

HOLD FOR  
AMERIPOINT TITLE

Special Warranty Deed

02/02/06 2065509  
201063080

\$140.00

THE STATE OF TEXAS §

COUNTY OF HARRIS §

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, MIDWAY KINGS HARBOR PARTNERS, L.P., a Texas limited partnership ("**Grantor**"), whose address is 34 S. Wynden Drive, 3rd Floor, Houston, TX 77056, Attention: Jonathan Brinsden, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) paid to Grantor and other good and valuable consideration, including a note of even date executed by Grantee and payable to the order of Woodforest National Bank ("Grantee's Lender") in the principal amount of \$9,000,000.00, such note being secured by, among other things, a first and superior vendor's lien and superior title retained in this deed in favor of Grantee's Lender and by a first-lien deed of trust of even date from Grantee to George V. Sowers, Jr., trustee, the receipt and sufficiency of which consideration are hereby acknowledged, has, subject to the exceptions hereinafter set forth, GRANTED, SOLD, and CONVEYED and does hereby GRANT, SELL and CONVEY unto HWD, Ltd., a Texas limited partnership, ("**Grantee**"), whose address is 1616 S. Voss, Suite 100, Houston, Texas 77057, Attention: Worth W. Witmer, all of the land (the "**Land**") located in Harris County, Texas, and being more particularly described in **EXHIBIT A** attached hereto and incorporated herein by reference together with any and all improvements located thereon and any and all appurtenances belonging or appertaining thereto, including, but not limited to: (i) any and all appurtenant easements or rights of way affecting said Land including, without limitation, those referenced on **Exhibit A** and any of Grantor's rights to use same; (ii) any and all rights of ingress and egress to and from said Land and any of Grantors' rights to use same; (iii) to the extent assignable, any and all rights to utilities, utility lines, utility connections, utility commitments and utility capacity designated for the Land, and (iv) all right, title and interest of Grantor, if any, in and to any and all strips, gores or pieces of property abutting, bounding or which are adjacent or contiguous to said Land (said Land together with any and all of the related improvements, appurtenances, rights and interests referenced in items (i) through (iv) above are herein collectively referred to as the "**Property**").

This conveyance is made and accepted subject to all matters set forth in **EXHIBIT B** attached hereto and incorporated herein by reference (the "**Permitted Encumbrances**").

TO HAVE AND TO HOLD the Property, together with all rights and appurtenances pertaining thereto, unto Grantee and Grantee's successors and assigns forever; and Grantor does hereby bind itself and its successors and assigns to warrant and forever defend the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject, however, to the Permitted Encumbrances.

All ad valorem taxes and assessments for the Property for calendar year 2005 and previous years have been paid. All ad valorem taxes and assessments for calendar year 2006 have been prorated by the parties hereto as of the effective date of this Deed, and by acceptance hereof, Grantee hereby expressly assumes liability for the payment of all ad valorem taxes and

assessments for calendar year 2006 and subsequent years.

The vendor's lien against and superior title to the Property are retained until the note described above is fully paid according to its terms, at which time this deed will become absolute. Grantee's Lender, at Grantee's request, has paid in cash to Grantor that portion of the purchase price of the Property that is evidenced by the note. The first and superior vendor's lien against and superior title to the Property are retained for the benefit of Grantee's Lender and are transferred to Grantee's Lender without recourse against Grantor.

The provisions of **EXHIBIT C**, which contain certain covenants and restrictions pertaining to the Property, are attached hereto and incorporated herein by this reference.

Executed on the date set forth in the acknowledgment attached hereto to be effective as of the 31 day of January, 2006.

GRANTOR:

Midway Kings Harbor Partners, L.P.

By: Midway Kings Harbor, Inc., its general partner

By: [Signature]

Name: E. R. Sanford, II

Title: Executive Vice President of General Partner

THE STATE OF TEXAS §

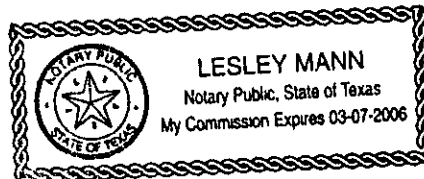
COUNTY OF HARRIS §

This instrument was acknowledged before me on January 31, 2006, by E.R. Sanford II, the Exec. Vice Pres. of Midway Kings Harbor, Inc., a Texas corporation, on behalf of said corporation, on behalf of Midway Kings Harbor Partners, L.P., a Texas limited partnership.

[Signature]  
Notary Public in and for the State of Texas

Printed Name of Notary

My Commission Expires: \_\_\_\_\_



(see next page for signature of Grantee)

LESLEY J. MANN  
AMERIPOINT TITLE  
34 S. WYNDEN DR., STE 340  
HOUSTON, TX 77056  
05-14313

RP 017-36-1793

The undersigned Grantee accepts this deed, including the provisions of Exhibit C, and consents to its form and substance. Grantee acknowledges that the terms of this deed conform with Grantee's intent and that they will control in the event of any conflict with the contract Grantee signed regarding the Property described in this deed. Grantee agrees to the obligations and restrictions imposed on Grantee and the Property by the terms of this deed.

HWD, Ltd., a Texas limited partnership

By: Hahnfeld-Witmer-Davis, Inc., a Texas corporation, its General Partner

By: 

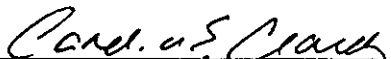
Name: Worth Witmer

Title: President

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on January 30, 2006, by Worth Witmer, the President of Hahnfeld-Witmer-Davis, Inc., a Texas corporation, on behalf of said corporation, on behalf of HWD, Ltd., a Texas limited partnership.



Printed Name of Notary

My Commission Expires: 7/23/09

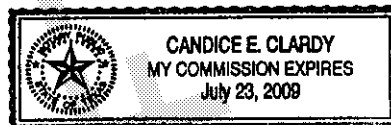


Exhibit A

A TRACT OR PARCEL OF LAND CONTAINING 3.3570 ACRES OR 146,232 SQUARE FEET OF LAND SITUATED IN THE AMASA TURNER SURVEY, ABSTRACT NO. 757, HARRIS COUNTY, TEXAS BEING OUT OF AND A PART OF UNRESTRICTED RESERVE "C" BLOCK 1 OF KINGS HARBOR CENTER SECTION TWO, MAP OR PLAT THEREOF RECORDED IN FILM CODE NO. 395014 OF THE HARRIS COUNTY MAP RECORDS, AND BEING A PORTION OF THAT CALLED 12.5219 ACRE TRACT OF LAND CONVEYED TO MIDWAY KINGS HARBOR PARTNERS, L.P. IN THAT CERTAIN WARRANTY DEED FILED UNDER HARRIS COUNTY CLERKS FILE NO. X-963690, WITH SAID 3.3570 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND ON THE EASTERLY CURVED RIGHT OF WAY LINE OF MAGNOLIA COVE DRIVE (VARYING WIDTH) MARKING THE SOUTHWEST CORNER OF UNRESTRICTED RESERVE "B" OF SAID KINGS HARBOR CENTER, MARKING THE MOST NORTHERLY CORNER OF SAID RESTRICTED RESERVE "C" AND OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 61 DEG. 10 MIN. 27 SEC. EAST, A DISTANCE OF 623.02 FEET TO A 5/8 INCH IRON ROD FOUND ON THE WESTERLY LINE OF LAKE HOUSTON PER PLAT OF SAID KINGS HARBOR, SECTION TWO, MARKING THE MOST EASTERLY CORNER OF SAID RESTRICTED RESERVE "C" AND OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 47 DEG. 29 MIN. 51 SEC. WEST, ALONG AND WITH THE WEST LINE OF SAID LAKE HOUSTON, A DISTANCE OF 339.93 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE MOST SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 42 DEG. 30 MIN. 09 SEC. WEST, A DISTANCE OF 111.85 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF INTERSECTION;

THENCE NORTH 66 DEG. 23 MIN. 35 SEC. WEST, A DISTANCE OF 70.25 FEET TO A CAPPED 5/8" IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF INTERSECTION;

THENCE NORTH 76 DEG. 17 MIN. 27 SEC. WEST, A DISTANCE OF 157.50 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE CUL-DE-SAC OF KINGS HARBOR DRIVE (PROPOSED 60' R.O.W), MARKING THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE IN A NORTHERLY DIRECTION, WITH THE EASTERLY RIGHT OF WAY LINE OF PROPOSED KINGS HARBOR DRIVE, A DISTANCE OF 37.90 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET, SUBTENDING A

5621-36-210-24

CENTRAL ANGLE OF 36 DEG. 11 MIN. 26 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 17 DEG. 52 MIN. 31 SEC. WEST, 37.27 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF REVERSE CURVATURE;

THENCE IN A NORTHERLY DIRECTION, CONTINUING WITH SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 21.68 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 49 DEG. 40 MIN. 47 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 11 DEG. 07 MIN. 50 SEC. WEST, 21.00 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF TANGENCY;

THENCE NORTH 13 DEG. 42 MIN. 33 SEC. EAST, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 148.59 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF CURVATURE;

THENCE IN A NORTHERLY DIRECTION, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 151.91 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET, SUBTENDING A CENTRAL ANGLE OF 48 DEG. 21 MIN. 20 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 10 DEG. 28 MIN. 07 SEC. WEST, 147.45 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF REVERSE CURVATURE;

THENCE IN A NORTHERLY DIRECTION, A DISTANCE OF 29.17 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 66 DEG. 51 MIN. 39 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 01 DEG. 12 MIN. 57 SEC. WEST, 27.55 FEET TO A 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON SAID CURVED EASTERLY RIGHT OF WAY LINE OF MAGNOLIA COVE DRIVE, MARKING A POINT OF REVERSE CURVATURE;

THENCE IN A NORTHEASTERLY DIRECTION, WITH SAID EASTERLY RIGHT OF WAY LINE OF MAGNOLIA COVE DRIVE, A DISTANCE OF 10.64 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET, SUBTENDING A CENTRAL ANGLE OF 03 DEG. 23 MIN. 17 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 30 DEG. 31 MIN. 14 SEC. EAST, 10.64 FEET TO THE POINT OF BEGINNING AND CONTAINING 3.3570 ACRES OR 146,232 SQUARE FEET OF LAND.

