

**AMENDED AND RESTATED  
DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR  
EXOTIC ISLE**

THE STATE OF TEXAS       §  
  §  
COUNTY OF MATAGORDA   §

THIS AMENDED AND RESTATED DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR EXOTIC ISLE is made on May 15, 2022 by the undersigned Owners, who collectively represent the owners of sixty percent (60%) of the Lots in the Community.

WHEREAS, the real property in Matagorda County, Texas described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "**Property**") is subject to that certain Exotic Isle Declaration of Access Easement and Restrictions recorded in Book 484, Page 333 of the Deed Records of Matagorda County, Texas, as amended by that certain Exotic Isle Amendment to Declaration of Access Easement and Restrictions recorded in Book 487, Page 778 of the Deed Records of Matagorda County, Texas, as amended by Exotic Isle Second Amendment to Declaration of Access Easement and Restrictions recorded in Book 566, Page 269 of the Deed Records of Matagorda County, Texas and amended by Declaration of Amendments to Subdivision Restrictions and of A Special Group Assessment recorded in Volume 52, Page 160 of the Official Public Records of Matagorda County, Texas (as amended, the "**Original Declaration**");

WHEREAS, the undersigned Owners have the authority to amend the Original Declaration pursuant to Article II, Section 4 of the Original Declaration;

WHEREAS, the undersigned Owners desire to, subject to the reservation of the easement rights created in Part One of the Original Declaration, amend and restate the Original Declaration in its entirety to establish and preserve a general and uniform plan for the improvement, development, sale and use of the Property (and any other real property that may be annexed and subjected to the provisions of this Declaration) for the benefit of the present and future owners of lots therein;

NOW, THEREFORE, the undersigned Owners hereby declare that (i) the Property shall be held, transferred, sold, conveyed, occupied and enjoyed subject to the covenants, conditions, restrictions, easements, liens and charges set forth in this Declaration, as such Declaration may be hereafter amended and supplemented, and (ii) except with respect to Part One of the Original Declaration, this Amended and Restated Declaration of Conditions, Covenants and Restrictions For Exotic Isle amends, restates and replaces the Original Declaration in its entirety.

**ARTICLE I.  
DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the following meanings:

**A. ANNUAL MAINTENANCE CHARGE** - The annual assessment made and levied by the Association against each Owner and its Lot in accordance with the provisions of this Declaration.

**B. ARCHITECTURAL REVIEW COMMITTEE** - The Architectural Review Committee established and empowered in accordance with Article III of this Declaration.

**C. ARTICLES OF INCORPORATION** - The Article of Incorporation of the Association.

**D. ASSOCIATION** – EXOTIC ISLE HOMEOWNERS ASSOCIATION, a Texas non-profit association, and its successors and assigns.

**E. BOARD or BOARD OF DIRECTORS** - The Board of Directors of the Association.

**F. BUILDER** - A person or entity engaged by the Owner of a Lot within the Community for the purpose of constructing a Residential Dwelling on the Owner's Lot. The Architectural Review Committee has the authority to approve or disapprove a Builder prior to the commencement of construction on the basis of the experience and reputation of the Builder and the ability of the Builder to obtain (and maintain throughout the entire construction period) all insurance required to be maintained by the Builder pursuant to the Community Development Guidelines. The intent of the requirement that a Builder be approved by the Architectural Review Committee prior to the commencement of construction is to attempt to assure that the Builder has sufficient experience and financial responsibility to complete the work in accordance with the approved Plans and in a timely manner. The Owner of a Lot shall not act as the Builder of the Residential Dwelling to be constructed on the Owner's Lot without the prior written approval of the Architectural Review Committee and then only if the Owner has sufficient experience in new home construction, as determined by the Architectural Review Committee, in its sole discretion. The approval of a Builder shall not be construed in any respect as a representation or warranty by the Architectural Review Committee, the Association, or any of their representatives, to any person or entity that the Builder has any particular level of knowledge or expertise or that any Residential Dwelling constructed by the Builder shall be a particular quality. It shall be the sole responsibility of each person or entity that engages a Builder to construct a Residential Dwelling on the Owner's Lot to determine the quality of that Builder's workmanship and the suitability of the Builder to construct a Residential Dwelling of the type and design constructed or to be constructed on the Lot.

**G. BYLAWS** - The Bylaws of the Association.

**H. COMMON AREA** - Any real property and improvements thereon owned or maintained by the Association for the common use and benefit of the Owners, including, but not limited to, (i) the Common Area Reserve, (ii) the Marina Easement Tract and (iii) Lot 49 and the area comprised of the 10' Utility Easement and 5' Access Easement, all as shown on the Plat.

**I. COMMON AREA RESERVE** – That certain area of land designated as such on the Plat.

**J. COMMUNITY** - The Property, together with all Improvements now or hereafter situated thereon and all rights and appurtenances thereto.

**K. COMMUNITY DEVELOPMENT GUIDELINES** – Guidelines promulgated by the Association which may be amended and supplemented from time to time and which set forth minimum development standards for the Community primarily related to the initial construction of a Residential Dwelling and related Improvements on a Lot.

**L. IMPROVEMENT** - Any Residential Dwelling, building, structure, fixture, or fence, any transportable structure placed on a Lot, whether or not affixed to the land, and any addition to, or modification of an existing Residential Dwelling, building structure, fixture or fence.

**M. LOT or LOTS** - Each of the Lots shown on a recorded Plat.

**N. MAINTENANCE FUND** - Any accumulation of the Annual Maintenance Charges collected by the Association in accordance with the provisions of this Declaration and interest, penalties, assessments and other sums and revenues collected by the Association pursuant to the provisions of this Declaration.

**O. MARINA EASEMENT TRACT** - That certain tract of land described on Exhibit "B" attached hereto and incorporated herein (the "**Marina Easement Tract**").

**P. MEMBER or MEMBERS** - All Owners who are Members of the Association as provided in Article IV hereof.

**Q. MORTGAGE** - A security interest, mortgage, deed of trust, or lien instrument granted by an Owner to secure the payment of a loan made to such Owner, duly recorded in the Official Public Records

of Real Property of Matagorda County, Texas, and creating a lien or security interest encumbering a Lot and some or all Improvements thereon.

**R. OWNER or OWNERS** - Any person or persons, firm, corporation or other entity or any combination thereof that is the record owner of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as a security for the performance of an obligation.

**S. PLAT** - The recorded plat for the Property recorded in the Plat Records of Matagorda County, Texas under Volume 6, Pages 26 and 27; the recorded plat for any other section of the Community recorded in the Map Records of Matagorda County, Texas; and any replat of any such plat.

**T. PLANS** - The final construction plans and specifications (including a related site plan) of any Residential Dwelling or other Improvement of any kind to be erected, placed, constructed, maintained or altered on any Lot.

**U. PROPERTY** - The real property described in Exhibit "A" to this Declaration; and any other property that may be subjected to the provisions of this Declaration by annexation document duly executed and recorded in the Official Public Records of Real Property of Matagorda County, Texas pursuant to the terms hereof.

**V. PRIVATE ACCESS ROADWAY** – The following easements and rights-of-way recorded in the Deed Records of Matagorda County, Texas, to wit:

- i. From Adelaide L. Zipprian, a widow, to Wyatt D. Selkirk, et al dated September 9, 1969, recorded in Volume 481, Page 749 of the Deed Records of Matagorda County, Texas;
- ii. From J. Pabst to Wyatt O. Selkirk, et al, dated February 16, 1970, recorded in Volume 481, Page 752 of the Deed Records of Matagorda County, Texas;
- iii. From J. Pabst to Wyatt O. Selkirk, et al, dated December 10, 1969, recorded in Volume 481, Page 755, of the Deed Records of Matagorda County, Texas;
- iv. From Wyatt O. Selkirk to J. Pabst, et al, dated December 31, 1969, recorded in Volume 481, Page 758 of the Deed Records of Matagorda County, Texas;
- v. From Wyatt O. Selkirk to J. Pabst, et al, dated April 1, 1970, recorded in Volume 483, Page 622 of the Deed Records of Matagorda County, Texas.

**W. RESIDENTIAL DWELLING** - The single-family residence and appurtenances constructed on a Lot.

**X. RESIDENTIAL MODIFICATION GUIDELINES** – Guidelines promulgated by the Board of Directors of the Association which may be amended and supplemented from time to time which primarily relate to modifications of and additions to existing Improvements that may be proposed by and Owner after the initial construction of the Residential Dwelling and related Improvements on the Owner's Lot and which set forth minimum requirements and standards for various types of modifications and additions.

**Y. RULES AND REGULATIONS** - Rules adopted from time to time by the Board concerning the management and administration of the Community for the use, benefit and enjoyment of the Owners, including Rules and Regulations governing the use of any Common Area.

**Z. UTILITY COMPANY or UTILITY COMPANIES** - Any public entity, utility district, governmental entity (including without limitation, districts created under Article 111, Section 52, or Article XVI, Section 59, of the Texas Constitution) or one or more private entities that regulate, provide or maintain utilities and drainage.

**ARTICLE II.**  
**GENERAL PROVISIONS RELATING TO USE AND OCCUPANCY**

**Section 2.1     USE RESTRICTIONS.**

**A.     GENERAL.** The Property shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration.

**B.     SINGLE FAMILY RESIDENTIAL USE.** Each Owner shall use his Lot and the Residential Dwelling on his Lot for single family residential purposes only. As used herein, the term "**single family residential purposes**" shall be deemed to specifically prohibit, but without limitation, the use of any lot for a duplex apartment, a garage apartment or any other apartment or for any multi-family use or for any business, professional or other commercial activity of any type, unless such business, professional or commercial activity is unobtrusive and merely incidental to the primary use of the lot and the Residential Dwelling for residential purposes. As used herein, the term "**unobtrusive**" means, without limitation, that there is no business, professional or commercial related sign, logo or symbol displayed on the Lot; there is no business, professional or commercial related sign, logo or symbol displayed on any vehicle on the Lot; there are no clients, customers, employees or the like who go to the lot for any business, professional or commercial related purpose on any regular basis; and the conduct of the business, professional, or commercial activity is not otherwise apparent by reason of noise, odor, vehicle and/or pedestrian traffic and the like.

