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**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS**  
*of*  
**KINGS HARBOR CENTER, SECTIONS ONE AND TWO  
HARRIS COUNTY SUBDIVISIONS**

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
of  
KINGS HARBOR CENTER, SECTIONS ONE AND TWO  
HARRIS COUNTY SUBDIVISIONS**

THE STATE OF TEXAS   §  
  §                   KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF HARRIS   §

WHEREAS, KINGS HARBOUR JV63, a Texas Joint Venture (the "Declarant") is the sole record owner of that certain property known as Kings Harbor Center, Section One and Kings Harbor, Section Two, both Harris County subdivisions according to the maps or plats thereof respectively recorded under Film Code Nos. 392056 and 395014 of the Map Records of Harris County, Texas (the "Subdivision"); and

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WHEREAS, the Declarant desires to establish a uniform plan for the development, improvement and sale of the Tracts in the Subdivision, and to ensure the preservation of such uniform plan for the benefit of both the present and future owners of Tracts in the Subdivision in order to protect and enhance the quality, value, desirability, and attractiveness of all Tracts in the Subdivision.

NOW, THEREFORE, the Declarant hereby declares as follows:

**ARTICLE I  
DEFINITIONS**

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

**SECTION 1.1. ANNUAL ASSESSMENT(S).** The Annual Assessment levied in accordance of Article VI hereof.

**SECTION 1.2. ARCHITECTURAL REVIEW COMMITTEE.** The Architectural Review Committee established and empowered in accordance with Article IV of this Declaration, which shall be the same Architectural Review Committee referenced in the Commercial Development Guidelines.

**SECTION 1.3. ARTICLES OF INCORPORATION.** The Articles of Incorporation of the Association.

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**SECTION 1.4. ASSOCIATION.** Kings Harbor Center Association, a Texas non-profit corporation, its successors and/or assigns.

**SECTION 1.5. ASSESSMENT(S).** An Annual Assessment, a Special Assessment, or a Reimbursement Assessment.

**SECTION 1.6. BOARD OR BOARD OF DIRECTORS.** The Board of Directors of the Association as elected in accordance with the Articles of Incorporation and the Bylaws.

**SECTION 1.7. BYLAWS.** The Bylaws of the Association, as same may be amended from time to time.

**SECTION 1.8. COMMERCIAL DEVELOPMENT GUIDELINES.** Those guidelines and standards the Architectural Review Committee is empowered to adopt and amend from time to time, which govern the Improvement to Property. The original Commercial Development Guidelines are attached to this Declaration as Exhibit "B".

**SECTION 1.9. DECLARANT.** Shall mean and refer to Kings Harbour JV63, a Texas general partnership, his successors and assigns so designated in writing by Kings Harbour JV63, a Texas general partnership. No Person or entity merely providing loans to or purchasing (in the ordinary course of such purchaser's business) one or more Tracts from Kings Harbour JV63, a Texas general partnership, shall be considered a "Declarant".

**SECTION 1.10. DECLARATION.** The covenants, conditions, restrictions, easements, reservations and stipulations that shall be applicable to and govern the improvement, use, occupancy, and conveyance of all the Tracts in the Subdivision set out in i) this instrument or any amendment thereto, and ii) the Protective Covenants.

**SECTION 1.11. ELECTION DATE.** The earliest of the dates when (a) the last vacant Tract in the Subdivision is sold by Declarant, or (b) Declarant by written notice to the Board notifies the Board of its election to cause the Election Date to occur.

**SECTION 1.12. IMPROVEMENT TO PROPERTY.** Includes, without limitation: (a) the construction, installation or erection of Improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any Improvements; (c) the grading, excavation, filing, or similar disturbance to the surface of any Tract, including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; (d) installation or changes to the landscaping on any Tract; and (e) any exterior modification, expansion, change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture not expressly permitted by this Declaration, Commercial Development Guidelines, or the Rules and Regulations.

**SECTION 1.13. IMPROVEMENTS.** All structures and any appurtenances thereto

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of every type or kind, including, but not limited to: buildings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, poles, signs, exterior tanks, exterior air conditioning fixtures and equipment, water softener fixtures, exterior lighting, recreational equipment or facilities, radio, conventional or cable or television antenna or dish, microwave television antenna, and landscaping that is placed on and/or visible from any Tract.

**SECTION 1.14. TRACTS(S).** Each of the Tracts shown on the Plats of the Subdivision or portions thereof conveyed to Owners.