Exhibit B

Restrictive covenants of record as shown on the plat recorded under Film Code No. 395014 of the Harris County Map Records and those set forth in instruments filed for record under Harris County Clerk's File Nos. S229900 and S850825.

Standby fees, taxes and assessments by any taxing authority for the year 2006, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.

Matters shown on the plat recorded under Film Code No. 395014 of the Harris County Map Records, which reflects the following items:

- (1) Storm Sewer Easement 15 feet wide along the Northwesterly property line of the subject property.
- (2) Storm Sewer Easement 40 feet wide extending along the Northeasterly property line and turning diagonally through the southerly property line.
- (3) Building set back line Twenty Five (25) feet wide along the Northwesterly property line(s).

Inundation rights between the 44.5 foot and 51 foot level, in favor of the City of Houston as set forth in instrument recorded in Volume 2211, Page 39 of the Deed Records of Harris County, Texas.

Any right, title, interest or claim (valid or invalid) or any character had or asserted by the State of Texas or by any other government or governmental authority or by the public generally (1) in and to portions of the Property which may be within the bed, shore or banks of a perennial stream, or of a stream or lake navigable in fact or in law; or within the bed or shores or the beach adjacent thereto of a body of water affected by the ebb and flow of the tide; and (2) in and to portions of the Property which may be between the water's edge and the line of vegetation of the upland or for any claim or right for ingress thereto or egress therefrom.

Provision against the Erection of Billboards as evidenced by City of Houston Ordinance Nos. 73-499 and 73-568, Certified Copies of which are filed under Harris County Clerk's File Nos. D846997 and D846996, respectively.

Reservation or exception of ½ of all the oil, gas and other minerals, the royalties, bonuses, rentals and all other rights in connection with same, including any easements owned or held by any lessee or mineral owner on, over, or across the Property for the purpose of producing or transporting any of the minerals together with the right of ingress and egress, as set forth in instrument recorded in Volume 7036, Page 323 (County Clerk's File No. C633027), of the Deed Records of Harris County, Texas.

Reservation or exception of all the oil, gas and other minerals, and all other elements to a depth

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of 100 feet, the royalties, bonuses, rentals and all other rights in connection with same, including any easements owned or held by any lessee or mineral owner on, over, or across the Property for the purpose of producing or transporting any of the minerals together with the right of ingress and egress, as set forth in instrument(s) filed for record under Harris County Clerk's File Nos. R732060 and S229900.

Annual assessments, including special assessments for capital improvements, secured by a vendor's lien as set forth in instrument filed for record under Harris County Clerk's File Nos. S850825 and W922422.

Terms and provisions of any and all leases, together with rights of lessees thereunder.

Rights of parties in possession.

Exhibit C

1. Definitions.

"Property" means the real property conveyed by this deed as described in Exhibit A to this deed

"Adjacent Property" means the real property described in Exhibit C-1, which is owned by Grantor

"Project" means the Property and the Adjacent Property

"Site Plan" means the site plan attached as Exhibit C-2, which shows the location of the Property, the Adjacent Property, and adjacent roads.

"Owner" means the owner of a townhome in the development to be constructed on the Property

"Property Owners Association" means any property owners association formed in connection with the development on the Property

"Permittee" means, as to the Property, (a) any tenant or occupant of the Property, (b) the invitees of any such tenant or occupant, and (c) the invitees of any Property Owners Association or Owner. "Permittee" means, as to the Adjacent Property, (a) any tenant or occupant of the Adjacent Property, (b) the invitees of any such tenant or occupant, and (c) the invitees of the owner of the Adjacent Property. In each case, the term "invitee" includes employees, agents, contractors, and licensees.

"Declaration" means the document titled "Exhibit of Covenants, Conditions and Restrictions of Kings Harbor Center, Sections One and Two, Harris County Subdivisions," executed by Kings Harbour JV63, a Texas joint venture, and filed for record under Harris County Clerk's File Number S850825 in the real property records of Harris County, Texas.

"Protective Covenants" mean the covenants contained in Exhibit B to the deed that was filed for record under Harris County Clerk's File Number S229900 in the real property records of Harris County, Texas.

"Person" means any natural person, a corporation, a partnership, or any other legal entity.

"Applicable Legal Requirements" means all laws, rules, regulations, orders, and ordinances of any federal, state or local government, or any department or agency thereof, that has jurisdiction over the Property.

2. Effect of Exhibit. By acceptance of this deed, Grantee is deemed to have agreed to and accepted all of the provisions of this Exhibit, which forms an integral part of this deed. The Property and each part of it shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to provisions set forth in this Exhibit. The provisions of this Exhibit shall run with the Property and be binding on all Persons having or hereafter acquiring any right, title, or interest in all or any



portion of the Property, and are, subject to any express provisions in Article 16 or elsewhere in this Exhibit to the contrary, for the benefit of the Adjacent Property and each part of it and all Persons having or hereafter acquiring any right, title, or interest in all or any portion of the Adjacent Property.

3. No further subdivision. Except in connection with the development of the Property for townhomes, the Property shall not be further subdivided, and no portion less than all of the Property, nor any easement or other interest therein, shall be conveyed without the prior written approval of Grantor. Grantee acknowledges that the Declaration (including Section 2.4 thereof) and the Protective Covenants may also contain requirements regarding any such subdivision or conveyance, and Grantee agrees to comply with those requirements.

4. Architectural Approval.

4.1 Grantor Approval Required. No building, structure, addition, sign, or other improvement ("Improvements") may be constructed, remodeled, replaced, or altered in any manner on the Property until all aspects of the proposed Improvements, including the construction plans and specifications and all contractors selected to construct the Improvements, have first been submitted to and approved in writing by Grantor. Matters subject to Grantor's approval include site layout, building and sign location, building materials, exterior colors, dimensions, elevations, utility layout, design and color scheme of all permanent and temporary signs, roads and other paved areas, vehicle parking areas, walls, fences, grading, drainage, trees, shrubs, and other landscaping, exterior lighting, antennas, and satellite dishes. Grantor's approval shall be (a) to insure compliance with these Protective Covenants and with Grantor's development plans for the Project and (b) to confirm the quality of materials, color, harmony of external design with existing and proposed structures, and the location and finish grade elevations of the Improvements with the surrounding topography. Grantor's approval right applies not only to initial construction, but also to reconstruction after damage, destruction, or condemnation, and to any additions, changes or alterations to previous construction. Grantor shall approve or reject the proposed improvements within ten (10) days of submittal, and such approval shall not be unreasonably withheld or denied.

4.2 Inspection of Work. Grantor or its duly authorized representative shall have the right, but not the obligation, to inspect any Improvements before or after completion to ensure compliance with the provisions of this Exhibit.

4.3 Correction of Noncompliance. If Grantor determines at any time that Grantee has failed to comply with any requirements of this Article 4, then Grantor may give notice thereof to Grantee, and Grantee shall remedy the failure within 45 days from the date of receipt of the notice of noncompliance. If Grantee does not remedy the failure within that 45 day period, then Grantor may, at its option, but at Grantee's expense, (a) record a Notice of Noncompliance against the Property in the real property records of Harris County, Texas; (b) remove any noncomplying Improvements; and/or (c) otherwise remedy the noncompliance, including if applicable modifying and completing any Improvements. Grantee shall reimburse Grantor on demand for all expenses incurred therewith. If such expenses are not repaid to Grantor within 15 days after receipt of Grantor's bill, the amount owed shall constitute a lien against the Property, effective upon the recordation of a notice of lien in the real property records of Harris County,

Texas. Grantor's right to remedy or remove any noncompliance shall be in addition to all other rights and remedies that Grantor may have at law, in equity, under this Exhibit, or otherwise. However, notwithstanding anything to the contrary contained in this Exhibit, after the expiration of one year from the date any Improvements are finally completed, the Improvements shall, as to purchasers and encumbrances in good faith and for value only, be deemed to be in compliance with the provisions of this Article 4 unless a Notice of Noncompliance or notice of lien, executed by Grantor or its designated representative, has been filed for record in the real estate records of Harris County, Texas, or unless legal proceedings have been instituted to enforce compliance with this Exhibit.

4.4 Limitation of liability; Indemnity. Notwithstanding anything in this Exhibit to the contrary, the provisions of this Section 4.5 shall apply. Grantee assumes all risks in connection with its Improvements and the construction of its Improvements. Neither Grantor nor any of Grantor's Related Parties (defined below) shall have any liability of any nature whatsoever for any liability, loss, cost, damage, or expense arising out of or related to the Improvements, including claims based upon the sole or contributory negligence of Grantor or any of Grantor's Related Parties due to (a) any defects in any plans and specifications approved by Grantor, (b) any structural or other defects in any work done according to any plans and specifications, (c) Grantor's disapproval of or failure to approve any plans, specifications or other items submitted by Grantee for approval, (d) the construction of the Improvements, (e) bodily injury (including death) of any person or damage to any property of any person (including the Improvements), whether or not related to defects in any Improvements, defects in any plans or specifications, site conditions (including soil and subsurface conditions), or the actions of Grantee's contractors, subcontractors, and materialmen, and (f) any other liability, loss, cost, damage, or expense, including court costs and attorney's fees. Grantee agrees to look solely to its insurance, if any, and its own resources in connection with all such matters. Grantee will indemnify, defend, and hold Grantor and each of Grantor's Related Parties harmless from any loss, attorney's fees, liens, expenses, or claims arising out of the foregoing matters. "Grantor's Related Parties" means any general partner of Grantor, and any agent, employee, representative, member, shareholder, partner, officer, or director of Grantor or any general partner of Grantor.