No Owner shall use or permit such Owner's Lot or the Residential Dwelling or other Improvement on the Lot to be used for any purpose that would (i) void any insurance in force with respect to the Community; (ii) make it impossible to obtain any insurance required by this Declaration; (iii) constitute a public or private nuisance, which determination may be made by the Board in its sole discretion; (iv) constitute a violation of the provisions of this Declaration or any applicable law or (v) unreasonably interfere with the use and occupancy of the Community by other Owners.

No Owner shall allow all or any portion of that Owner's Lot to be occupied by persons other than the Owner and the Owners' immediate family, except as otherwise set forth herein. No Owner shall be permitted to lease all or any portion of such Owner's Lot for any purposes or for any length of time, including, but not limited to, (i) short-term rentals consummated through short-term rental services such as Airbnb, VRBO, WanderJaunt, or any similar company, or (ii) leases for hotel or transient purposes. In the event any Owner enters into a lease or short-term rental in violation of this paragraph, the lessee or occupant's use of such Owner's Lot thereunder shall remain subject in all respects to this Declaration.

Unless otherwise approved in writing by the Board of Directors, not more than two (2) full-time, live-in domestic workers, "nannies" or the like shall be entitled to reside on a Lot; for purposes of this Section, a domestic worker, nanny or the like shall be considered an immediate member of the family occupying the Lot.

No garage sale, rummage sale, estate sale, moving sale or similar type of activity is permitted on a Lot.

**C.     PASSENGER VEHICLES; TRAILERS AND BOATS.** Except as provided in Section 2.1, paragraph D, below, no Owner, lessee, or occupant of a Lot, including all persons who reside with such Owner, lessee or occupant of the Lot, shall park, keep or store any vehicle, trailer or boat on the Lot which is visible from any road in the Community or any neighboring Lot. For purposes of this Declaration, the term "**passenger vehicle**" is limited to a vehicle which displays a passenger vehicle license plate issued by the State of Texas or which, if displaying a license plate issued by another state, would be eligible to obtain a passenger vehicle license plate from the State of Texas, and a sport utility vehicle used as a family vehicle (whether or not the sport utility vehicle displays a passenger or truck vehicle license plate); the term "**pick-up truck**" is limited to a one (1) ton capacity pick-up truck which has not been adapted or modified for



commercial use. No passenger vehicle, trailer or boat or pick-up truck owned or used by the residents of a Lot shall be permitted to be parked on any road in the Community or on any other portion of a Lot other than temporarily for loading and unloading purposes. No guest of an Owner, lessee or other occupant of a Lot shall be entitled to park on any road in the Community or on any Lot overnight.

No inoperable vehicle, trailer or boat of any kind shall be parked, kept or stored on a Lot if visible from any road in the Community or any neighboring Lot or in a road. As used herein, a vehicle, trailer or boat is deemed to be inoperable if it does not display all required current permits and licenses, it is on a jack or does not have fully inflated tires, or it is not otherwise capable of being legally operated on a public street or right of way.

The Association may tow (or cause to be towed) any vehicle parked in violation of this section after ten (10) days written notice and opportunity to cure, and the Owner shall be responsible for the costs thereof. Interest thereon at the rate of eighteen percent (18%) per annum, or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty first (31st) day after a written Invoice is delivered to the Owner.

**D. OTHER VEHICLES.** No pick-up truck in excess of one (1) ton capacity, mobile home trailer, utility trailer, or the like shall be parked, kept or stored on a Lot. The Association may tow (or cause to be towed) any vehicle parked in violation of this section after ten (10) days written notice and opportunity to cure, and the Owner shall be responsible for the costs thereof. Interest thereon at the rate of eighteen percent (18%) per annum, or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty first (31st) day after a written Invoice is delivered to the Owner.

**E. RING ROAD.** Notwithstanding anything herein to the contrary, no vehicles, whether with a trailer or not may drive on the ring road surrounding the Common Area Reserve except for temporary periods of time in order to transport building materials, equipment, supplies, furniture, furnishing and items of similar nature to the Lots.

**F. ATVS AND GOLF CARTS.** It is recognized that the use of passenger vehicles, pick-up trucks, motorcycles and other vehicles and trailers for purposes of ordinary travel upon the private roadways within the Community would not be keeping with the intended quiet, rustic surroundings of the Community. As such only bicycles, golf carts, gas-powered ATVs and any other modes of travel approved by the Board, will be permitted within the Community for travel so long as such modes of travel do not interfere or disturb the Community or any Owners and are not otherwise unreasonably loud for a residential, rustic island neighborhood.

**G. NUISANCES.** No rubbish or debris of any kind shall be placed or permitted to accumulate on or adjacent to a Lot and no odors shall be permitted to arise therefrom, so as to render the Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants. No nuisance shall be permitted to exist or operate on a Lot. For the purpose of this Section, a nuisance shall be any activity or condition on a Lot which is reasonably considered to be an annoyance to surrounding residents of ordinary sensibilities or which might be calculated to reduce the desirability of the Lot or any surrounding Lot. The Board of Directors is authorized to determine whether any activity or condition on a Lot constitutes a nuisance or is offensive and its reasonable, good faith determination shall be conclusive and binding on all parties.

**H. TRASH; TRASH CONTAINERS.** No garbage or trash, or garbage or trash container, shall be maintained on a Lot so as to be visible from any road in the Community or any neighboring Lot except to make the same available for collection and then only the shortest time reasonably necessary to effect such collection. Garbage and trash made available for collection shall be placed in tied trash bags or covered containers, or as otherwise provided in any trash disposal contract entered into by the Association. No garbage or trash, including, without limitation, stumps, tree limbs or construction debris, shall be burned on a Lot.

**I. CLOTHES DRYING.** No outside clothesline or other outside facilities for drying or airing clothes shall be erected, placed or maintained on a Lot. No clothes shall be aired or dried outside if visible from any road in the Community or any neighboring Lot.

**J. RIGHT TO INSPECT.** During reasonable hours, any member of the Architectural Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect a Lot, and the exterior of the Improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry. Provided that, except in the case of a bona fide emergency, the right of inspection shall not be exercised unless the Owner of the Lot has been provided not less than twenty four (24) hours' notice of the intent to inspect the Lot.

**K. ANIMALS.** Subject to Section W below, a reasonable number of generally recognized house or yard pets may be maintained on a Lot but only if they are kept thereon solely as domestic pets and not for commercial purposes. No generally recognized house or yard pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any generally recognized house or yard pet shall be maintained on a Lot if visible from any road in the Community or any neighboring Lot without the prior written consent of the Architectural Review Committee. The Board shall have the authority to determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, the number of generally recognized house or yard pets on a Lot is reasonable, and a particular animal or bird is a nuisance, and its reasonable, good faith determination shall be conclusive and binding on all parties.

**L. DISEASES AND INSECTS.** No Owner shall permit anything or condition to exist on a Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

**M. NO OIL AND GAS ACTIVITY.** No gas or oil drilling, gas or oil development operations, oil refining, quarry or mining operations of any kind shall be permitted upon the Community, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Community.

**N. RESTRICTION ON FURTHER SUBDIVISION.** No Lot shall be further subdivided, and no portion less than all of a Lot shall be conveyed by any Owner without the prior written approval of the Board of Directors. No Lot shall be further subdivided, whether by replat or otherwise, for the purpose of creating an additional Lot or additional Lots.

**O. CONSOLIDATION OF LOTS.** Notwithstanding any provision in this Declaration to the contrary, an Owner of adjoining Lots may consolidate such Lots into one (1) building site, with the privilege of constructing a Residential Dwelling on the resulting site, in which event set back lines shall be measured from the resulting side property lines rather than from the side lot lines indicated on the Plat. The Owner of such Lots must also comply with any replatting requirements imposed by any governmental entity having jurisdiction. Any such consolidated building site must have a frontage at the building setback line of not less than the minimum frontage shown on the Plat. Upon the consolidation of adjoining Lots, the consolidated building site shall not be considered a single Lot for purposes of voting rights and assessments; rather, the Lots comprising the consolidated building site (as shown on the Plat) shall be treated separately for purposes of voting rights and assessments.

**P. SIGNS.** No signs whatsoever (including but not limited to commercial, political and similar signs) shall be erected or maintained on a Lot if visible from any road in the Community or a neighboring Lot, except:

- (i) Street signs and such other signs as may be required by law;
- (ii) Ground mounted political signs as permitted by law; and
- (iii) Home security signs and school spirit signs.

No sign is permitted on Common Area with the exception of a sign placed on Common Area by the Association. The Association, shall have the authority to go upon a Lot and remove any sign displayed on the Lot or Common Area in violation of this Section and dispose of the sign without liability in trespass or otherwise.

**Q. TREE REMOVAL.** No tree (other than a dead tree) with a caliper of four (4) inches or more that is not within the area seven and one-half (7 ½) feet around the foundation of the Residential Dwelling and garage constructed or to be constructed on a Lot shall be removed from any Lot without the prior written approval of the Architectural Review Committee. A dead tree shall be removed from a Lot within thirty (30) days of the date that it is determined the tree is no longer growing.

**R. FLAGS.** Section 202.011 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory Instrument that prohibits, restricts, or has the effect of prohibiting or restricting a flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States armed forces, except as otherwise provided therein. The following provisions shall be applicable to flagpoles and the three (3) types of flags listed in Section 202.011 of the Texas Property Code:

- (a) **ARC Approval.** A flagpole that does not comply with all setbacks and above- ground flagpole stands and/or footings must be approved by the Architectural Review Committee. Additionally, in order to confirm a proposed flagpole conforms to the following standards, Owners are encouraged to apply to the Architectural Review Committee for prior approval. The Association may require an Owner to remove flagpoles, flagpole footings, or flags that do not comply with this Section.
- (b) **Flag of the United States.** The flag of the United States must be displayed in accordance with applicable provisions of 4 U.S.C. Sections 5-10, which address, among other things, the time and occasions for display, the position and manner of display, and respect for the flag.
- (c) **Flag of the State of Texas.** The flag of the State of Texas must be displayed In accordance with applicable provisions of Chapter 3100 of the Texas Government Code, which address, among other things, the orientation of the flag on a flagpole or flagstaff, the display of the flag with the flag of the United States of America, and the display of the flag outdoors.
- (d) **Flagpoles.**
  - (i) Not more than one (1) freestanding flagpole or flagpole attached to the Residential Dwelling or garage (on a permanent or temporary basis) is permitted on a Lot.
  - (ii) A freestanding flagpole shall not exceed twenty (20) feet in height, measured from the ground to the highest point of the flagpole.
  - (iii) A flagpole attached to a Residential Dwelling or garage shall not exceed six (6) feet in length.
  - (iv) A flagpole, whether freestanding or attached to the Residential Dwelling or garage, must be constructed of permanent, long lasting materials with a finish appropriate to materials used in the construction of the flagpole and harmonious with the Residential Dwelling on the Lot on which it is located. A flagpole, whether freestanding or attached to the Residential Dwelling or garage, must be a dark color, such as black, brown, bronze or silver; a flagpole shall not be a primary color or white.
  - (v) A flagpole shall not be located in an easement or encroach into an easement.
  - (vi) A freestanding flagpole shall not be located nearer to a property line of the Lot than the applicable setbacks as either shown on the recorded plat or as set forth in the Declaration. Provided, with prior Architectural Review Committee approval, a freestanding flagpole may be located up to five feet (5') in front of the front building

setback line for a Lot. Above ground stands and/or footings also require Architectural Review Committee approval.

