IS CONDITIONED IN PART AND IS DONE IN RELIANCE UPON SUCH OWNER'S ACKNOWLEDGMENT OF AND AGREEMENT WITH THE PROVISIONS OF THIS ARTICLE 13.

ARTICLE 14 MISCELLANEOUS

14.1 Severability. In the event that any provision of this Declaration, or any portion thereof, shall be held to be invalid or unenforceable by judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect,

invalidate or impair any other provision, or parts of a provision, hereof, and all remaining provisions, or parts of provisions, shall remain valid and in full force and effect in accordance herewith.

14.2 Joinder of Owners. Prior to the execution and recordation of this Declaration, Lots 369, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384 and 385 in the Subdivision were sold and conveyed to certain Owners. The conveyance of such Lots was (in the respective Deeds) made subject to the subsequent recordation of this Declaration. Nevertheless, for the avoidance of doubt in order to assist title examinations that may occur in the future, all of such Owners are executing and recording separate writings for the purpose of evidencing that the foregoing Lots owned by the them are and shall remain at all times during the term of this Declaration subject to the terms and provisions of this Declaration. This Declaration shall be binding upon and run with all such Lots that were conveyed to Owners prior to the recordation of this Declaration.

14.3 Counterparts. This Declaration may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

14.4 Enforcement. The Declarant (during the Development Period) and the Board of Directors (after the Development Period) shall have the right to enforce, by appropriate proceedings at law or in equity, all terms and provisions of this Declaration. Failure by the Declarant or the Board of Directors of Directors enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

14.5 Conflicts. In the event any of the provisions of this Declaration, the By-Laws or the rules and regulations adopted by the Association shall be in conflict with the provisions of the Texas Business Organizations Code pertaining to non-profit corporations, the provisions of such code shall control. In the event that a conflict exists between the provisions of this Declaration, the By-Laws or the rules and regulations adopted by the Association, this Declaration shall control over the By-Laws and the rules and regulations and the By-Laws shall control over the rules and regulations.

14.6 Captions. Captions used in the various articles and sections of this Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof.

14.7 Usury. It is expressly stipulated that the terms of this Declaration, the By-Laws and any rules and regulations adopted by the Association (collectively the "Governance Documents") shall at all times comply with the usury laws of the State of Texas. If such laws are ever revised, repealed, or judicially interpreted so as to render usurious any amount called for, contracted for, charged or received in connection with any amounts due under the Governance Documents, or if the Declarant's or the Association's exercise of any provisions of the Governance Documents results in any party having paid any interest in excess of that permitted by applicable law, then it is the Association's and/or the Declarant's express intent that all excess amounts theretofore collected by the Association be credited on the principal balance of any indebtedness (or, if the indebtedness has been paid in full, refunded to the payor), and the applicable provisions of the Governance Documents immediately be deemed reformed and the amounts thereafter collected be reduced, without the necessity of execution of any new document, so as to comply with then applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder.

14.8 Governing Law; Venue. THIS DECLARATION SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW WHICH MIGHT OTHERWISE BE APPLICABLE (EXCEPT AS TO THE CONSTRUCTION AND/OR ENFORCEMENT OF THE ARBITRATION PROVISIONS CONTAINED HEREIN WHICH SHALL BE GOVERNED BY THE FEDERAL LAWS OF THE UNITED STATES). Unless otherwise expressly agreed by the parties, any judicial proceeding or arbitration brought in connection with this Agreement shall be maintainable only in Galveston County, Texas.

14.9 Time Computation. All time periods arising under this Agreement shall be computed based on in calendar days, unless Business Days are expressly specified. All hours of the day (e.g., 5:00 p.m., midnight, etc.) shall be construed as local Subdivision time. All acts designated to occur or to be taken by or on a specified day or date, must be completed by 5:00 p.m. on such day or date, unless otherwise expressly provided. In computing any period of time prescribed or permitted by this Declaration, the day of the act or event from which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included.

14.10 Fair Housing. None of the Declarant, the Association or any Owner shall, either directly or indirectly, forbid the listing, conveyance, encumbrance, renting, leasing or occupancy of an Owner's Lot or dwelling to any person on the basis of race, color, sex, religion, ancestry or national origin.

IN WITNESS WHEREOF, Declarant, certain Owners and Lienholder have caused this Declaration to be executed on this _____ day of _____, 20____.