4.5 Effect of approval. Grantor's approval or conditional approval of any plans, specifications or other items submitted in connection therewith does not constitute an agreement, representation, warranty, or guaranty by Grantor that the Improvements described in Grantee's plans, specifications or other items submitted to Grantor will, if constructed, comply with Applicable Legal Requirements, be structurally sound, be of good quality, or satisfy any standards or requirements relating to health, safety, workmanship or suitability for any particular purpose. Grantee has made its own careful and complete investigation of the soil conditions, drainage conditions, and characteristics of the Property, and Grantee has carefully reviewed the plans and specifications for its Improvements. Accordingly, neither Grantor nor any of Grantor's Related Parties shall be liable for, and Grantee hereby waives and releases any claim against Grantor and Grantor's Related Parties for any delays, loss, cost, or damage arising out of or related to the following: (a) soil conditions of the Property, (b) drainage conditions of the Property, (c) other characteristics or conditions of the Property, (d) unavailability of, or delays in obtaining,

governmental approvals or permits, (e) defects in Grantee's plans and specifications or construction drawings, or (f) any action, failure to act, financial condition, or quality of work of Grantee's contractors or subcontractors, regardless of whether Grantor recommended or approved any such contractors or subcontractors.

5. Construction.

5.1 Construction of Improvements. All improvements constructed on the Property shall be constructed, operated and maintained in compliance with all Applicable Legal Requirements.

5.2 Notices of Commencement and Completion. Grantee shall give notice to Grantor promptly after commencing construction of its Improvements and after finally completing construction of its Improvements.

5.3 Removal of Trash and Debris During Construction. During any construction of Improvements, Grantee shall keep the Property in a reasonably clean and organized condition. Papers, rubbish, trash, scrap, and unusable building materials must be kept, picked up, and hauled from the Property on a regular basis. Other useable building materials must be kept stacked and organized in a reasonable manner. No trash, materials, or dirt shall be placed in any street. Any such trash, materials, or dirt shall be removed from the street and street gutters, without delay, no less frequently than daily.

5.4 Notice before pouring concrete. Grantee shall give Grantor notice not less than 72 hours before pouring concrete for any building slab or driveway access area, so that Grantor or its representative can inspect the location of the building slab or driveway access area for compliance with this Exhibit and any conditions that were part of Grantor's approval. The notice to Grantor must specify the date and time when pouring of concrete is expected to begin. The Applicant shall not proceed with pouring any concrete for such purposes unless and until Grantor approves the location of the each building slab and driveway access area in writing. The notice to Grantor shall be sent to its address as set forth in this deed and a copy shall also be sent at the same time to Grantor by fax to 713-629-5235, to the attention of Jonathan Brinsden.

5.5 Liens; Indemnity. Grantee agrees that if any mechanic's lien or other statutory lien is filed against the Adjacent Property related to construction of the Improvements, then Grantee shall (a) discharge the lien of record, by payment or bonding, within 10 days after receiving notice that the lien is filed of record, and (b) indemnify, defend, and hold Grantor harmless from any loss, attorney's fees, expenses, liens, or claims arising out of the filing of the lien.

5.6 Construction vehicles serving the Property. "Heavy Construction Vehicles" (defined below) must use only public roads, i.e., Kings Harbor Drive and Magnolia Cove, for access to the Property; access over the Adjacent Property (including any private roads on the Adjacent Property) is forbidden. Grantee shall cause its contractors, subcontractors and others performing work on the Property to comply with this requirement. If any Heavy Construction Vehicles use any portion of the Adjacent Property (including any private roads on the Adjacent Property), then Grantor has the right, in addition to its other remedies, to enforce this prohibition by any reasonable means, including charging Grantee the then current access violation fee

charged by Grantor, which on the date hereof is \$1,000 per violation (but charging and collecting that fee does not waive the default), plus any costs or damages that Grantor incurs in connection with Grantee's default, including any costs to repair any damage to roads. Heavy Construction Vehicles include track vehicles, vehicles weighing more than 10,000 pounds (inclusive of any load they may carry), and all other vehicles that Grantor, in its good faith judgment, determines may interfere with the free flow of traffic to or from the Adjacent Property or place an unreasonable degree of wear and tear on paved surfaces other than public roads.

6. Use Restrictions.

6.1 Use Restrictions.

6.1.1 Residential Purposes. The Property must be used only for single family residential purposes, as part of a townhome development, and for no other purpose.

6.1.2 Nuisance, etc. The Property shall not be used for any purpose that would (a) constitute a public or private nuisance; (b) violate this Exhibit, the Declaration, the Protective Covenants, or any Applicable Legal Requirements; (c) in Grantor's good faith judgment unreasonably disturb or interfere with the use and occupancy of the Adjacent Property; or (d) in Grantor's good faith judgment be offensive by reason of odor, fumes, dust, smoke, noise, pollution, or excessive danger of fire or explosion.

6.1.3 Parking ratio. The Property must comply with applicable governmental parking ratio requirements without taking into account any parking spaces located on any other property, such that the Property will be self sufficient for vehicular parking.

6.1.4 Firearms and Fireworks. The carrying or use of firearms in the Property is strictly prohibited. The term "firearms" includes "BB" guns, pellet guns, and small or large firearms of all types. Fireworks of any type are strictly prohibited anywhere in the Property.

6.1.5 Maximum Occupancy. In no event may a townhome be occupied by more persons than the product of the total number of bona fide bedrooms contained therein multiplied by two.

6.1.6 Permitted Pets; Leashes Required. No animals of any kind may be raised, bred, kept or maintained on the Property at any time except "Permitted Pets," which consist of dogs, cats, fish, and other usual household pets. All Permitted Pets must be kept on a leash or otherwise maintained under the control of their owner when not within a townhome. No pets of any kind are permitted upon the Adjacent Property, except for legitimate seeing-eye dogs and dogs on a leash. All pets must be kept indoors.

6.1.7 No outside clotheslines. No outside clotheslines shall be constructed or maintained on the Property, and no outside drying of clothes is permitted.

6.1.8 Home Business. No business, professional, commercial, industrial, or manufacturing uses are permitted on the Property, except that a home business does not violate this subsection so long as it complies with Applicable Legal Requirements and the requirements of Exhibit C-3.

6.1.9 Prohibited Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter ton pick-up, recreational vehicle, bus, golf cart, ATV ("all terrain vehicle"), unused vehicle, inoperable vehicle of any kind, and no unsightly vehicle as determined in the good faith judgment of Grantor, may be parked, stored, or kept at anytime within the Property, unless the vehicle is stored completely within a garage. No vehicle may be operated on any private street on the Property that could not be legally operated on a public street.

6.1.10 No limitation on property owners association. The foregoing provisions of this Section 5.1 do not limit the power of any Property Owners Association to impose other requirements or more restrictive requirements than those contained in this Article 5.

7. Maintenance. Duty to maintain. Grantee shall maintain the Property and all improvements on it in a neat, clean, and attractive condition, making repairs and replacements as necessary. All maintenance, repairs and replacements shall be performed (a) in a safe, workmanlike, diligent and efficient manner, (b) in accordance with all Applicable Legal Requirements and this Exhibit, and (c) using reasonable efforts to minimize any interference with the business activities on the Adjacent Property.

8. Annual Fee.

8.1 Obligation to pay. Beginning with calendar year 2006, Grantee shall pay an "Annual Fee" to Grantor, at its address in this Exhibit, on January 1<sup>st</sup> of each year. The Annual Fee is the agreed amount owed by Grantee for certain costs incurred by Grantor for construction and maintenance of improvements on the Adjacent Property that benefit the Project. The Annual Fee shall be prorated for any partial year.

8.2 Amount of Annual Fee. The initial amount of the Annual Fee is \$10,000.00 for calendar year 2006. The Annual Fee shall be adjusted on January 1, 2007 and on each January 1<sup>st</sup> thereafter (the "Adjustment Date"). On each Adjustment Date, the Annual Fee shall be increased by the percentage of increase, if any, shown by the Consumer Price Index for All Urban Consumers U.S. City Average, All Items (base years 1982-1984 = 100) ("Index"), published by the United States Department of Labor, Bureau of Labor Statistics, for the month immediately preceding the Adjustment Date as compared with the Index for the same month in the immediately preceding calendar year. Grantor shall calculate the amount of this increase in the Annual Fee after the United States Department of Labor publishes the statistics on which the amount of the increase will be based. Grantor shall give written notice of the amount of the increase, and the new Annual Fee to Grantee, who shall pay this amount. Grantor's failure to make the required calculations promptly shall not be considered a waiver of Grantor's rights to adjust the Annual Fee, nor shall it affect Grantee's obligations to pay the increased Annual Fee. If the Index is changed so that the base year differs from that in effect on the date this deed is recorded, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised, the government index or computation with which it is replaced shall be used to obtain substantially the same result as if the Index had not been discontinued or revised.