- (vii) A flagpole must be maintained in good condition; a deteriorated or structurally unsafe flagpole must be repaired, replaced or removed.
- (viii) An Owner is prohibited from locating a flagpole on property owned or maintained by the Association.
- (ix) A freestanding flagpole must be installed in accordance with the manufacturer's guidelines and specifications.
- (x) If the footing and/or stand for a freestanding flagpole extends above the surface of the ground, the Architectural Review Committee may require the installation of landscaping to screen the stand and/or footing from view.

(e) **Flags.**

- (i) Unless otherwise expressly provided in the Community Development Guidelines, only the three (3) types of flags addressed in this Section shall be displayed on a freestanding flagpole. Other types of flags may be displayed on a wall mounted flagpole as otherwise provided in the Community Development Guidelines or as otherwise permitted by the Association.
  - (ii) Not more than two (2) of the permitted types of flags shall be displayed on a flagpole at any given time.
  - (iii) The maximum dimensions of a displayed flag on a freestanding flagpole that is less than fifteen (15) feet in height or on a flagpole attached to the Residential Dwelling or garage shall be three (3) feet by five (5) feet.
  - (iv) The maximum dimensions of a displayed flag on a freestanding flagpole that is fifteen (15) feet in height or greater is four (4) feet by six (6) feet.
  - (v) A displayed flag must be maintained in good condition; a deteriorated flag must be replaced or removed.
  - (vi) A flag must be displayed on a flagpole. A flag shall not be attached to the wall of the Residential Dwelling or other structure on a Lot or a fence or be displayed in a window of the Residential Dwelling or other structure on a Lot.
- (f) **Illumination.** It is the universal custom to display the flag of the United States of America only from sunrise to sunset. Likewise, the flag of the State of Texas should not normally be displayed outdoors before sunrise or after sunset. Accordingly, illumination of a flagpole or flag is not permitted.
- (g) **Noise.** An external halyard on a flagpole is required to be securely affixed to the flagpole so that it is not moved by the wind and thereby permitted to clang against the flagpole.

**S. RELIGIOUS ITEMS.** Section 202.018 of the Texas Property Code provides that a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property Owner or resident from displaying or affixing on the entry to the Owner's or resident's dwelling one or more religious items, the display of which is motivated by the Owner's or resident's sincere religious belief, except as otherwise provided therein. Section 202.001(4) of the Texas Property Code defines "**restrictive covenant**" to mean any covenant, condition, or restriction contained in a dedicatory instrument. The following provisions shall be applicable to the display of religious items on a Lot:

- (a) **ARC Approval.** As authorized by this Declaration and, therefore, allowed by Section 202.01B(c) of the Texas Property Code, any alteration to the entry door or door frame must first be approved by the Architectural Review Committee.

- (b) **Location.** Except as otherwise provided in this Section, a religious item is not permitted anywhere on a Lot except on the entry door or door frame of the Residential Dwelling. A religious item shall not extend past the outer edge of the door frame.
- (c) **Size.** The religious item(s), individually or in combination with each other religious item displayed or affixed on the entry door or door frame, shall not have a total size of greater than twenty-five (25) square inches.
- (d) **Content.** A religious item shall not contain language, graphics, or any display that is patently offensive to persons of ordinary sensibilities.
- (e) **Limitation.** A religious item shall not be displayed or affixed on an entry door or door frame if it threatens the public health or safety or violates a law.
- (f) **Color of Entry Door and Door Frame.** An Owner or resident is not permitted to use a color for an entry door or door frame of the Owner's or resident's Residential Dwelling or change the color of an entry door or door frame that is not authorized by the Board.
- (g) **Seasonal Decorations.** The provisions of this Section shall not be applicable to temporary, seasonal decorations relating to religious holidays.

**T. ANTENNAS.** Satellite dish antennas which are forty (40) inches or smaller in diameter and antennas designed to receive television broadcast signals may be installed, provided they are installed in the least obtrusive location that still enables the receipt of an acceptable quality signal. All other antennas are prohibited. No radio or television aerial, pole or other framework, structure or device which will project more than ten feet (10') above the uppermost roof line of the residence or other improvements shall be erected (or allowed to remain) on any Lot or attached to any of the improvements thereon, without the prior written approval of the Architectural Review Committee.

**U. PROPANE TANKS.** A propane tank is permitted on a Lot; provided that the size, color and location of the propane tank must be approved by the Architectural Review Committee prior to installation. Further, the Architectural Review Committee shall have the authority to require an above-ground propane tank to be screened from view by landscaping as a condition to the installation of the propane tank.

**V. ADJACENT LOT.** Section 209.015 of the Texas Property Code allows an "**Adjacent Lot**", as defined therein, to be used for a residential purpose notwithstanding a provision in a dedicatory instrument that would otherwise prohibit such a use of an Adjacent Lot. However, Section 209.015 of the Texas Property Code further provides that an Owner must obtain the approval of the Architectural Review Committee prior to placing or constructing an Improvement on an Adjacent Lot. Accordingly, Plans for Improvements proposed to be erected or placed on an Adjacent Lot must be submitted to and approved by the Architectural Review Committee prior to erecting or placing such Improvements on the Adjacent Lot. Reasonable restrictions relating to the size, location, shielding, and aesthetics of Improvements proposed to be placed or constructed on an Adjacent Lot shall be determined by the Architectural Review Committee. The provisions of Section 2.3C of this Declaration shall not apply to an Adjacent Lot so long as a Lot next to the Adjacent Lot (the "**Main Lot**") has a completed Residential Dwelling thereon, the two Lots are owned by the same person or entity, and the Adjacent Lot is being used by the Owner of the Main Lot for a "**residential purpose**", as defined in Section 209.015 of the Texas Property Code. Provided further that, if the Adjacent Lot and the Main Lot are not sold and conveyed together, meaning the Adjacent Lot is then required to be restored to its original condition per Section 209.015 of the Texas Property Code, Section 2.3C of this Declaration shall become applicable to the Adjacent Lot.

**W. COMMON AREA.** The use of the Common Area shall be in strict accordance with Rules and Regulations governing the Common Area adopted and published by the Board of Directors. The Owner's right to use the Common Area shall include, but not be limited to, (a) use of boat, barge and ferry docking and landing facilities, (b) the right of ingress and ingress to and from his Lot to the aforesaid boat, barge and ferry docking and landing facilities in, over and along the private roadways located within the

Common Areas (provided, the use of automobiles, trucks and similar vehicles shall not be allowed for this purpose), and (c) the use and enjoyment of park and playground areas, swimming pool and other recreational and community facilities. Each Owner or other person who uses the Common Area, including any lake, bay or other body of water therein, does so at his/her own risk. The use of any land area between a Lot and a lake, bay or other body of water within the Property shall be subject to the execution of a license agreement by the Owner of the Lot.

**X. OWNERSHIP, PRESERVATION AND CARE OF EXOTIC ANIMALS AND BIRDS.** The Association reserves the right to stock the Community with exotic breeds of animals and birds. This will be done to add to the charm and picturesqueness of the Community and for the mutual pleasure and enjoyment of the property Owners. To further this program all or substantially all of the land area, including the residential Lots and Common Area, has been or will be planted with Coastal Bermuda of similar type of grass for wildlife forage as well as for beautification purposes.

It is intended that such animals and birds, and any additions or replacements thereto, shall be allowed to roam, pasture or graze throughout the Community. It is hereby expressly provided that said animals and birds shall not be hunted, disturbed, chased or fed by Owners of Lots, their tenants, guests, or invitees.

It is further expressly provided that the ownership as well as the duties of preservation, protection and care of the said animals and birds, and any additions or replacements thereto, shall be vested in the Association. All expenses relating to the foregoing shall be paid for from the Maintenance Fund as hereinafter provided.

**Y. HUNTING AND FIREARMS.** No Lot or other portion of the Community shall be used or permitted to be used for hunting or for the discharge of any pistol, rifle, shotgun or any other firearm, or any bow and arrow, or any other device capable of killing or injuring; provided, however, the Board may approve the use of firearms in connection with the control of wildlife animal populations for the general benefit and enjoyment of the Owners. If the Board approves any such use of firearms, the Board will notify all Owners in writing of such approval.

**Z. USE OF THE TRAM.** All Owners and their visitors shall be required to review and follow the system guidelines for the Tram ("**Tram Guidelines**"), which are posted on the Community website. All Owners are required to inform their visitors, guests and invitees of where to find the Tram Guidelines and suggest review of such. Additionally, all Owners and any visitors, guests and invitees shall be required to read, review and accept any responsibility documents required by the Association in connection with operation of the Tram and provide the Association with a current copy for Association records. Current documents are located on the Community website. Any failure to comply with the foregoing, or any other Rules and Regulations related to use and operation of the Tram may result in fines and suspension of Tram privileges by the Association.

**AA. BARGE OPERATION.** Only Owners or another person approved by the Board in writing will be permitted to operate the barge for purposes of traversing the Colorado River to and from the Community to the Marina Easement Tract. An Owner or any other person must be trained to operate the barge as determined by the Board in its sole discretion. Any failure to comply with the foregoing, or any other Rules and Regulations related to use and operation of the barge may result in fines and suspension of barge privileges by the Association.