**SECTION 1.15. MAINTENANCE FUND.** Any accumulation of the Assessments collected by the Association in accordance with the provisions of this Declaration and interest, penalties, costs and other sums and revenues collected by the Association pursuant to the provisions of this Declaration or by law.

**SECTION 1.16. MEMBER(S).** All Owners of Tracts as provided in Section 3.3 of this Declaration.

**SECTION 1.17. MORTGAGE.** A security interest, mortgage, deed of trust, or lien instrument voluntarily granted by an Owner of a Tract to secure the payment of a loan made to such Owner, duly recorded in the office of the County Clerk of Harris County, Texas, and creating a lien or security interest encumbering a Tract and some or all Improvements thereon.

**SECTION 1.18. MORTGAGEE.** A mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of any such mortgagee or beneficiary.

**SECTION 1.19. NOTICE AND HEARING.** A written notice and a public hearing before the Board of Directors or a tribunal appointed by the Board in the manner provided in this Declaration or in the Bylaws.

**SECTION 1.20. OWNER(S).** Any person, firm, corporation or other entity, including Declarant or any combination thereof that is the record owner of fee simple title to a Tract or a portion thereof, including contract sellers, but excluding those having an interest merely as a security for the performance of an obligation.

**SECTION 1.21. PERSON(S).** A natural person, a corporation, a partnership, or any other legal entity.

**SECTION 1.22. PLATS.** The official plats of Kings Harbor Center, Section One and Kings Harbor, Section Two, which are respectively filed of record in the Map Records of Harris County, Texas under Film Code Nos. 392056 and 395014.



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**SECTION 1.23. PLANS.** The final construction plans and specifications (including a related site plan) of any Improvements of any kind to be erected, placed, constructed, maintained or altered on any portion of the Property.

**SECTION 1.24. PROPERTY.** All of that certain property known as Kings Harbor Center, Section One and Kings Harbor Center, Section Two, Harris County Subdivisions according to the Plats.

**SECTION 1.25. PROTECTIVE COVENANTS.** That certain instrument entitled "Exhibit `B` To Special Warranty Deed between Friendswood Development Company and Kings Harbour JV63, Protective Covenants" and filed of record in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number S229900, a copy of which is attached to this Declaration as Exhibit "A" and incorporated herein by reference. The term "Grantor" as used in the Protective Covenants shall also mean and refer to the Association. Notwithstanding Paragraph 19 of the Protective Covenants, no variance, change rescission or modification of the terms of the Protective Covenants may be approved without the written consent of both i) Friendswood Development Company, and ii) the Declarant if prior to the Election Date, or by the Board of Directors if after the Election Date.

**SECTION 1.26. REIMBURSEMENT ASSESSMENT.** A charge against a particular Owner and its Tract or Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association incurred in curing any violation, directly attributable to the Owner, of this Declaration or the Rules and Regulations, pursuant to Section 6.7 hereof.

**SECTION 1.27. RULES AND REGULATIONS.** Such rules and regulations as the Association may promulgate from time to time with respect to the Subdivision, which may include reasonable provisions for fines for violation of such Rules and Regulations.

**SECTION 1.28. SPECIAL ASSESSMENT.** A charge against each Owner and Tract, as approved by the Members, in accordance with Section 6.4 hereof.

**SECTION 1.29. SUBDIVISION.** All that certain real property reflected on the Plats.

**SECTION 1.30. VOTING UNIT.** Each acre of land in the Property, which acre of land is entitled to one vote.

## **ARTICLE II ESTABLISHMENT OF GENERAL PLAN**

**SECTION 2.1. GENERAL PLAN AND DECLARATION.** This Declaration hereby is established pursuant to and in furtherance of a common and general plan for the

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improvement and sale of Tracts within the Subdivision and for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Subdivision. Declarant, for itself, its successors, and assigns, hereby declares that the Subdivision and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in this Declaration, for the duration thereof. The Tracts in the Subdivision shall be subject to the jurisdiction of the Association.

**SECTION 2.2. EQUITABLE SERVITUDES.** The covenants, conditions, restrictions, limitations, reservations, easements, and exceptions of this Declaration hereby are imposed as equitable servitudes upon each Tract, within the Subdivision, as a servient estate, for the benefit of each and every other Tract within the Subdivision, as the dominant estate.