8.3 Subdivision of the Property. Before a Property Owners Association is created for the Owners of the Property, Grantee shall be responsible for paying the Annual Fee. After a

Property Owners Association is created, the Property Owners Association shall be responsible for paying the Annual Fee. The Property Owners Association shall take all reasonable actions needed to require the Owners to pay their portion of the Annual Fee to the Property Owners Association. However, if the Property Owners Association does not pay all of the Annual Fee, then, in addition to Grantor's other rights and remedies at law or in equity against the Property Owners Association for its failure to pay, Grantor may recover from time to time on demand from each Owner (a) a handling fee of \$75 and (b) the Owner's portion of any unpaid Annual Fee, which portion will be determined by multiplying the unpaid portion of the Annual Fee by a fraction, the numerator of which is the number one (1) and the denominator of which is the total number townhomes in the Property. Any amounts owing to Grantor that Grantor recovers from an Owner (rather than from the Property Owners Association) shall reduce dollar for dollar the amounts owing by the Property Owners Association.

8.4 Liens. Any amounts owing to Grantor under this Article 8 that are not paid within 30 days after receipt of notice that they are due shall become a lien against the Property upon recordation of notice thereof in the real property records of Harris County, Texas, and may be enforced in accordance with the provisions of Article 13. However, after a Property Owners Association is formed with respect to the Owners of the Property, the amount owing with respect to any lien arising under this Article against an individual Owner shall not exceed the amount of the Owner's portion of any unpaid Annual Fee and the handling fee set forth above.

9. Damage or destruction. If there is any damage to or destruction of any Improvements on the Property, Grantee shall at its expense and in accordance with all Applicable Legal Requirements promptly either (a) repair, restore and rebuild the damaged improvements to their condition prior to the damage or destruction (or with changes that do not conflict with this Exhibit and are approved by Grantor), or (b) raze the damaged improvements, remove all debris, pave the affected area for parking or cover it with grass or some combination of the two, and install adequate lighting and storm water drainage. In addition, Grantee acknowledges that it is aware of and shall comply with the requirements and provisions regarding damage to or destruction of any Improvements on the Property that are imposed by the Declaration or the Protective Covenants or both, even if they are more stringent than those imposed by the preceding sentence.

10. Insurance.

10.1 Liability insurance. Beginning on the date of this deed and continuing thereafter, Grantee (or, after a Property Owners Association is formed with respect to the Property, the Property Owners Association) shall maintain or cause to be maintained Commercial General Liability Insurance in the amount of \$1,000,000 or more, combined single limit per occurrence, and umbrella liability in the amount of \$2,000,000. Such insurance shall include the following provisions: (a) the policy may not be canceled or materially reduced in amount or coverage without at least 30 days prior written notice by the insurer to each insured and any additional insureds; (b) the policy shall name Grantor and its lender as additional insureds and any fee required to name Grantor or its lenders as additional insureds will be paid by Grantor; (c) the policy shall provide for severability of interests; (d) the policy shall provide that an act or omission of one of the insureds or additional insureds which would otherwise void or reduce coverage, shall not void or reduce the coverage as to the other additional insureds or the insured,

respectively; and (e) the policy shall provide for contractual liability coverage with respect to the indemnity obligations in this Exhibit.

10.2 Requirements. All insurance required by Section 10.1 shall be obtained from companies licensed in Texas that are rated by Best's Insurance Reports not less than A:VII. Grantor may increase the limits of such policies periodically (but not more than once every calendar year) based on inflation, increased liability awards, the recommendation of Grantor's professional insurance advisers, and other relevant factors. To the extent any deductible is permitted as a part of any insurance policy carried by Grantee or the Property Owners Association, as applicable, in compliance with this Article 10, the party obtaining such insurance shall be deemed to be covering the deductible amount under an informal plan of self-insurance, but in no event shall any deductible exceed \$50,000. The party obtaining such insurance agrees to furnish Grantor on or before the date of this deed, and thereafter annually upon obtaining any renewal or replacement insurance policy, and at other times on Grantor's request, certificates of insurance (and copies of endorsements if applicable) evidencing that the insurance required to be carried is in effect.

## 11. Environmental.

11.1 Compliance with environmental requirements. Grantee shall (a) comply with all Applicable Legal Requirements related to the use, storage, treatment, transportation, removal or disposal of Hazardous Materials (defined below); (b) give notice to Grantor immediately after learning of any Hazardous Materials Contamination (defined below) with a full description thereof; (c) at its expense promptly comply with all Applicable Legal Requirements requiring the removal, treatment, or disposal of the Hazardous Materials or Hazardous Materials Contamination, and (d) promptly provide Grantor with satisfactory evidence of its compliance under subsection (c).

11.2 Indemnity. Grantee shall defend, indemnify and hold Grantor and Grantor's Permittees harmless from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including interest, penalties, fines and monetary sanctions), losses, costs or expenses (including consultants' fees, investigation fees, laboratory fees, remedial costs, and reasonable attorneys' fees and costs) that are now or in the future incurred or suffered by Grantor or Grantor's Permittees arising in any manner whatsoever, directly or indirectly, from (a) the breach of any covenant of Grantee in this Article 11, (b) the presence of any Hazardous Materials or any Hazardous Materials Contamination on or under the Property, (c) the migration, escape, seepage, leakage, spillage, discharge, emission or release from the Property, or (d) the environmental condition of the Property.

## 11.3 Definitions.

"Hazardous Materials" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) any substance, the

presence of which on the Property is prohibited by any governmental law, rule or regulation; (f) any petroleum-based products stored or used other than in compliance with governmental laws, rules or regulations; (g) underground storage tanks not in compliance with governmental laws, rules or regulations; and (h) any other substance which by any governmental law, rule or regulation requires special handling in its collection, storage, treatment or disposal.

“Hazardous Materials Contamination” means the contamination (whether presently existing or hereafter occurring) of the Property or its improvements, including buildings, facilities, soil, ground water, air or other elements on or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on or of any other real property as a result of Hazardous Materials at any time (whether before or after the date of this deed) migrating or emanating from the Property.

12. Taxes. Grantee shall pay all real property taxes, assessments, and charges of any type levied or made by any governmental authority with respect to the Property and its improvements.

13. Remedies and Enforcement.

13.1 Remedies Available. In the event of a breach or threatened breach by Grantee of any of the provisions of this Exhibit, Grantor is entitled to full and adequate relief, by injunction and other available legal and equitable remedies, from the consequences of such breach, including payment of any amounts due and specific performance.

13.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of Grantee to cure a breach of this Exhibit within 30 days after written notice of the breach is given by Grantor (unless, with respect to any such breach the nature of which cannot reasonably be cured within the 30 day period, Grantee commences such cure within the 30 day period and thereafter diligently prosecutes the cure to completion), Grantor shall have the right but not the obligation to take such actions as Grantor deems necessary to cure the breach on behalf of Grantee and be reimbursed by Grantee upon demand for the reasonable costs thereof together with interest at the “Applicable Rate,” which means the lesser of (a) the “Prime Rate” plus 5% per annum, and (b) the maximum rate permitted by applicable law. The Prime Rate means the rate of interest from time to time announced by The Wall Street Journal as the “prime rate.” If the Wall Street Journal ceases to announce a prime rate, then Grantor shall select an appropriate replacement, which will then be the Prime Rate. Notwithstanding the foregoing, in the event of (a) an emergency or (b) blockage or material impairment of any easement rights, Grantor may immediately cure the same and be reimbursed by Grantee upon demand for the reasonable cost thereof together with interest at the Applicable Rate.

13.3 Lien Rights. If any amounts owing to Grantor under Section 13.2 or under Article 8 or under any other provisions of this Exhibit are not paid when due, then Grantor shall have the right to record a lien (the “Assessment Lien”) for the unpaid amounts owing to Grantor, together with interest as set forth above and any costs of collection incurred by Grantor, on the Property (or portion thereof, as applicable) of the Person owing those amounts. The liens provided for in this Section 13.3 shall be effective only when a statement thereof is filed in the real property records of Harris County, Texas as a claim of lien against the Person owing those amounts. The statement shall be signed by Grantor and contain at least the following information: an itemized



statement of the amounts owing; a description of the real property that is subject to the lien sufficient to identify it; the name of the owner of the real property which is subject to the lien (insofar as the name is known to Grantor); and the name and address of Grantor. The lien shall attach from the date a notice of the lien is recorded as set forth above and may be enforced in any manner allowed by law, including by suit in the nature of an action to foreclose a mortgage or mechanic's lien under the applicable provisions of Texas law. Grantor shall release the claim of lien after the amounts secured by the lien have been paid in full. However, notwithstanding the foregoing, any Assessment Lien shall be subject and subordinate to (a) liens for taxes and other public charges which by applicable law are expressly made superior, (b) all liens recorded in the real property records of Harris County, Texas before the date the notice of lien is recorded, and (c) all written leases entered into, whether or not recorded, before the date of recordation of the notice of lien. All liens recorded after the recordation of the notice of lien shall be junior and subordinate to the Assessment Lien.

13.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

13.5 Parking violations. In addition to its other remedies, Grantor has the right to enforce the parking requirements of this Exhibit by any reasonable means, including charging the offending individual the then current parking violation fee charged by Grantor (which is currently \$25 per violation for each day or part thereof), and in addition having the vehicle towed and recovering from the offending individual any out of pocket towing charges incurred by Grantor in removing such vehicle.

14. Protection of lenders.

14.1 No Termination For Breach. Notwithstanding any other provisions in this Exhibit to the contrary, no breach of this Exhibit shall entitle any Owner to cancel, rescind, or terminate this Exhibit.

14.2 Effect on liens. No breach of this Exhibit or claim of lien resulting therefrom shall defeat or render invalid the lien of any mortgage or deed of trust upon any the Property made in good faith and for value, but the provisions of this Exhibit shall be binding upon and effective against any owner of the Property or portion thereof whose title is acquired by foreclosure, trustee's sale, or otherwise.