## **Section 2.2 DECORATION, ALTERATION, MAINTENANCE, AND REPAIR.**

**A. DECORATION AND ALTERATION.** Subject to the provisions of this Declaration, each Owner shall have the right to modify, alter, repair, decorate, redecorate or improve the Residential Dwelling and other Improvements on such Owner's Lot provided that each modification, alteration, decoration,

redcoration or improvement complies with any Residential Modifications Guidelines adopted and published by the Board of Directors of the Association and each exterior modification, alteration, decoration, redecoration or improvement has been approved in writing by the Architectural Review Committee. Notwithstanding the foregoing, the Architectural Review Committee shall have the authority to require an Owner to remove or eliminate any exterior modification, alteration, decoration, redecoration or improvement on an Owner's Lot or the Residential Dwelling or other Improvement on the Lot if, (a) the item does not comply with the Residential Modifications Guidelines, (b) the item was not approved by the Architectural Review Committee prior to construction and will not be approved by the Architectural Review Committee as built, or (c) in the Architectural Review Committee's sole judgment, such object detracts from the visual attractiveness of the Community. During any modification, alteration, decoration, redecoration or improvement, (i) trash piles and burning of any materials on any Lots shall be prohibited, (ii) trash collecting receptables shall be located on the Lot, and (iii) all trash, refuse and other waste must be disposed of regularly so as to create a neat and clean appearance.

**B. MAINTENANCE AND REPAIR.** No Residential Dwelling or Improvement on a Lot shall be permitted to fall into disrepair, and each such Residential Dwelling or other Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner of the Lot at such Owner's sole cost and expense. Any peeled or faded paint, rotten wood, or mildew shall be adequately painted or replaced by the Owner of the Lot at such Owner's sole cost and expense. The Board of Directors shall have the exclusive authority to determine whether an Owner is maintaining his Lot in a reasonable manner and the Board of Director's reasonable, good faith determination shall be conclusive and binding on all parties. In the event the Owner of a lot fails to keep the exterior of the Residential Dwelling or other Improvement on the Lot in good condition and repair, and such failure continues after thirty (30) days written notice from the Association, or such longer period, if required by law, the Association may at its option, without liability to the Owner or occupant of the Lot in trespass or otherwise, enter upon the Lot and repair and/or paint the exterior of the Residential Dwelling or other Improvement on the lot and otherwise cause the Residential Dwelling or other Improvement on the Lot to be placed in good condition and repair, and to do every other thing necessary to secure compliance with this Declaration, and may charge the Owner of the Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such charge, plus fifty percent (50%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such charges shall be secured by the lien created in Article V of this Declaration. Interest thereon at the rate of eighteen percent (18%) per annum, or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty first (31st) day after a written Invoice is delivered to the Owner.

**C. LOT MAINTENANCE.** Until such time that there is a substantially completed Residential Dwelling on a Lot, the Owner shall regularly mow the first fifty (50) feet of the Lot along the entire perimeter adjacent to a road (i.e., from the curb inward a distance of fifty (50) feet); as used herein, "**regularly**" means not less than twice a month at reasonable intervals in the months of May through September and not less than once a month in the months of October through April. After such time that there is a substantially completed Residential Dwelling on a Lot, the Owner or occupant of the Lot shall at all times keep all weeds and grass on the Lot cut in a sanitary, healthful and attractive manner. In no event shall an Owner use any Lot for storage of materials and equipment or permit the accumulation of garbage, trash or rubbish of any kind thereon. Owners shall not burn anything on any Lot; provided that, this provision shall not be construed to prohibit cooking on an outdoor pit. All septic tanks serving any Lot must be properly permitted by all applicable governmental authorities and serviced regularly by the respective Owner and otherwise kept in good condition and repair. Any septic tank and system shall be maintain so that no effluent from the same shall ever drain or flow upon the ground surface or drain in such a manner into any body of water. The Owners or occupants of any Lots at the intersection of road, where the rear yard or portion of the Lot is visible to full public view, shall screen the following from public view: yard equipment, wood piles and storage piles that are Incident to the normal residential requirements of a typical family. The Board of Directors shall have the exclusive authority to determine whether an Owner is maintaining his Lot in a reasonable manner and the Board of Director's determination shall be conclusive and binding on all parties.

In the event the Owner or occupant of any Lot fails to maintain the Lot in a reasonable manner as required by this Declaration and such failure continues after ten (10) days written notice from the Association, or such longer period, if required by law, the Association may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon the Lot and cause the Lot to be mowed, edged and cleaned, cause the landscaping beds to be weeded and cleaned, cause shrubs and trees to be trimmed or pruned, cause dead or diseased shrubs or trees to be removed, and to do every other thing necessary to secure compliance with this Declaration, and may charge the Owner of such Lot for the cost of such work. The Owner agrees by the purchase or occupancy of such Lot to pay such charge, plus fifty percent (50%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such charges shall be secured by the lien created in Article V of this Declaration. Interest thereon at the rate of eighteen percent (18%) per annum or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31st) day after a written invoice is delivered to the owner.

**D. BUILDING MATERIAL.** All building materials, whether in connection with new construction no remodeling shall be properly screened and remain out of sight so that such building materials are not visible from any road or from any other Lot.

**E. PIERS AND FENDERS.** No pier, wharf, dock, boathouse, boat lift or other structure shall be erected on any Lot except upon first having obtained the approval of the Architectural Control Committee. The use of automotive tires or other unsightly material for holdoff fenders is hereby expressly prohibited.

### **Section 2.3 NEW CONSTRUCTION OF RESIDENTIAL DWELLINGS AND RELATED IMPROVEMENTS; ARCHITECTURAL RESTRICTIONS.**

**A. NEW CONSTRUCTION.** Any Residential Dwelling to-be constructed after the date of this Declaration shall (i) be completed within six (6) months after the closing of the purchase of the Lot on which the Residential Dwelling will be constructed, or if such Lot has already been purchased but no Residential Dwelling exists thereon as of the date of this Declaration, within six (6) months after construction commences on such Lot or the approval of any construction by the Architectural Review Committee shall automatically be revoked and expire and an Owner shall be required to resubmit all items to the Architectural Review Committee for re-approval, (ii) contain a minimum of One Thousand Five Hundred (1,500) square feet of interior floor space of living area, (iii) have exterior walls comprised of stucco, stucco board, brick, rock, cement board and/or Hardi board, (iv) have a metal roof or thirty (30) year architectural shingles and (v) otherwise comply with any Community Development guidelines and Residential Modification Guidelines. During construction of any new Residential Dwelling, (I) trash piles and burning of any materials on any Lots shall be prohibited, (II) trash collecting receptacles shall be located on such Lot, (III) all trash, refuse and other waste must be disposed of regularly so as to create a neat and clean appearance, (IV) portable restrooms must be located on the Lot and maintained in good, neat and sanitary condition, and (V) all septic tanks serving such Lot must be properly permitted by all applicable governmental authorities and serviced regularly. With respect to any Lot which is sold, conveyed or otherwise transferred after the date of this Declaration, the monthly Annual Maintenance Charge for such Lot pursuant to Section 5.3 herein shall automatically be increased to the monthly amount owed for Lots with Improvements thereon pursuant to Section 5.3 herein on the earlier to occur of (i) the date of commencement of construction of the Improvements or (ii) the date which is seven (7) months after the date of the sale, transfer or conveyance of the Lot.

**B. COMPLIANCE WITH COMMUNITY DEVELOPMENT GUIDELINES.** All Owners and Builders are obligated to strictly comply with all provisions of the Community Development Guidelines for Exotic Isle in effect as of the date of recording this Declaration or as such Community Development Guidelines may hereafter be adopted and/or amended. The Community Development Guidelines may address, without limitation, the types of structures that may be constructed on a Lot, construction



procedures, exterior finish, roofing materials, landscaping, exterior colors, minimum square footage, setbacks, and height limitations.

**C. BUILDER NON-COMPLIANCE.** In the event that a Builder fails to comply with the provisions of this Declaration and/or the Community Development Guidelines and does not correct the violation within ten (10) days of the date of receipt of written notice of the violation from the Association, the Association shall have the authority to impose a fine against the Builder in the amount of \$100.00 each day that the violation continues to exist after the period specified in the notice to correct the violation. Any fines imposed against a Builder in accordance with this Section shall be payable to the Association. Payment of such fines shall be the personal obligation of the Builder; provided that, payment of such fines shall also be secured by the lien referred to and established in Article V of this Declaration against the Lot, if owned by the Builder. An Owner shall be responsible for informing a Builder of the terms of this Declaration and the Community Development Guidelines.

**D. RESTRICTIONS ON LOTS 52 THROUGH 68.** No buildings or other improvements of a permanent or substantial nature shall be erected or placed upon those portions of Lots 52 through 68 (as designated on the Plat, lying within the right-of-way area of the Colorado River as shown on the Plat; provided, however, that improvements or facilities of a recreational type not falling within this category may be constructed or placed thereon with the written approval of the Architectural Review Committee in accordance with the terms hereof. The Architectural Review Committee shall have the right to determine, in the exercise of its reasonable judgment, whether any particular building or structure proposed to be erected or placed within said right-of-way area is substantial or permanent in nature.

**E. OTHER RESTRICTIONS.**

- a. Subject to Section 2.1(N), no building shall be located nearer than five feet (5') to a side Lot line. For the purpose of this covenant, eaves, steps and unroofed terraces shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot. The location of any building on any Lot or building site with respect to the front lot line or to the land side of any proposed or existing bulkhead (or, as to Lots 52 to 68, the right-of-way of the Colorado River as shown on the Plat), shall be determined by the Architectural Review Committee as provided herein.
- b. No wall, fence or hedge (or other improvements serving a like or similar purpose) shall be constructed or permitted without the prior written consent of the Architectural Review Committee.
- c. No structure of a temporary character, prefabricated building, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on a Lot at any time as a residence.