Declarant:

Avocet Oceanfront Villas, LP,
a Colorado limited partnership

By: Birdsall Development, LLC,
a Colorado limited liability company,
its general partner

By: _____
David M. Birdsall
Its sole member

State of _____

§
§
§

County of _____

This instrument was acknowledged before me on ____ day of _____, 20____, by David M. Birdsall, the sole member of Birdsall Development, LLC, a Colorado limited liability company, the general partner of Avocet Oceanfront Villas, LP, a Colorado limited partnership, on behalf of both entities.

Notary Public, State of _____

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

**AVOCET, A SUBDIVISION
IN GALVESTON COUNTY, TEXAS**

EXHIBIT A

Declarant's intended use of reserves under current development plan
(subject to modification as provided in Section 3.37 of the Declaration).

Reserve A	Detention and Wetland Preserve
Reserve B	Detention and Wetland Preserve
Reserve C	Detention and Wetland Preserve
Reserve D	Beach Club Site
Reserve E	Landscape Reserve, State Highway 87 west entry (Birdsall Boulevard West)
Reserve F	Landscape Reserve, State Highway 87 west entry (Birdsall Boulevard West)
Reserve G	Landscape Reserve, State Highway 87 west entry (Birdsall Boulevard West)
Reserve H	Landscape Reserve, State Highway 87 west entry (Birdsall Boulevard West)
Reserve I	Landscape Reserve, State Highway 87 west entry (Birdsall Boulevard West)
Reserve J	Landscape Reserve, State Highway 87 west entry (Birdsall Boulevard West)
Reserve K	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway
Reserve L	Wetland Preserve
Reserve M	Wetland Preserve

Reserve N	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway
Reserve O	Landscape Reserve – Birdsall Boulevard
Reserve P	Landscape Reserve – Birdsall Boulevard
Reserve R	Landscape Reserve, “Avocet Green” – Primary Beach Access
Reserve S	Landscape Reserve – Birdsall Boulevard
Reserve T	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway/ Landscape Reserve – Birdsall Boulevard
Reserve U	Wetlands Preserve
Reserve V	Wetlands Preserve
Reserve W	Wetlands Preserve
Reserve X	Wetlands Preserve
Reserve Y	Wetlands Preserve
Reserve Z	Wetlands Preserve
Reserve 1A	Wetlands Preserve
Reserve 1B	Wetlands Preserve
Reserve 1C	Landscape Reserve, State Highway 87 east entry (Birdsall Boulevard East)
Reserve 1D	Landscape Reserve, State Highway 87 east entry (Birdsall Boulevard East)
Reserve 1E	Landscape Reserve, State Highway 87 east entry (Birdsall Boulevard East)
Reserve 1F	Landscape Reserve, State Highway 87 east entry (Birdsall Boulevard East)
Reserve 1G	Landscape Reserve, State Highway 87 east entry (Birdsall Boulevard East)

Reserve 1H	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway
Reserve 1I	Landscape Reserve
Reserve 1J	Landscape Reserve
Reserve 1M	Wetlands Preserve
Reserve 1N	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway
Reserve 1O	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway
Reserve 1P	Wetlands Reserve/ Secondary Beach Access
Reserve 1Q	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway
Reserve 1R	Landscape Reserve, back or side of lot, provides alternative pedestrian access pathway
Reserve 1S	Wetlands Preserve
Reserve 1T	Landscape Reserve
Reserve 1U	Landscape Reserve
Reserve 1V	Landscape Reserve/ Buffer along State Highway 87
Reserve 1W	Landscape Reserve/ Buffer along State Highway 87
Reserve 1X	Landscape Reserve/ Buffer along State Highway 87
Reserve 1Y	Wetlands Preserve
Reserve 1Z	Beach
Reserve 2A	Landscape Preserve

LIENHOLDER'S CONSENT AND SUBORDINATION

IMH SECURED LOAN FUND, LLC, a Delaware limited liability company, the owner and holder of a lien covering the Subdivision (exclusive of Lots 369, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384 and 385 in the Subdivision) has executed this Declaration to evidence its: (i) consent to Declarant's execution of this Declaration; (ii) agreement to subordinate its lien to the provisions of this Declaration with the same effect as if this Declaration has been executed, delivered, and recorded prior to the execution and recording of the agreement(s) creating the lien; and (iii) agreement that notwithstanding any foreclosure pursuant to the terms of any agreement(s) creating the lien, this Declaration shall continue unabated and in full force and effect.

IMH SECURED LOAN FUND, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

State of _____ §
County of _____ §

This instrument was acknowledged before me on ____ day of _____, 20____, by _____, the _____ of IMH SECURED LOAN FUND, LLC, a Delaware limited liability company, on behalf of such entity.

Notary Public, State of _____