15. Term. The provisions of this Exhibit shall be effective beginning on the date of this deed and shall remain in effect until January 1, 2056, and shall be renewed for successive 10 year periods unless terminated by the owner of the Property (which for this purpose shall be deemed to be the Property Owners Association, if one exists on such date) and the owner(s) of the Adjacent Property in a written termination document recorded in the real estate records of Harris County, Texas.

16. Subdivision or sale of Adjacent Property. Notwithstanding any contrary provisions in this Exhibit, if the Adjacent Property is subdivided or if any portion of it is sold, then the Person that shall succeed to all of Grantor's rights, benefits, and obligations under this Exhibit (the "Designated Owner") shall be Midway Kings Harbor Partners, L.P., so long as it owns any

portion of or interest in the Adjacent Property. However, if Midway Kings Harbor Partners, L.P. ceases to own any portion of or interest in the Adjacent Property, then the Designated Owner shall be whichever affiliate of Midway Kings Harbor Partners, L.P. owns the most gross land area (by square footage) located within the Adjacent Property. However, if neither Midway Kings Harbor Partners, L.P. nor any affiliate of Midway Kings Harbor Partners, L.P. owns any portion of or interest in the Adjacent Property, then the Designated Owner shall be the Person that owns the most gross land area (by square footage) located within the "South Parcel," which is a portion of the Adjacent Property, and is identified in Exhibit C-1 as a 6.2886 acre parcel of land. The term "affiliate" includes any Person that, directly or indirectly, controls, is controlled by, or is under common control with another Person. Without limiting the Designated Owner's rights, the Designated Owner shall have the sole and exclusive right, to the exclusion of the rights and interests of any other owner of any portion of the Adjacent Property, with respect to the following: all aspects of Article 4, including the right to approve all Improvements; all aspects of Article 5; all aspects of Article 8, including the right to receive and retain the Annual Fee; all aspects of Article 10, including the right to determine and monitor Grantee's insurance requirements; all aspects of Article 11, including the right to receive notices and evidences of compliance and otherwise control the administration of rights and remedies regarding Hazardous Materials; all rights to use self help and to file and obtain the benefit of lien rights under Article 13; the right to enforce parking obligations under Section 13.5; all aspects of Article 17, including the right to decide whether to repurchase the Property and the sole ownership of the Property if repurchased; all rights to receive payments and fees; and all rights under this Exhibit where reference is made to Grantor's judgment or to Grantor's determination of the amount of fees or charges, or to similar matters.

17. Grantor's Repurchase Option.

17.1 Defined Terms.

"Deadline for Commencement" means the date that is 180 days after the date of this deed.

"Deadline for Completion" means the date that is 540 days after the date of this deed.

"Repurchase Price" means an amount equal to 100% of the purchase price paid by Grantee to Grantor for the Property.

17.2 Commencement and Completion of Improvements. Grantee shall commence actual "on the ground" construction of its Improvements on the Property on or before the Deadline for Commencement and shall thereafter diligently proceed to final completion of its Improvements on or before the Deadline for Completion. "Final completion of its Improvements" as used above means that Grantee has fully constructed its townhome development, with all common areas and amenities completed, and all townhomes ready for occupancy. The Deadline for Commencement and Deadline for Completion are each subject to Excusable Delay under Section 18.3.

17.3 Repurchase Option. If Grantee fails to commence construction of its Improvements before the Deadline for Commencement or fails to achieve final completion of its

Improvements before the Deadline for Completion, as required in subsection 17.2, then in addition to its other rights and remedies Grantor shall also have the right and option, but not the obligation, to repurchase the Property from Grantee (the "Repurchase Option") for the Repurchase Price in accordance with the provisions of this Article. Grantor may exercise the Repurchase Option by delivering written notice (the "Option Notice") to Grantee.

17.4 Date of closing; Grantee's obligations. The closing under the Repurchase Option will be held at a title company designated by Grantor on a date designated by Grantor no later than 30 days after the date Grantor delivers the Option Notice to Grantee. At or before closing, Grantee shall at its expense (a) remove all exceptions that arise by, through, or under Grantee or its affiliates after the date of this deed, (b) resolve the items that are listed on Schedule C of the title commitment applicable to Grantee, (c) remove all monetary liens encumbering the Property, including mortgages, deeds of trust, liens on personal property, mechanic's or materialman's or supplier's liens, broker's liens claimed by Grantee's broker, judgment liens, and liens for past due real or personal property taxes and assessments, and (d) sign and deliver to the Title Company the customary affidavits (as to debts and liens, nonforeign status, and otherwise) in a form sufficient to allow the title company to issue Grantor's title policy without generic exceptions (such as but not limited to exceptions for "rights of parties in possession," "rights of tenants under unrecorded leases," "visible and apparent easements," or other matters that are not specific to the Property.

17.5 Closing. At closing, (a) Grantee shall reconvey the Property to Grantor by special warranty deed, free and clear of all liens, encumbrances, and other title exceptions except for those set forth in this Deed and the lien for real property taxes for the year of closing (the "Permitted Exceptions"), (b) Grantee shall deliver to Grantor an Owner Policy of Title Insurance in the Texas standard form, naming Buyer as insured, in the amount of the Repurchase Price, and insuring that Buyer owns good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions, and (c) Grantor shall pay the Repurchase Price to Grantee. At closing, the title company shall prorate between Grantor and Grantee as of the date of closing all real property taxes, assessments, standby fees and any rents or other income from the Property. Except as expressly provided otherwise in the Article, the title company will allocate any other closing charges between the parties in accordance with the customary practice for like transactions in the County where the Property is located.

17.6 Termination of Repurchase Option. Grantor's Repurchase Option shall automatically terminate (a) if Grantor does not give its Option Notice exercising the Repurchase Option within 180 days after the Deadline for Completion, or (b) if, after giving the Option Notice, Grantor fails to close the repurchase for reasons within the time period specified above for closing, unless the failure was due to Grantee's failure to comply with its obligations to close under this Article. If Grantor's Repurchase Option terminates under (a) or (b) above, then Grantor will on request deliver to Grantee a document in recordable form evidencing such termination, which Grantee may record.

17.7 Revestment. If Grantor exercises its Repurchase Option, or otherwise acquires title to the Property, then upon revestment of title in Grantor, all provisions, covenants, conditions, restrictions and reservations under this Exhibit shall automatically terminate and be of no further force and effect.

17.8 Continuation notwithstanding sale. The Repurchase Option shall continue to be effective even if Grantee conveys the Property or any portion of it to any other Person.

18. Miscellaneous.

18.1 Bankruptcy. If there is a bankruptcy of any Owner, tenant, or occupant of the Property, all provisions of this Exhibit shall, to the maximum extent permitted by law, be considered to be agreements that run with the land, and not as personal covenants, and which are therefore not rejectable in bankruptcy.

18.2 Constructive notice and acceptance. Every Person who owns, leases, or acquires any interest in the Property is conclusively deemed to have agreed to this Exhibit and all of its provisions, whether or not any reference to this Exhibit is contained in the document by which that person acquired its interest in the Property.

18.3 Excusable Delay. Whenever performance is required in this Exhibit, the party required to perform (the "performing party") shall use all due diligence to perform and shall take all commercially reasonable measures in good faith to perform. However, if the performing party is delayed in performing, or prevented from performing, any of its obligations or from satisfying any condition in this Exhibit due to "Excusable Delay" (defined below), then upon notice to the party to whom performance is due the period for performing such obligation shall be extended by a period equal to the period of such delay. However, the performing party must use all reasonable efforts to reduce or eliminate the delay. "Excusable Delay" means an act of God, strike, lockout, labor troubles, governmental delay, inability to procure materials, restrictive governmental laws or regulations, adverse weather, unusual delay in transportation, delay or default by the party to whom performance is due, and similar causes beyond the reasonable control of the performing party, but excluding the failure to pay amounts owing under this Exhibit or other financial inability.

18.4 Exhibits. All exhibits referred to in this Exhibit are attached to this Exhibit and incorporated in this Exhibit by this reference. Even though the Site Plan may show contemplated improvements, Grantor has no obligation to build any improvements on the Adjacent Property, except as may be expressly set forth in this Exhibit.

18.5 Estoppel Certificates. Each party shall, within 20 days after it receives a written request from the other, provide the requesting party with a certificate stating: (a) to the best of the party's knowledge, whether the requesting party is in default under this Exhibit, and if so identifying the default; and (b) that the Exhibit is in effect and identifying any amendments to it.

18.6 Governing Law. This Exhibit will be construed under the laws of the state of Texas, without regard to the choice-of-law rules of any jurisdiction.

18.7 Including. All forms of the words "include," "includes" and "including" will be interpreted broadly, in the sense of "including but not limited to" the things mentioned.

18.8 Legal fees. If there is any litigation relating to this Exhibit, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

18.9 No derivative rights. No tenant, occupant, or other Permittee of all or any part of the Property has (a) any right to consent to or approve any termination or amendment or modification from time to time of this Exhibit, or (b) any right to enforce any of the provisions of this Exhibit.

18.10 No Rights in Public. Nothing in this Exhibit creates any rights in the general public or dedicates any portion of the Property or the Adjacent Property for public use.

18.11 No Special Relationship. The relationship of Grantor and Grantee under this deed and this Exhibit is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship

18.12 Notices. Any notice required by or permitted under this Exhibit must be in writing. Any notice required by this Exhibit will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at its address. Any address for notice may be changed by written notice delivered as provided herein. Grantor's initial address for notice purposes is its address set forth above in this deed.