**Section 2.4 RESERVATIONS AND EASEMENTS.**

**A. UTILITY EASEMENTS.** The utility easements, roads and rights-of-way shown on the Plat for the construction, addition, maintenance and operation of all necessary utility systems including systems of electric light and power supply, telephone service, cable television service, gas supply, water supply and sewer service, including systems for utilization of services resulting from advances in science and technology are reserved for use by the Owners of the Lots and the Utility Companies as set forth on the Plat. There is hereby created an easement upon, across, over and under all of the Community for ingress and egress for the purpose of installing, replacing, repairing and maintaining all utilities. By virtue of this easement, it shall be expressly permissible for the Utility Companies and other entities supplying services to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, under the land within the utility easements now or from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained

in this paragraph, no utilities or appurtenances thereto may be installed or relocated on the Community until approved by the Board.

**B. DRAINAGE.** No Owner of a Lot shall be permitted to construct Improvements on such Lot or to grade such Lot or permit such Lot to remain in or be placed in such condition that rainwater falling on such Lot drains to any other Lot or Common Area. It is the intent of this provision to preserve natural drainage. An underground drainage system may be required on a Lot by the Architectural Review Committee to assure proper drainage on the Lot.

**C. ELECTRIC DISTRIBUTION SYSTEM.** An electric distribution system will be installed in the Community, which service area embraces all of the Lots which are platted in the Community. This electrical distribution system shall consist of underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the Residential Dwelling or other Improvement on the Owner's Lot to the electric company's primary service line. The electric company furnishing service shall make the necessary connections at said point of attachment. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of an electric meter of an electric company for each dwelling unit involved. For so long as service is maintained, the electric service to each dwelling unit therein shall be uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

**D. LAWN MAINTENANCE.** The Association may provide lawn maintenance services to the Common Areas and any Lot. The costs incurred by the Association in connection with such lawn maintenance services may be charged to the Owners as part of the Annual Maintenance Charges. The lawn maintenance services provided by the Association (if ever) may be discounted by the Association at any time, with or without notice to the Owners.

**E. MARINA EASEMENT TRACT; BOATS, WATERCRAFT AND COMMON AREA DOCK FACILITIES.** The easements for the Marina Easement Tract in Part One of the Original Declaration are not amended and terminated and hereby remain in full force and effect. The Owners do hereby confirm the existence of a perpetual easement in, over and upon the Marina Easement Tract for the exclusive use and benefit of the Owners and their respective tenants, invitees, guests and lienholders holding liens or mortgages thereon. The Marina Easement Tract may be used and enjoyed in common by the Owners and their respective tenants, invitees, guests and lienholders for the following purposes:

- a) Ingress and egress to and from the Private Access Roadway to the East Bank of the Dredged Channel of the Colorado River. Such ingress and egress shall include the right to use the same for pedestrian and vehicular travel for all purposes necessary and convenient to the Owners and their respective tenants, invitees, guests and lienholders to obtain ingress to and from said Private Access Roadway to said Channel.
- b) Each Owner is entitled to the use of the Marina Easement Tract dock facilities for boat and watercraft (both power and sail boat) docking purposes. No boat or watercraft, however, shall be permitted to be docked at the Marina Easement Tract dock facilities for more than twelve (12) consecutive hours unless prior approval has been obtained from the Board of Directors. Further, nothing contained in this Declaration shall obligate the Association to provide or maintain any dock lines, minimum depth at the dock facilities or channel access to the dock facilities. The Association's repair, maintenance and replacement obligations with respect to the Common Areas shall extend to the Marina Easement Tract.

- c) The parking of automobiles and other vehicles, including trailers for transporting boats. This provision, however, shall not be construed as permitting the parking of house trailers or mobile homes.
- d) The right to the use of boat storage and covered facilities as may be furnished by the Association as provided herein.
- e) The use of barge docking facilities at the bulkhead on the East Bank of the Dredged Channel of the Colorado River as may be required in connection with maintenance work on the Community; and boat launching, including, without limitation, the right to construct and maintain appropriate facilities on the Marina Easement Tract as may be deemed necessary by the Association.
- f) Activities relating to private ferry, barge and cable car service as may be provided from the Marina Easement Tract to the Community, as provided herein.
- g) Community and recreational purposes (it being intended, however, that this provision shall not be construed as permitting hunting, fishing or swimming on the Marina Easement Tract).

Such easements are subject to the following conditions

- 1) The use and enjoyment of the easements herein established shall be administered in accordance with the Rules and Regulations as may be promulgated by the Association as provided for herein, including, without limitation, the designation of parking areas, selection of roadways and the property use, conduct and maintenance of facilities. The Association is hereby vested with fully power and authority to adopt such Rules and Regulations as it may deem necessary and desirable which it considers beneficial to the Owners.
- 2) The rights and privileges in the Marina Easement Tract are private and are not intended for public use.
- 3) Such easements shall inure to the exclusive use and benefit of all persons, firms or corporations who may now own or hereafter own, use and occupy the Lots in the Community and for the like use and benefit of their tenants, invitees, guests and lienholders holding liens or mortgages thereon, and shall be easements appurtenant to the respective Lots, which shall pass to the Owners thereof from time to time, whether easement rights are specifically granted to each successive owner or not.
- 4) No more than 67 boat stalls shall be constructed on the Marina Easement Tract. The Association has the right to designate which portions of the Marina Easement Tract may be used for boat storage.
- 5) Boats on trailers parked on the Marina Easement Tract must be moved at least once per calendar month for proper maintenance of the surrounding areas.
- 6) The Association shall have the right, but not the obligation, to furnish private ferry, barge and cable car service to and from the Marina Easement Tract and the Community for the exclusive use and benefit of the Owners, their tenants, invitees and guests. Reasonable fees for the use of any such services may be charges by the Association. It is intended that the use of the ferry or barge shall be limited to the transportation of property and that the cable car shall be utilized for the transportation of passengers. The rights of ingress and egress in, over and across the Marina Easement Tract are hereby reserved to the Association for the purposes of construction, inspecting, repairing, operating and maintaining any equipment and facilities required in connection with furnishing such service. The Association reserves the right to designate the specific portion thereof which shall be used for such purposes.

**ARTICLE III.**  
**ARCHITECTURAL APPROVAL**

**Section 3.1 ARCHITECTURAL REVIEW COMMITTEE.** The Architectural Review Committee shall be the Board of Directors.

**Section 3.2 APPROVAL OF IMPROVEMENTS REQUIRED.** In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Community, to establish and preserve a harmonious design for the Community and to protect and promote the value of the Lots and the Residential Dwellings and Improvements thereon, except for Residential Dwellings and Improvements which exist as of the date of this Declaration and have been approved by the Architectural Review Committee, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot by any Owner which affect the exterior appearance of any Lot or the Residential Dwelling or other Improvement on a Lot unless Plans therefor have been submitted to and approved by the Architectural Review Committee in accordance with the terms and provisions of this Article. Without limiting the foregoing, the construction and installation of any Residential Dwelling, sidewalk, driveway, mailbox, deck, patio, landscaping, swimming pool, tennis court, greenhouse, barn, play structure, awning, wall, fence, exterior lighting, garage, guest quarters, accessory structures, bulkhead, pier, wharf, dock, boathouse, boat lift or other structure or any other improvement shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Residential Dwelling or other Improvement, unless the Plans for the same have been submitted to and approved by the Architectural Review Committee in accordance with the terms and provisions of this Article.

The Architectural Review Committee is hereby authorized and empowered to approve all Plans and the construction of all Residential Dwellings and other Improvements on any Lot and the Builder of such Improvements. Prior to the commencement of any Residential Dwelling or other Improvement on a Lot, the Owner thereof shall submit to the Architectural Review Committee Plans and related data for all such Improvements. The Architectural Review Committee shall, in its sole discretion, determine whether the Plans and other data submitted by any Owner for approval are acceptable. The Architectural Review Committee may establish and change from time to time, if deemed appropriate, a non-refundable fee sufficient to cover the expense of reviewing Plans and related data (the "**Submission Fee**").

The Architectural Review Committee shall have the authority to disapprove any Plans on any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations; failure to comply with any of the provisions of this Declaration or the Community Development Guidelines or the Residential Modification Guidelines; failure to provide requested information; objection to exterior design, appearance or materials; objection on the ground of incompatibility of any such proposed Improvement with the general plan of development for the Community; objection to the location of any proposed Improvements on any such Lot or Residential Dwelling; objection to the landscaping plan for such Lot; objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement; or any other matter which, in the sole judgment of the Architectural Review Committee, would render the proposed Improvement inharmonious with the general plan of development for the Community. The Architectural Review Committee shall have the right to approve any submitted Plans with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the Plans for the Residential Dwelling or other Improvement. Approval of Plans by the Architectural Review Committee for the Residential Dwelling or other Improvement to be constructed on a Lot shall not be deemed an approval or otherwise obligate the Architectural Review Committee to approve similar Plans for a Residential Dwelling or other Improvement to be constructed on another Lot.

Any revisions, modifications or changes in any Plans previously approved by the Architectural Review Committee must be approved by the Architectural Review Committee in the same manner specified above.

**Section 3.3 ADDRESS OF COMMITTEE.** The address of the Architectural Review Committee shall be at the principal office of the Association.

**Section 3.4 COMMUNITY DEVELOPMENT GUIDELINES.** If the Community Development Guidelines impose requirements that are more stringent than the provisions of this Declaration, without directly conflicting with the provisions of the Declaration, the provisions of the Community Development Guidelines shall control, it being the intent of the Owners to allow the Community Development Guidelines to supplement the Declaration on matters generally relating to architectural control and the discretionary authority vested in the Architectural Review Committee.

**Section 3.5 FAILURE OF COMMITTEE TO ACT ON PLANS.** Any request for approval of a proposed Improvement on a Lot shall be deemed disapproved by the Architectural Review Committee, unless approval is transmitted to the Owner by the Architectural Review Committee within forty five (45) days of the date of actual receipt by the Architectural Review Committee of the request. A written request for additional information or materials shall also be deemed to be a disapproval of a request, whether or not so stated in the written request.

**Section 3.6 PROSECUTION OF WORK AFTER APPROVAL.** After approval of any proposed Improvement on a Lot, the proposed Improvement shall be prosecuted diligently and continuously and shall be completed within the time frame approved by the Architectural Review Committee and in strict conformity with the description of the proposed Improvement in the Plans submitted to the Architectural Review Committee.