18.13 Sale by Grantor. After the sale of all or any portion of the Adjacent Property or any part thereof, Grantor shall have no liability for the obligations under this Exhibit with respect to the real property sold that accrue after the date the conveyance is recorded.

18.14 Severability. Each provision of this Exhibit is independent and severable from the remainder of this Exhibit. If any provision of this Exhibit is held to be partially or completely invalid or unenforceable, that will not affect the validity or enforceability of any other provision in this Exhibit.

18.15 Time of Essence. Time is of the essence of this Exhibit.

18.16 Unpaid amounts. All amounts owing under this Exhibit that are not paid when due shall bear interest at the Applicable Rate, as defined in Section 13.2, from the date due until paid.

18.17 Waiver of Default. It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.

18.18 Declaration and Protective Covenants. **This deed and this Exhibit are subject to the Declaration and the Protective Covenants, among other documents. All Persons who acquire any interest in the Property are deemed to have reviewed and become familiar with the provisions of the Declaration and the Protective Covenants, which contain provisions that affect the Property and other property, and which require, among other things, that certain annual assessments and special assessments for capital improvements must be paid, and that certain architectural approvals must be obtained before improvements may be constructed, all on terms set forth therein. The Declaration and the Protective Covenants contain additional provisions not listed above that affect the Property. The provisions and requirements of this Exhibit are in addition to the provisions and requirements of the Declaration and the Protective Covenants. Grantee agrees to comply with the provisions of the Declaration and the Protective Covenants to the extent that they affect the Property,**

**including obtaining all approvals and consents, performing all required actions, complying with all requirements, and paying all amounts owing thereunder, including annual assessments and special assessments for capital improvements.**

18.19 Consent. Section 2.4 of the Declaration provides as follows: “No Tract shall be further subdivided, and no portion less than all of any such Tract, nor any easement or other interest therein, shall be conveyed by any Owner without the prior written approval of the Architectural Review Committee.” Accordingly, the consent of such architectural review committee is attached to this deed.

List of exhibits

- |             |  |
|-------------|--|
| Exhibit C-1 | Description of the Adjacent Property (see Article 1) |
| Exhibit C-2 | Site Plan (see Article 1)                            |
| Exhibit C-3 | Home businesses (see Section 6.1.8)                  |

RP 017-36-1813

UNOFFICIAL COPY

Consent under Declaration

Pursuant to Section 2.4 of the Declaration, the undersigned, as the Architectural Review Committee under the Declaration, approves of the conveyance of the Property to Grantee pursuant to the foregoing deed and agrees that the same does not violate the provisions of the Declaration.

By: Mark Kelly  
Name: MARK KELLY  
Title: BOARD MEMBER K H ARC

RP 012-36-1814

COPY UNOFFICIAL

Exhibit C-1  
Description of the Adjacent Property

The Adjacent Property consists of two parcels of real property, the South Parcel and the North Parcel, which are described below.

The South Parcel consists of the real property described in the following legal description for "6.2886 Acres or 273,932 square feet."

**DESCRIPTION OF  
6.2886 ACRES OR 273,932 SQ. FT.**

A TRACT OR PARCEL CONTAINING 6.2886 ACRES OR 273,932 SQUARE FEET OF LAND SITUATED IN THE AMASA TURNER SURVEY, ABSTRACT NO. 757, HARRIS COUNTY, TEXAS BEING A PORTION OF A CALLED 12.5219 ACRE TRACT DESCRIBED IN THAT CERTAIN WARRANTY DEED FILED FOR RECORD UNDER HARRIS COUNTY CLERKS FILE NO. X-963690, AND BEING A PORTION OF UNRESTRICTED RESERVE 'C', AND ALL OF RESTRICTED RESERVE 'E' OF KINGS HARBOR CENTER, SECTION TWO, MAP OR PLAT THEREOF RECORDED IN FILM CODE NO. 395014 OF THE HARRIS COUNTY MAP RECORDS, WITH SAID 6.2886 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARING BEING BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83).

BEGINNING AT A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE EASTERLY RIGHT-OF-WAY LINE OF LAKE HOUSTON PARKWAY (VARYING WIDTH) AS DESCRIBED IN H.C.C.F. NO. N-250837, MARKING THE SOUTHWEST CUTBACK CORNER AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF MAGNOLIA COVE DRIVE (VARYING WIDTH) AS SHOWN ON F.C. NO. 395014, WITH THE EASTERLY RIGHT-OF-WAY LINE OF SAID LAKE HOUSTON PARKWAY, FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE IN AN EASTERLY DIRECTION, ALONG SAID CUTBACK, A DISTANCE OF 38.53 FEET WITH THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 88 DEG. 17 MIN. 54 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 57 DEG. 39 MIN. 22 SEC. EAST, 34.83 FEET TO A CAPPED 5/8 IRON ROD STAMPED "SURVCON" FOUND MARKING THE NORTHEAST CORNER OF SAID CUTBACK;

THENCE SOUTH 78 DEG. 11 MIN. 43 SEC. EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 85.50 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED 'SURVCON' FOUND MARKING A POINT OF CURVATURE.

THENCE IN AN EASTERLY DIRECTION CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 34.71 FEET WITH THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 03 DEG. 58 MIN. 39 SEC. AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 80 DEG. 11 MIN. 02 SEC. EAST, 34.70 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "SURVCON" FOUND MARKING A POINT OF TANGENCY;

THENCE SOUTH 82 DEG. 10 MIN. 22 SEC. EAST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 277.22 FEET TO A CAPPED 5/8 INCH IRON ROD

5131-36-210 24



STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF CURVATURE;

THENCE IN AN EASTERLY DIRECTION, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 106.54 FEET WITH THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET, SUBTENDING A CENTRAL ANGLE OF 33 DEG. 54 MIN. 46 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 80 DEG. 52 MIN. 06 SEC. EAST, 104.99 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE NORTHWEST CUTBACK CORNER AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MAGNOLIA COVE DRIVE, WITH THE WESTERLY RIGHT-OF-WAY LINE OF KINGS HARBOR DRIVE (BASED ON A WIDTH OF 60 FEET), AS SHOWN ON F.C. NO. 586157, H.C.M.R., FOR A POINT OF REVERSE CURVATURE;

THENCE IN A SOUTHEASTERLY DIRECTION, ALONG SAID CUTBACK, A DISTANCE OF 39.29 FEET WITH THE ARC OF A CURVE OT THE RIGHT, HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 90 DEG. 02 MIN. 31 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 71 DEG. 03 MIN. 57 SEC. EAST, 35 37 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE SOUTHEAST CORNER OF SAID CUTBACK AND A POINT OF COMPOUND CURVATURE;

THENCE IN A SOUTHERLY DIRECTION, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID KINGS HARBOR DRIVE, A DISTANCE OF 83.26 FEET WITH THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 120.00 FEET, SUBTENDING A CENTRAL ANGLE OF 39 DEG. 45 MIN. 15 SEC. AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 06 DEG. 10 MIN. 04 SEC. EAST, 81.60 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE SERVICES" SET MARKING A PONT OF TANGENCY;

THENCE SOUTH 13 DEG. 42 MIN. 33 SEC. WEST, CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 148.59 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF CURVATURE;

THENCE IN A SOUTHWESTERLY DIRECTION, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 21.68 FEET WITH THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 49 DEG. 40 MIN. 47 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 38 DEG. 32 MIN. 57 SEC. WEST, 21.00 FEET TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF REVERSE CURVATURE;

THENCE IN A SOUTHERLY DIRECTION, CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 146.27 FEET WITH THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET, SUBTENDING A CENTRAL ANGLE OF 139 DEG. 40 MIN. 47 SEC. AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 06 DEG. 27 MIN. 03 SEC. EAST, 112.65 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE END OF CURVE;

THENCE SOUTH 13 DEG. 42 MIN. 33 SEC. WEST, A DISTANCE OF 220.92 FEET TO A CAPPED 5/8 IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE NORTHERLY BOUNDARY OF LAKE HOUSTON AS DEFINED BY F.C. NO. 395014, SAME BEING THE SOUTHERLY LINE OF SAID UNRESTRICTED RESERVE "C", MARKING THE MOST EASTERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 52 DEG. 30 MIN. 18 SEC. WEST, ALONG THE SOUTHERLY LINE OF SAID

UNRESTRICTED RESERVE "C", A DISTANCE OF 360.45 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF INTERSECTION;

THENCE NORTH 85 DEG. 40 MIN. 52 SEC. WEST, CONTINUING ALONG SAID SOUTHERLY LINE, A DISTANCE OF 239.90 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE NORTHEAST CORNER OF SAID RESTRICTED RESERVE "E", AND AN INTERIOR CORNER OF SAID 12.5219 ACRE TRACT, AND OF THE HEREIN DESCRIBED TRACT, FROM WHICH A CAPPED 5/8 STAMPED "SURVCON" FOUND FOR REFERENCE BEARS NORTH 34 DEG. 07 MIN. EAST, 1.9 FEET;

THENCE SOUTH 18 DEG. 58 MIN. 58 SEC. WEST, ALONG THE EASTERLY LINE OF SAID RESTRICTED RESERVE "E", SAME BEING AN EASTERLY LINE OF SAID 12.5219 ACRE TRACT AND THE HEREIN DESCRIBED TRACT, A DISTANCE OF 518.40 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE MOST SOUTHERLY CORNER OF SAID RESTRICTED RESERVE "E", SAID 12.5219 ACRE TRACT, AND THE HEREIN DESCRIBED TRACT, FROM WHICH A CAPPED 5/8 INCH IRON ROD STAMPED "SURVCON" FOUND FOR REFERENCE BEARS NORTH 52 DEG. 57 MIN. WEST, 1.0 FEET;

THENCE NORTH 73 DEG. 03 MIN. 44 SEC. WEST, A DISTANCE OF 10.93 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID LAKE HOUSTON PARKWAY, MARKING THE SOUTHWEST CORNER OF SAID RESTRICTED RESERVE "E", SAID 12.5219 ACRE TRACT AND THE HEREIN DESCRIBED TRACT, FROM WHICH A CAPPED 5/8 INCH IRON ROD STAMPED "SURVCON" FOUND FOR REFERENCE BEARS NORTH 55 DEG. 14 MIN. WEST, 1.0 FEET;

THENCE NORTH 11 DEG. 13 MIN. 38 SEC. EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, SAME BEING THE WESTERLY LINE OF SAID RESTRICTED RESERVE "E" AND SAID 12.5219 ACRE TRACT, A DISTANCE OF 301.50 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF INTERSECTION, FROM WHICH A CAPPED 5/8 INCH IRON ROD STAMPED "SURVCON" FOUND FOR REFERENCE BEARS NORTH 43 DEG. 26 MIN. WEST, 1.0 FEET;

THENCE NORTH 16 DEG. 56 MIN. 16 SEC. EAST, CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 434.04 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF CURVATURE;

THENCE IN A NORTHERLY DIRECTION, CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 149.70 FEET WITH THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2,500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 03 DEG. 25 MIN. 51 SEC , AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 15 DEG 13 MIN. 20 SEC. EAST, 149.68 FEET TO THE POINT OF BEGINNING AND CONTAINING 6.2886 ACRES OR 273,932 SQUARE FEET OF LAND, AS SHOWN ON THE DRAWING, JOB NO. 36309WC-WEST REMAINDER.DWG, FILED IN THE OFFICES OF WINDROSE LAND SERVICES, INC., HARRIS COUNTY, TEXAS.

The North Parcel consists of two parcels of real property described in the following legal descriptions, the first of which is called "Tract II" and which consists of 6.7559 Acres or 294,286 square feet, and the second of which is called "Tract III" and which consists of 4.9459 Acres or 215,442 square feet.

**6.7559 ACRES OR 294,286 SQ. FT.  
"TRACT II"**

A TRACT OR PARCEL OF LAND CONTAINING 6.7559 ACRES OR 294,286 SQUARE FEET OF LAND SITUATED IN THE AMASA TURNER SURVEY, ABSTRACT NO. 757, HARRIS COUNTY, TEXAS BEING OUT OF AND A PART OF UNRESTRICTED RESERVE "D", BLOCK 2 OF KINGS HARBOR CENTER SECTION TWO, MAP OR PLAT THEREOF RECORDED IN FILM CODE NO. 395014 OF THE HARRIS COUNTY MAP RECORDS, BEING THAT SAME TRACT OF LAND CONVEYED TO HOLLEY-STROTHER, LTD. IN THAT CERTAIN WARRANTY DEED FILED UNDER HARRIS COUNTY CLERKS FILE NO. U-696461, WITH SAID 6.7559 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND ON THE CURVED EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY (VARYING WIDTH) AS DESCRIBED IN H.C.C.F. NO. N-250837, MARKING THE MOST WESTERLY SOUTHWEST CORNER OF SAID UNRESTRICTED RESERVE "D", SAME BEING THE NORTHWEST CUTBACK CORNER AT THE INTERSECTION OF THE SAID EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY, WITH THE NORTHERLY RIGHT OF WAY LINE OF MAGNOLIA COVE DRIVE (VARYING WIDTH);

THENCE IN A NORTHERLY DIRECTION ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY, AN ARC DISTANCE OF 431.97 FEET, WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 2500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 09 DEG. 54 MIN. 00 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 05 DEG. 09 MIN. 14 SEC. EAST, A DISTANCE OF 431.44 FEET TO A 5/8 INCH IRON ROD SET MARKING THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 89 DEG. 43 MIN. 51 SEC. EAST, A DISTANCE OF 155.18 FEET TO A POINT OF CURVATURE;

THENCE IN A NORTHEASTERLY DIRECTION, AN ARC DISTANCE OF 171.72 FEET, WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 330.00 FEET, SUBTENDING A CENTRAL ANGLE OF 29 DEG. 48 MIN. 54 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 75 DEG. 21 MIN. 42 SEC. EAST, A DISTANCE OF 169.79 FEET TO A 5/8 INCH IRON ROD SET MARKING A POINT OF TANGENCY;

THENCE NORTH 60 DEG. 27 MIN. 15 SEC. EAST, A DISTANCE OF 56.78 FEET TO A 5/8 INCH IRON ROD SET MARKING A POINT OF REVERSE CURVATURE;

THENCE IN A NORTHEASTERLY DIRECTION, AN ARC DISTANCE OF 139.85 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 270.00 FEET, SUBTENDING A CENTRAL ANGLE OF 29 DEG. 40 MIN. 40 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 75 DEG. 17 MIN. 35 SEC. EAST, A DISTANCE OF 138.30 FEET TO A 5/8 INCH IRON ROD SET MARKING A POINT OF TANGENCY;

2013-03-21

THENCE SOUTH 89 DEG. 52 MIN. 05 SEC. EAST, A DISTANCE OF 27.87 FEET TO A 5/8 INCH IRON ROD SET ON THE CURVED WESTERLY RIGHT OF WAY LINE OF SAID MAGNOLIA COVE DRIVE, MARKING THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE IN A SOUTHERLY DIRECTION, ALONG THE SAID CURVED WESTERLY RIGHT OF WAY LINE OF MAGNOLIA COVE DRIVE, AN ARC DISTANCE OF 564.79 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 3032.00 FEET, SUBTENDING A CENTRAL ANGLE OF 10 DEG. 40 MIN. 22 SEC. AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 03 DEG. 30 MIN. 56 SEC. WEST, A DISTANCE OF 563.97 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF COMPOUND CURVATURE;

THENCE IN A SOUTHWESTERLY DIRECTION, CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE, AN ARC DISTANCE OF 194.68 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 120.00 FEET, SUBTENDING A CENTRAL ANGLE OF 92 DEG. 57 MIN. 09 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 55 DEG. 19 MIN. 42 SEC. WEST, A DISTANCE OF 174.02 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF COMPOUND CURVATURE;

THENCE IN A WESTERLY DIRECTION, ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID MAGNOLIA COVE DRIVE, AN ARC DISTANCE OF 38.33 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 04 DEG. 23 MIN. 32 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 75 DEG. 59 MIN. 58 SEC. WEST, A DISTANCE OF 38.32 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF TANGENCY;

THENCE NORTH 73 DEG. 48 MIN. 12 SEC. WEST, CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 222.82 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF REVERSE CURVATURE;

THENCE IN A WESTERLY DIRECTION, CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE, AN ARC DISTANCE OF 38.33 FEET, WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 04 DEG. 23 MIN. 31 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 75 DEG. 59 MIN. 58 SEC. WEST, A DISTANCE OF 38.32 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF TANGENCY;

THENCE NORTH 78 DEG. 11 MIN. 43 SEC. WEST, CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 85.50 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHEAST CUTBACK CORNER AT THE SAID INTERSECTION OF LAKE HOUSTON PARKWAY AND MAGNOLIA COVE DRIVE;

THENCE IN A NORTHWESTERLY DIRECTION, ALONG SAID CUTBACK, AN ARC DISTANCE OF 38.48 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 88 DEG. 11 MIN. 09 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 34 DEG. 06 MIN. 30 SEC. WEST, 34.79 FEET TO THE POINT OF BEGINNING AND CONTAINING 6.7559 ACRES OR 294,286 SQUARE FEET OF LAND.

**4.9459 ACRES OR 215,442 SQ. FT.  
"TRACT III"**

A TRACT OR PARCEL OF LAND CONTAINING 4.9459 ACRES OR 215,442 SQUARE FEET OF LAND SITUATED IN THE AMASA TURNER SURVEY, ABSTRACT NO. 757, HARRIS COUNTY, TEXAS BEING OUT OF AND A PART OF UNRESTRICTED RESERVE "D", BLOCK 2 OF KINGS HARBOR CENTER SECTION TWO, MAP OR PLAT THEREOF RECORDED IN FILM CODE NO. 395014 OF THE HARRIS COUNTY MAP RECORDS, BEING THAT SAME TRACT OF LAND CONVEYED TO HOLLEY-STROTHER, LTD. IN THAT CERTAIN WARRANTY DEED FILED UNDER HARRIS COUNTY CLERKS FILE NO. U-696461, WITH SAID 4.9459 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 5/8 INCH IRON ROD FOUND ON THE CURVED EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY (VARYING WIDTH) AS DESCRIBED IN H.C.C.F. NO. N-250837, MARKING THE MOST WESTERLY SOUTHWEST CORNER OF SAID UNRESTRICTED RESERVE "D", SAME BEING THE NORTHWEST CUTBACK CORNER AT THE INTERSECTION OF THE SAID EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY, WITH THE NORTHERLY RIGHT OF WAY LINE OF MAGNOLIA COVE DRIVE (VARYING WIDTH);