**Section 3.7 INSPECTION OF WORK.** The Architectural Review Committee or its duly authorized representative shall have the right to inspect any Improvement on a Lot before or after completion, provided that the right of inspection shall terminate sixty (60) days after the Architectural Review Committee actually receives notice from the Owner that construction of the Improvement has been completed. In the case of a new Residential Dwelling on a Lot, the Architectural Review Committee may issue a "Certificate of Completion" prior to occupancy, provided that the Residential Dwelling is, in fact, completed and ready for occupancy and the Residential Dwelling was constructed in accordance with the approved Plans.

**Section 3.8 NO IMPLIED WAIVER OR ESTOPPEL.** No action or failure to act by the Architectural Review Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Architectural Review Committee or the Board of Directors, with respect to any Improvement on a Lot. Specifically, the approval by the Architectural Review Committee of an Improvement on a Lot shall not be deemed a waiver of any right or an estoppel against withholding approval or consent for any similar Improvement on another Lot or any similar proposals, Plans, specifications, or other materials submitted with respect to any other Improvement on a Lot by such person or otherwise.

**Section 3.9 POWER TO GRANT VARIANCES.** The Architectural Review Committee may authorize variances from compliance with any of the provisions of Article II of this Declaration (except for the provisions relating to single family residential construction and use), including restrictions upon placement of structures, the time for completion of construction of Improvements on a Lot or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, environmental, or other relevant considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Review Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor

shall the granting of any variance affect the jurisdiction of the Architectural Review Committee other than with respect to the subject matter of the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned.

**Section 3.10 COMPENSATION OF ARCHITECTURAL REVIEW COMMITTEE MEMBERS.**

The members of the Architectural Review Committee shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder as the Board from time to time may authorize or approve.

**Section 3.11 ESTOPPEL CERTIFICATES.** The Board of Directors, upon the reasonable request of any interested party and after confirming any necessary facts with the Architectural Review Committee, shall furnish a certificate with respect to the approval or disapproval of any Improvement on a lot or with respect to whether any Improvement on a Lot was made in compliance with the provisions of this Declaration and the Community Development Guidelines. Any person, without actual notice of any falsity or inaccuracy of such a certificate, shall be entitled to rely on such certificate with respect to all matters set forth therein.

**Section 3.12 NONLIABILITY FOR ARCHITECTURAL REVIEW COMMITTEE ACTION.** None of the members of the Architectural Review Committee, the Association, or any member of the Board of Directors shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Architectural Review Committee, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Architectural Review Committee shall not inspect, guarantee or warrant the workmanship of the Improvement, including its design, construction, safety, whether structural or otherwise, conformance with building codes, or other governmental laws or regulations or whether the Improvement is suitable or fit for its intended purpose. Furthermore, none of the members of the Architectural Review Committee, or any member of the Board of Directors shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association, or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Association, the Architectural Review Committee, the Board of Directors, or otherwise. Finally, neither the Association, the Board, the Architectural Review Committee, or their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any Improvement or portion thereof, or for failure to repair or maintain the same.

**Section 3.13 CONSTRUCTION PERIOD EXCEPTION.** During the course of actual construction of any permitted Improvement on a Lot, and provided construction is proceeding with due diligence, the Architectural Review Committee may temporarily suspend the provisions of Article II contained in this Declaration as to the Lot upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that during the course of any such construction, nothing shall be done that will result in a violation of any of the provisions of this Declaration upon completion of construction or that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Community.

**Section 3.14 SUBSURFACE CONDITIONS.** The approval of Plans by the Architectural Review Committee for any Residential Dwelling or other Improvement on a Lot shall not be construed in any respect as a representation or warranty by the Architectural Review Committee to the Owner submitting such Plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot are suitable for the construction of the Improvement contemplated by such Plans. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated Improvement thereon.

**Section 3.15 LANDSCAPING.** No landscaping, grading, excavation or fill work of any nature should be implemented or installed by any Owner on any Lot unless and until landscaping plans therefor have been submitted to and approved by the Architectural Review Committee in accordance with the provisions of this Article III.

**ARTICLE IV.**  
**MANAGEMENT AND OPERATION OF COMMUNITY**

**Section 4.1 MANAGEMENT BY ASSOCIATION.** The affairs of the Community shall be administered by the Association. The Association shall have the right, power and obligation to provide for the management, administration, and operation of the Community as herein provided for and as provided for in the Certificate of Formation, Bylaws, and Rules and Regulations. The business and affairs of the Association shall be managed by its Board of Directors. The Board may engage any entity to perform the day-to-day functions of the Association and to provide for the management, administration and operation of the Community. The Association, acting through the Board, shall be entitled to enter into such contracts and agreements concerning the Community as the Board deems reasonably necessary or appropriate, in the Board's sole discretion, to manage and operate the Community in accordance with this Declaration, including without limitation, the right to grant utility and other easements for uses the Board shall deem appropriate and the right to enter into agreements with adjoining or nearby land owners or governmental entities on matters of maintenance, trash pick-up, repair, administration, patrol services, traffic, operation of recreational facilities, operation of the water distribution system and any sewer system serving the Community or other matters of mutual interest. . The Association shall supervise, manage and control the use and enjoyment of the Common Areas and the Marina Easement Tract, together with the community and recreational facilities located thereon, in accordance with such Rules and Regulations as may be established and prescribed by it. The Association shall own, manage and control any ferry, barge, boat, cable, car or other vessel or vessels which may now or hereinafter be owned by the Association for the common benefit of the Owners.

**Section 4.2 MEMBERSHIP IN ASSOCIATION.** The Association has mandatory membership. Each Owner of a Lot, whether one or more persons or entities, shall, upon and by virtue of becoming such Owner, automatically become and shall remain a Member of the Association until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be mandatory, shall be appurtenant to ownership of a Lot, shall automatically follow the ownership of each Lot, and shall not be separated from ownership of a Lot.

**Section 4.3 VOTING OF MEMBERS.** Subject to any limitations set forth in this Declaration or the Bylaws, each Member shall be a Class A Member entitled to one (1) vote per Lot owned on each matter submitted to a vote of the Members. No Member shall be entitled to vote at any meeting of the Association until such Owner has presented evidence of ownership of a Lot in the Community to the Secretary of the Association. In the event that ownership interests in a Lot are owned by more than one Class A Member of the Association, such Class A Members shall exercise their right to vote in such manner as they may among themselves determine, but in no event shall more than one (1) vote be cast for each Lot. Such Class A Members shall appoint one of them as the Class A Member who shall be entitled to exercise the vote of that Lot at any meeting of the Association. Such designation shall be made in writing to the Board of Directors and shall be revocable at any time by actual written notice to the Board. The Board shall be entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Lot is owned by more than one Class A Member of the Association, and no single Class A Member is designated to vote on behalf of the Class A Members having an ownership interest in such Lot, then the Class A Member exercising the vote for the Lot shall be deemed to be designated to vote on behalf of the Class A Members having an ownership interest in the Lot. All Members of the Association may attend meetings of the Association and all Members may exercise their vote at such meetings either in person or proxy. Occupants of Lots who are not Members of the Association may attend meetings of the Association and serve on committees (except the Architectural Review Committee). Fractional votes and split votes will not be permitted. The decision of the Board of Directors as to the number of votes which any Member is entitled to cast, based upon the number of Lots owned by him, shall be conclusive and binding on all parties.

**Section 4.4 MEETINGS OF THE MEMBERS.** Annual and special meetings of the Members of the Association shall be held at such place and time and on such dates as shall be specified or provided in the Bylaws.

**Section 4.5 PROFESSIONAL MANAGEMENT.** The Board shall have the authority to retain, hire, employ or contract with such professional management companies or personnel as the Board deems appropriate to perform the day to day functions of the Association and to provide for the administration and operation of the Community as provided for herein and as provided for in the Bylaws.

**Section 4.6 BOARD ACTIONS IN GOOD FAITH.** Any action, inaction or omission by the Board made or taken in good faith shall not subject the Board or any individual member of the Board to any liability to the Association, its Members or any other party.

**Section 4.7 STANDARD OF CONDUCT.** The Board of Directors, the officers of the Association, and the Association shall have the duty to represent the interests of the Owners in a fair and just manner. Any act or thing done by any Director, officer or committee member taken in furtherance of the purposes of the Association, and accomplished in conformity with the Declaration, Certificate of Formation, Bylaws, Community Development Guidelines, and the laws of the State of Texas, shall be reviewed under the standard of the Business Judgment Rule as established by the common law of Texas, and such act or thing shall not be a breach of duty on the part of the Director, officer or committee member if taken or done within the exercise of their discretion and judgment. The Business Judgment Rule means that a court shall not substitute its judgment for that of the Director, officer or committee member. A court shall not re-examine the decisions made by a Director, officer or committee member by determining the reasonableness of the decision as long as the decision is made in good faith and in what the Director, officer, or committee member believed to be in the best interest of the Association.

**Section 4.8 IMPLIED RIGHTS; BOARD AUTHORITY.** The Association may exercise any right or privilege given to it expressly by the provisions of this Declaration or its Certificate of Formation or Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board of Directors without a vote of the membership except where any provision in this Declaration, the Certificate of Formation, the Bylaws or applicable law specifically requires a vote of the membership.

The Board may institute, defend, settle or intervene on behalf of the Association in litigation, administrative proceedings, binding or non-binding arbitration or mediation in matters pertaining to (a) Common Areas or other areas in which the Association has or assumes responsibility pursuant to the provisions of this Declaration, (b) enforcement of this Declaration or any Rules and Regulations or the Community Development Guidelines or (c) any other civil claim or action.

However, no provision in this Declaration or the Certificate of Formation or Bylaws shall be construed to create any independent legal duty to institute litigation on behalf of or in the name of the Association.

**Section 4.9 SUSPENSION OF CERTAIN RIGHTS.** The Association shall have the right to suspend the Common Area and any recreational facilities in accordance with the Association's Enforcement and Fines Policy.

## **ARTICLE V.**

### **MAINTANCE CHARGE AND MAINTENANCE FUND; CABLE CAR AVAILABILITY FEE**

**Section 5.1 MAINTENANCE FUND.** All Annual Maintenance Charges collected by the Association and all interest, penalties, assessments and other sums and revenues collected by the Association constitute the Maintenance Fund. The Maintenance Fund shall be held, managed, invested and expended by the Board, in its sole discretion, for the benefit of the Community and the Owners of Lots therein. The Board shall by way of illustration and not by way of limitation, expend the Maintenance Fund for the administration, management, and operation of the Community; for the maintenance, repair and



improvement of the Common Area and the Marina Easement Tract; operation and maintenance of ferry, barge and tram services and related facilities; expenses relating to the ownership, preservation, protection and care of the Exotic breeds of animals and birds and any addition or replacements thereto as described in Section 2.1(w); for the maintenance of any easements granted to the Association; for the enforcement of the provisions of this Declaration by action at law or in equity, or otherwise, and the payment of court costs as well as reasonable and necessary legal fees; and for all other purposes that are, in the discretion of the Board, desirable in order to maintain the character and value of the Community and the Lots therein. The Board and its individual members shall not be liable to any person as a result of actions taken by the Board with respect to the Maintenance Fund, except for willful neglect or intentional wrongdoings.

**Section 5.2 COVENANTS FOR ANNUAL MAINTENANCE CHARGES AND ASSESSMENTS.** Each and every Lot in the Community is hereby severally subjected to and impressed with an Annual Maintenance Charge or assessment in an amount to be determined annually by the Board, which Annual Maintenance Charge shall run with the land. Each Owner of a Lot, by accepting a deed to the Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the Annual Maintenance Charges and assessments levied against his Lot and/or assessed against him by virtue of his ownership thereof, as the same shall become due and payable, without demand. The Annual Maintenance Charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all Improvements thereon, as hereinafter more particularly stated. Each Annual Maintenance Charge or assessment, together with late charges, interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such Annual Maintenance Charge or assessment accrued, but no Owner shall be personally liable for the payment of any Annual Maintenance Charge or assessment made or becoming due and payable after his ownership ceases. No Owner shall be exempt or excused from paying any such Annual Maintenance Charge or assessment by waiver of the use or enjoyment of the Common Areas, or any part thereof, or by abandonment of his Lot or his interest therein.

**Section 5.3 BASIS AND ANNUAL MAINTENANCE CHARGE.** The Annual Maintenance Charge is \$4,800.00 (\$400.00 per month) for unimproved Lots and \$9,600.00 (\$800.00 per month) for any Lots with Improvements located thereon. The Annual Maintenance Charge will be increased by \$420.00 (\$35.00 per month) for any Owner who utilizes a boat stall on Selkirk Island. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may adjust the Annual Maintenance Charge or assessment upon notice to the Owners. The Annual Maintenance Charge or assessment levied against each Lot shall be uniform. The Annual Maintenance Charge for unimproved Lots is subject to the terms and conditions of Section 2.3A.

**Section 5.4 DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL MAINTENANCE CHARGE.** The initial Annual Maintenance Charge or assessment provided for herein shall be established as to all Lots on the date this Declaration is recorded in the Official Public Records of Real Property of Matagorda County, Texas. On or before the 30th day of November in each year, the Board of Directors of the Association shall fix the amount of the Annual Maintenance Charge or assessment to be levied against each Lot in the next calendar year. Written notice of the figure at which the Board of Directors of the Association has set the Annual Maintenance Charge or assessment for Lots shall be sent to every Lot Owner. Provided that, the failure to fix the amount of the Annual Maintenance Charge or assessment or to send written notice thereof to all Owners shall not affect the authority of the Association to levy Annual Maintenance Charges or assessments or to increase Annual Maintenance Charges or assessments as provided in this Declaration.

**Section 5.5 SPECIAL ASSESSMENTS.** If the Board at any time, or from time to time, determines that the Annual Maintenance Charges assessed for any period are insufficient to provide for the continued operation of the Community or any other purposes contemplated by the provisions of this Declaration, then the Board shall have the authority to levy such Special Assessments ("**Special Assessments**") as it shall deem necessary to provide for such continued maintenance and operation. No

Special Assessment shall be effective until the same is approved in writing by at least a majority of the Members, or by the vote of not less than sixty percent (60%) of the Members and voting, in person or by proxy, at meeting of the Members called for that purpose at which a quorum is present. Any such Special Assessment shall be payable in the manner determined by the Board and the payment thereof may be enforced in the manner herein specified for the payment of the Annual Maintenance Charges. The amount of any Special Assessment levied against Lots shall be uniform.

**Section 5.6 ENFORCEMENT OF ANNUAL MAINTENANCE CHARGE/SUBORDINATION OF LIEN.** The Annual Maintenance Charge assessed against each Lot shall be due and payable, in advance, in twelve (12) monthly installments, in an amount equal to one-twelfth (1/12) of the Annual Maintenance Charge, on the fifteenth (15<sup>th</sup>) day of each calendar month during the year. Invoices for the monthly Annual Maintenance Charge will be delivered to each Owner thirty (30) days prior to the date such invoice is due. Any Annual Maintenance Charge which is not paid and received by the Association by the twenty-eighth (28<sup>th</sup>) day of any calendar month shall be deemed to be delinquent, and, without notice, shall bear interest at the rate of eighteen percent (18%) per annum or the maximum, non-usurious rate, whichever is less, from the date originally due until paid. Further, the Board of Directors of the Association shall have the authority to impose a monthly late charge on any delinquent Annual Maintenance Charge, Special Assessment or Reserve Assessment equal to \$35.00, which is subject to adjustment by the Board. The monthly late charge, if imposed, shall be in addition to interest. In the event any Owner does not timely pay any portion of the Annual Maintenance Charge within ninety (90) days after the date such payment was due, then the Association shall be permitted to file a lien on such Owner's Lot in accordance with all applicable laws. To secure the payment of the Annual Maintenance Charge, Special Assessments and Reserve Assessments levied hereunder and any other sums due hereunder (including, without limitation, interest, late fees, costs, attorney's fees or delinquency charges), there is hereby created and fixed a separate and valid and subsisting lien upon and against each Lot and all Improvements thereon for the benefit of the Association, and superior title to each Lot is hereby reserved in and to the Association. The lien described in this Section 5.6 and the superior title herein reserved shall be deemed subordinate to any Mortgage for the purchase or Improvement of any Lot and any renewal, extension, rearrangements or refinancing thereof. The collection of such Annual Maintenance Charge, Special Assessment, Reserve Assessment, and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including Interest, late charges, costs and attorney's fees shall be chargeable to and be a personal obligation of the defaulting Owner. Notice of the lien referred to in the preceding paragraph may, but shall not be required to, be given by recording an affidavit, duly executed, and acknowledged by an authorized representative of the Association, setting forth the amount owned, the name of the Owner or Owners of the affected Lot according to the records of the Association, and the legal description of such Lot in the Official Public Records of Real Property of Matagorda County, Texas. Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Association the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Annual Maintenance Charge, Special Assessment, Reserve Assessment and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including both judicial and non-judicial foreclosure pursuant to Chapter 51 of the Texas Property Code (as same may be amended or revised from time to time hereafter); in addition to and in connection therewith, by acceptance of the deed to his Lot, each Owner expressly grants, bargains, sells and conveys to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Annual Maintenance Charge, Special Assessments, Reserve Assessments and other sums due hereunder remaining unpaid hereunder by such Owner from time to time and grants to such trustee a power of sale. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and filed in the Official Public Records of Real Property of Matagorda County, Texas. In the event of the election by the Board to foreclose the lien

herein provided for nonpayment of sums secured by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, to enforce the lien and to sell such Lot, and all rights appurtenant thereto, in accordance with the provisions of Chapter 51 of the Texas Property Code as same may hereafter be amended. At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice, except as may otherwise be provided by law.

**Section 5.7 NOTICE OF SUMS OWING.** Upon the written request of an Owner, the Association shall provide to such Owner a written statement setting out the then current total of all Annual Maintenance Charges, Special Assessments, Reserve Assessments, and other sums, if any, owing by such Owner with respect to his Lot. In addition to such Owner, the written statement from the Association so advising the Owner may also be addressed to and be for the benefit of a prospective lender or purchaser of the Lot, as same may be identified by said Owner to the Association in the written request for such information. The Association shall be entitled to charge the Owner a reasonable fee for such statement.

**Section 5.8 FORECLOSURE OF MORTGAGE.** In the event of a foreclosure of a Mortgage on a Lot that is superior to the lien created by this Declaration for the benefit of the Association, the purchaser at the foreclosure sale shall not be responsible for Annual Maintenance Charges, Special Assessments, Reserve Assessments or other sums, if any, which accrued and were payable to the Association by the prior Owner of the Lot, but said purchaser and its successors shall be responsible for Annual Maintenance Charges, Special Assessments, Reserve Assessments and other sums, if any, becoming due and owing to the Association with respect to said Lot after the date of foreclosure.

**Section 5.9 TRANSFER FEES AND RESALE CERTIFICATES.** The Board of Directors of the Association shall establish and change from time to time, if deemed appropriate, a fee sufficient to cover the expense associated with providing information in connection with the sale of a Lot in the Community and changing the ownership records of the Association ("**Transfer Fee**"). A Transfer Fee shall be paid to the Association or the managing agent of the Association, if agreed upon by the Association, upon each transfer of title to a Lot. The Transfer Fee shall be paid by the purchaser of the Lot, unless otherwise agreed by the seller and purchaser of the Lot. The Association shall also have the authority to establish and change from time to time, if deemed appropriate, a fee sufficient to cover the expense associated with providing a Resale Certificate in connection with the sale of a Lot. The fee for a Resale Certificate shall be paid to the Association or the managing agent of the Association, if agreed to by the Association. The fee for a Resale Certificate shall be in addition to, not in lieu of, the Transfer Fee.

**Section 5.10 CABLE CAR AVAILABILITY FEE.** Each Owner shall pay a "Cable Car Availability Fee" to the Association in the minimum amount of \$5.00 per Lot, calculated on an annual calendar year basis of \$60.00 per year, which shall be included as part of the Annual Maintenance Charges. The Board of Directors may adjust the Cable Car Availability Fee in their reasonable discretion.

## **ARTICLE VI**

### **INSURANCE, SECURITY**

**Section 6.1 GENERAL PROVISIONS.** The Board shall have the authority to determine whether or not to obtain insurance for the Association and, if insurance is obtained, the amounts thereof. In the event that insurance is obtained, the premiums for such insurance shall be an expense of the Association which shall be paid out of the Maintenance Fund. Provided that, the Association shall at all times maintain directors' and officers' liability insurance.