THENCE IN A NORTHERLY DIRECTION ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY, AN ARC DISTANCE OF 431.97 FEET, WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 2500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 09 DEG. 54 MIN. 00 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 05 DEG. 09 MIN. 14 SEC. EAST, A DISTANCE OF 431.44 FEET TO A 5/8 INCH IRON ROD SET MARKING THE SOUTHWEST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE IN A NORTHERLY DIRECTION, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, AN ARC DISTANCE OF 264.48 FEET, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 2500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 06 DEG. 03 MIN. 01 SEC. AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 02 DEG. 49 MIN. 37 SEC. WEST, A DISTANCE OF 264.36 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF A CALLED 1.941 ACRE TRACT CONVEYED TO LAKE HOUSTON RETAIL, LTD. IN THAT CERTAIN WARRANTY DEED FILED UNDER H.C.C.F. NO. X-74566, FOR THE MOST WESTERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 84 DEG. 22 MIN. 17 SEC. EAST, ALONG AND WITH THE SOUTHERLY LINE OF THE SAID 1.941 ACRE TRACT, A DISTANCE OF 286.57 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHEAST CORNER OF THE SAID 1.941 ACRE TRACT AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 07 DEG. 57 MIN. 27 SEC. WEST, ALONG AND WITH THE EASTERLY LINE OF THE SAID 1.941 ACRE TRACT, A DISTANCE OF 323.43 FEET TO A 5/8 INCH IRON ROD FOUND ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID MAGNOLIA COVE DRIVE, MARKING THE NORTHEAST CORNER OF THE SAID 1.941 ACRE TRACT AND THE MOST NORTHERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

RP 017-36-1820

THENCE NORTH 72 DEG. 36 MIN. 08 SEC. EAST, ALONG AND WITH THE SAID SOUTHERLY RIGHT OF WAY LINE OF SAID MAGNOLIA COVE DRIVE, A DISTANCE OF 106.66 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF CURVATURE;

THENCE IN A SOUTHEASTERLY DIRECTION, ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE OF SAID MAGNOLIA COVE DRIVE, AN ARC DISTANCE OF 203.35 FEET, WITH A CURVE TO RIGHT, HAVING A RADIUS OF 120.00 FEET, SUBTENDING A CENTRAL ANGLE OF 97 DEG. 05 MIN. 32 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 58 DEG. 51 MIN. 06 SEC. EAST, A DISTANCE OF 179.88 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF COMPOUND CURVATURE;

THENCE IN A SOUTHERLY DIRECTION, ALONG THE WESTERLY RIGHT OF WAY LINE SAID MAGNOLIA COVE DRIVE, AN ARC DISTANCE OF 449.00 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 3032.00 FEET, SUBTENDING A CENTRAL ANGLE OF 08 DEG. 29 MIN. 05 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 06 DEG. 03 MIN. 47 SEC. EAST, A DISTANCE OF 448.59 FEET TO A 5/8 INCH IRON ROD SET MARKING THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 89 DEG. 52 MIN. 05 SEC. WEST, A DISTANCE OF 27.87 FEET TO A 5/8 INCH IRON ROD SET MARKING A POINT OF CURVATURE;

THENCE IN A SOUTHWESTERLY DIRECTION, AN ARC DISTANCE OF 139.85 FEET, WITH A CURVE TO THE LEFT HAVING A RADIUS OF 270.00 FEET, SUBTENDING A CENTRAL ANGLE OF 29 DEG. 40 MIN. 40 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 75 DEG. 17 MIN. 35 SEC. WEST, A DISTANCE OF 138.30 FEET TO A 5/8 INCH IRON ROD SET MARKING A POINT OF TANGENCY;

THENCE SOUTH 60 DEG. 27 MIN. 15 SEC. WEST, A DISTANCE OF 56.78 FEET TO A 5/8 INCH IRON ROD SET MARKING A POINT OF REVERSE CURVATURE;

THENCE IN A SOUTHWESTERLY DIRECTION, AN ARC DISTANCE OF 171.72 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 330.00 FEET, SUBTENDING A CENTRAL ANGLE OF 29 DEG. 48 MIN. 54 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 75 DEG. 21 MIN. 42 SEC. WEST, A DISTANCE OF 169.79 FEET TO A 5/8 INCH IRON ROD SET MARKING A POINT OF TANGENCY;

THENCE NORTH 89 DEG. 43 MIN. 51 SEC. WEST, A DISTANCE OF 155.18 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.9459 ACRES OR 215,442 SQUARE FEET OF LAND.

# Exhibit C-2 Site Plan

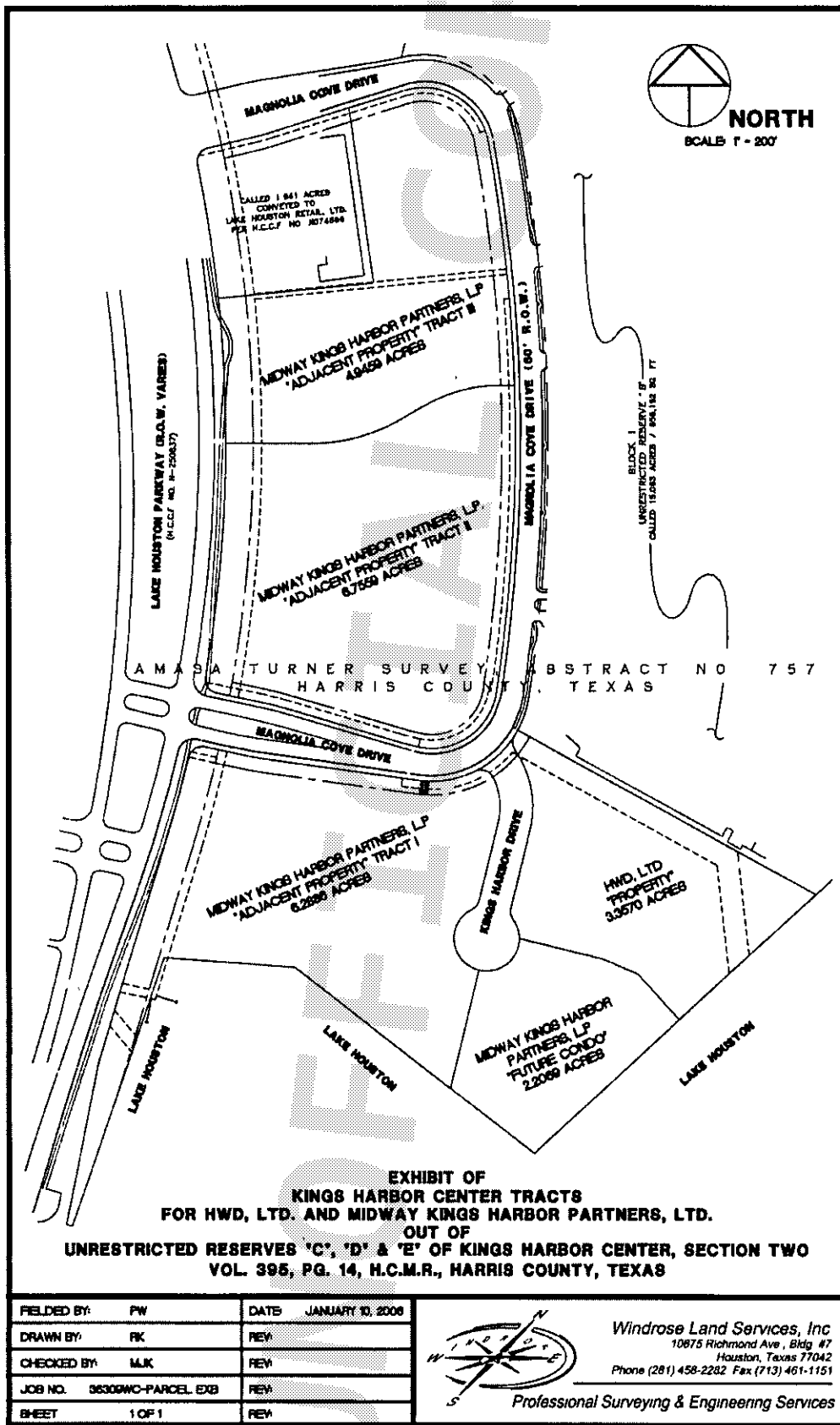


Exhibit C-3  
Home businesses

For purposes of this Exhibit C-3, "residence" means each single family residential townhome on the Property and any rights that are appurtenant to it.

The only persons who are permitted to work for a home business are a townhome Owner and members of its family.

The public must not be invited, permitted or allowed to enter the residence to conduct any business thereon. A home business must not create any significant additional vehicular or pedestrian traffic to the residence and must not materially increase the number of deliveries to or pickups from the residence by delivery services, including Fedex, UPS, and similar services.

The home business must not be detectable by sight, sound, or smell from outside the residence and there must not be any other external evidence of the home business (including signs, advertising, brochures, or contacts in person at the residence with clients or customers).

The home business must not involve the storage of any equipment, materials or devices other than those that are consistent with the operation of a small home-based business office, and in no event may any equipment, materials or devices which are hazardous, or which constitute a threat to health or safety be kept in the residence.

The home business must comply with all Applicable Legal Requirements, including ordinances relating to zoning, business permits, and licensing requirements.

The home business must be consistent with the character of the other residences in the Property and the businesses in the Adjacent Property.

The home business must not cause any annoyance or unreasonable inconvenience to owners or occupants of other residences in the Property or the businesses in the Adjacent Property.

The conduct of the home business must not cause any interference with, or reduce or render unusable any parking spaces or other areas provided for parking.

The home business must not use any equipment, materials, or processes in its business that are hazardous to public health, safety, or welfare. No toxic, explosive, radioactive, or other dangerous materials not normally used in a single-family residence may be used or stored in or about the residence.

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 THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED. In the Official Public Records of Real Property of Harris County, Texas on

FEB - 2 2006



*Dorely B. Kayman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

FILED  
206 FEB - 2 AM 11:11  
*Dorely B. Kayman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

PP 017-36-1823