**Section 6.2 INDIVIDUAL INSURANCE.** Each Owner, tenant or other person occupying a Residential Dwelling, shall be responsible for insuring his Lot and his Residential Dwelling, its contents and furnishings. Each Owner, tenant or other person occupying a Residential Dwelling, shall, at his own cost and expense, be responsible for insuring against the liability of such Owner, tenant or occupant.

**Section 6.3 INDEMNITY OF ASSOCIATION.** EACH OWNER SHALL BE RESPONSIBLE FOR ANY COSTS INCURRED AS A RESULT OF SUCH OWNER'S NEGLIGENCE OR MISUSE OR THE NEGLIGENCE OR MISUSE OF HIS AMITY, TENANTS, GUESTS, INVITEES, AGENTS, EMPLOYEES, OR ANY RESIDENT OR OCCUPANT OF HIS RESIDENTIAL DWELLING, AND BY ACCEPTANCE OF A DEED TO A LOT DOES HEREBY INDEMNIFY THE ASSOCIATION, ITS OFFICERS, DIRECTORS AND AGENTS, AND ALL OTHER OWNERS AGAINST ANY SUCH COSTS.

**Section 6.4 SECURITY.** THE ASSOCIATION, ITS RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS AND ATTORNEYS, ("**ASSOCIATION RELATED PARTIES**") SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. THE ASSOCIATION RELATED PARTIES SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. OWNERS, LESSEE AND OCCUPANTS OF ALL LOTS, ON BEHALF OF THEMSELVES, AND THEIR GUESTS AND INVITEES, ACKNOWLEDGE THAT THE ASSOCIATION RELATED PARTIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES, OR OTHER SECURITY SYSTEMS (IF ANY ARE PRESENT) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD UP OR OTHERWISE, NOR THAT FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. OWNERS, LESSEES, AND OCCUPANTS OF LOTS ON BEHALF OF THEMSELVES, AND THEIR GUESTS AND INVITEES, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION RELATED PARTIES ARE NOT AN INSURER AND THAT EACH OWNER, LESSEE AND OCCUPANT OF ANY LOT AND ON BEHALF OF THEMSELVES AND THEIR GUESTS AND INVITEES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS) TO RESIDENTIAL DWELLINGS AND TO THE CONTENTS OF THEIR RESIDENTIAL DWELLING AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION RELATED PARTIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER OR LESSEE ON BEHALF OF THEMSELVES AND THEIR GUESTS OR INVITEES RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

## **ARTICLE VII.**

### **FIRE OR CASUALTY: REBUILDING**

**Section 7.1 REBUILDING.** In the event of a fire or other casualty causing damage or destruction to the Residential Dwelling or other Improvement on a Lot, the Owner of such damaged or destroyed Residential Dwelling or other Improvement shall within ninety (90) days after such fire or casualty contract to repair or reconstruct the damaged portion of the Residential Dwelling or other Improvement and shall cause such Residential Dwelling or other Improvement to be fully repaired or reconstructed in accordance with the original Plans therefor, or in accordance with new Plans presented to and approved by the Architectural Review Committee, and shall promptly commence repairing or reconstructing such Residential Dwelling or other Improvement, to the end that the Residential Dwelling or other Improvement shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.

Alternatively, such damaged or destroyed Residential Dwelling or other Improvement shall be razed and the Lot restored as nearly as possible to its original condition within ninety (90) days of its damage or destruction. In the event that the repair and reconstruction of the Residential Dwelling or other Improvement has not been commenced within ninety (90) days after such fire or casualty and the damaged or destroyed Residential Dwelling or other Improvement has not been razed and the Lot restored to its original condition, the Association and/or any contractor engaged by the Association, shall, upon ten (10) days written notice to the Owner at the Owner's last known mailing address according to the records of the Association, have the authority but not the obligation to enter upon the Lot, raze the Residential Dwelling or other Improvement and restore the Lot as nearly as possible to its original condition. Any costs incurred by the Association to raze the Residential Dwelling or other Improvement and to restore the lot to its original condition, plus fifty percent (50%) of such costs for overhead and supervision and interest thereon (from the date an invoice is submitted to Owner) at the rate of eighteen percent (18%) per annum, or the maximum, non-usurious rate, whichever is less, shall be charged to the Owner's assessment account and collected in the manner provided in Article V of this Declaration.

## **ARTICLE VIII.**

### **AMENDMENT, DURATION, ANNEXATION AND MERGER**

**Section 8.1 AMENDMENT.** The provisions of this Declaration may be amended at any time by an instrument in writing signed by the Secretary of the Association certifying that Owners representing not less than sixty percent (60%) of the total votes allocated to owners in the Association approved such amendment, setting forth the amendments and duly recorded in the Official Public Records of Real Property of Matagorda County, Texas. In the event that there are multiple Owners of a lot, the written approval of an amendment to this Declaration may be reflected by the signature of a single Co-Owner. Any legal challenge to the validity of an amendment to this Declaration must be initiated by filing a suit not later than one (1) year after the date the amendment document is recorded in the Official Public Records of Real Property of Matagorda County, Texas.

**Section 8.2 DURATION.** The provisions of this Declaration shall remain in full force and effect for a period of fifty (50) years from the date hereof, and shall be extended automatically for successive ten (10) year periods; provided, however, that the provisions of this Declaration may be terminated on the commencement of any successive ten year period by filing for record in the Official Public Records of Real Property of Matagorda County, Texas, an Instrument in writing signed by Owners representing not less than seventy-five percent (75%) of the Lots.

**Section 8.3 ANNEXATION.** Additional land may be annexed and subjected to the provisions of this Declaration with the consent of not less than sixty percent (60%) of the Members of the Association present and voting, in person or by proxy, at a meeting of the Members called for that purpose at which a quorum is present. The annexation of additional land shall be effective upon filing of record an annexation instrument in the Official Public Records of Real Property of Matagorda County, Texas.

**Section 8.4 MERGER.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the merging or consolidating associations as one scheme. No such merger or consolidation shall effect any revocation, change or addition to the provisions of this Declaration.

**ARTICLE IX.**  
**MISCELLANEOUS**

**Section 9.1 SEVERABILITY.** In the event of the invalidity or partial invalidity or partial unenforceability of any provision in this Declaration, the remainder of the Declaration shall remain in full force and effect.

**Section 9.2 NUMBER AND GENDER.** Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

**Section 9.3 ARTICLES AND SECTIONS.** Article and section headings in this Declaration are for convenience of reference and shall not affect the construction or interpretation of this Declaration. Unless the context otherwise requires references herein to articles and sections are to articles and sections of this Declaration.

**Section 9.4 DELAY IN ENFORCEMENT.** No delay in enforcing the provisions of this Declaration with respect to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

**Section 9.5 ENFORCEABILITY.** The provisions of this Declaration shall run with the Property and shall be binding upon and inure to the benefit of and be enforceable by the Association, each Owner and occupant of a Lot in the Community, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. If notice and an opportunity to be heard are given as provided by law, the Association shall be entitled to impose reasonable fines for violations of the provisions of this Declaration, the Community Development Guidelines or any Rules and Regulations adopted by the Association or the Architectural Review Committee pursuant to any authority conferred by either of them by the provisions of this Declaration and to collect reimbursement of actual attorney's fees and other reasonable costs incurred by it relating to violations of the provisions of such documents. Such fines, fees and costs may be added to the Owner's assessment account and collected in the manner provided in Article V of this Declaration.

**Section 9.6 REMEDIES.** In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the provisions of this Declaration, the Community Development Guidelines or the Rules and Regulations, the Association or each Owner or occupant of a Lot within the Community, or any portion thereof, may institute and prosecute any proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover monetary damages caused by such violation or attempted violation.

**Section 9.7 INTERPRETATION.** The provisions of this Declaration shall be liberally construed to give full effect to their intent and "purposes." If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible to more than one conflicting interpretation, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration and the general plan of development established by this Declaration shall govern.

**Section 9.8 UNIFORM PLAN.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Property.

**Section 9.9 GOVERNING LAW.** THIS DECLARATION, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY THE LAW OF THE STATE OF TEXAS (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

**[SIGNATURE PAGE TO FOLLOW]**

**EXHIBIT "A"**

**Legal Description of Property**

Lots 1-68 of Exotic Isle Subdivision, a subdivision in Matagorda County, Texas according to the Replat of Exotic Isle recorded in Volume 6, Pages 26 and 27 of the Plat Records of Matagorda County, Texas.



**EXHIBIT "B"**  
**Legal Description of Marina Easement Tract**

The South 172 feet of that certain five (5) acre parcel of land, more or less, out of the William Selkirk Survey, Abstract 87, in Matagorda County, Texas, being more fully described by metes and bounds and being identified as the "Second Tract" in a deed to Exotic Isle Company, a Texas corporation, dated April 15, 1970 and recorded in Volume 484, Page 151 of the Deed Records of Matagorda County, Texas (the "Five-Acre Tract"), such south 172 feet being more particularly described as follows:

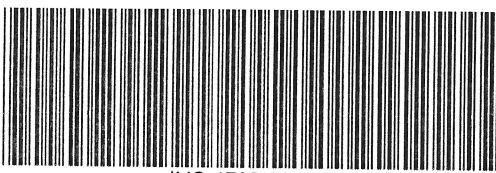
Commencing at a point in the East bank or the Dredged Channel of the Colorado River, being the Southwest corner of the Five-Acre Tract;

Thence North 54 degrees 45 minutes East along the South Line of the Five-Acre Tract a distance of 545 feet to a point for the Southeast corner of the Tract herein described (being also the Southeast corner of the Five-Acre Tract);

Thence North 36 degrees 54 minutes West along the East line of the Five-Acre Tract a distance of 172 feet to a point for the Northeast corner of the tract herein described;

Thence South 54 degrees 45 minutes West parallel with the South line of the Five-Acre Tract a distance of 545 feet to the West line of the Five-Acre Tract (the East bank of the Dredged Channel of the Colorado River);

Thence South 36 degrees 53 minutes East along the East bank of the Dredged Channel of the Colorado River (the West line of the Five-Acre Tract) to the Place of Beginning.



\*VG-1788-2022-4481\*

Matagorda  
County  
Stephanie Wurtz  
Matagorda County  
Clerk

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 4481  
Receipt Number: 20220630000022  
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Stephanie Wurtz  
Matagorda County Clerk  
Matagorda County, TX

*Stephanie Wurtz*