**SECTION 2.3. COVENANTS APPURTENANT.** The covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in this Declaration shall run with, and shall inure to the benefit of and shall be binding upon, all of the Subdivision, and each Tract therein, and shall be binding upon and inure to the benefit of: (a) the Subdivision; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all Persons having, or hereafter acquiring, any right, title, or interest in all or any portion of the Subdivision and their heirs, executors, successors, and assigns.

**SECTION 2.4. RESTRICTION ON FURTHER SUBDIVISION.** 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.

### **ARTICLE III** **MANAGEMENT AND OPERATION OF SUBDIVISION**

**SECTION 3.1. MANAGEMENT BY ASSOCIATION.** The affairs of the Subdivision shall be administered by the Association. The Association shall have the right, power and obligation to provide for the management, acquisition, construction, maintenance, repair, replacement, administration, and operation of the Subdivision as herein provided for and as provided for in the Articles of Incorporation, Bylaws, and the Rules and Regulations. In the event of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the event of a conflict between the Articles of Incorporation or the Bylaws and the provisions of the Declaration, the provisions of the Declaration shall control. The business and affairs of the Association shall be managed by its Board of Directors, unless otherwise reserved to the Members of the Association by law, the terms of the Declaration, Articles of Incorporation, or the Bylaws. It shall be the responsibility of each Owner to obtain copies of and become familiar with the terms of the Declaration, Articles of

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Incorporation, Bylaws, Rules and Regulations and Commercial Development Guidelines.

The Association, acting through the Board, shall be entitled to enter into such contracts and agreements concerning the Subdivision as the Board deems reasonably necessary or appropriate to maintain and operate the Subdivision in accordance with the 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, security, traffic, or other matters of mutual interest. In addition to other powers granted the Board of Directors herein or in the Articles of Incorporation, the Board of Directors of the Association shall also have the power, but no obligation, to create procedures for resolving disputes between Owners including appointment of committees to consider or reconsider resolutions of any disputes.

**SECTION 3.2. BOARD OF DIRECTORS.** The number, term, and qualifications of the members of the Board of Directors shall be governed by the Articles of Incorporation and the Bylaws.

**SECTION 3.3. MEMBERSHIP IN ASSOCIATION.** Each Owner, whether one Person or more of a Tract shall, upon and by virtue of becoming such Owner, automatically become and shall remain a Member of the Association until ownership of the Tract ceases for any reason, at which time the membership in the Association shall also automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each Tract and may not be separated from such ownership.

**SECTION 3.4. TRANSFER OF MEMBERSHIP FEES.** Prior to changing the name of the Owner of any Tract on the membership rolls of the Association, the Association or its managing agent (if authorized by the Board of Directors) may charge a reasonable transfer fee or processing fee when ownership to any Tract changes or the Mortgage on the Tract is refinanced.

**SECTION 3.5. VOTING OF MEMBERS.** The Association shall have two classes of membership.

**Class A.** Class A Members shall be all those Owners as defined in Section 3.3, with the exception of Declarant. Class A Members shall be entitled to one vote for each Voting Unit in which they hold the interest required for membership in Section 3.3. In the case of fractional votes, the vote for the Voting Unit shall be rounded off to the nearest whole number. When more than one person holds interest in any Voting Unit, all such persons shall be Members. The vote for such Voting Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Voting Unit. It is

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contemplated that one or more of the Tracts may be developed for multi-family use and ownership (e.g., condominium regimes or townhouse developments), in which case the Voting Units for any such Tract so developed shall be exercised by the board of directors of the property owners association established in the restrictive covenants applicable to that Tract.

**Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each Voting Unit in which it holds the interest required for membership by Section 3.3; provided, however, that the Class B membership shall cease and be converted to Class A membership on the Election Date. In the case of fractional votes, the vote for the Voting Unit shall be rounded off to the nearest whole number.

**SECTION 3.6. POWER TO ADOPT RULES AND REGULATIONS.** The Association, through its Board of Directors, may adopt, amend, repeal, and enforce Rules and Regulations, fines, levies, and enforcement provisions as it deems necessary or desirable with respect to the interpretation and implementation of the Declaration, the operation of the Association, and the use of any other property within the Subdivision. Any such Rules and Regulations shall be reasonable and uniformly applied to all Members. Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment, or repeal of any Rule and Regulation shall be given by depositing in the mail to each Member a copy of such Rule or Regulation and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

**SECTION 3.7. POWER TO ENFORCE DECLARATION AND RULES AND REGULATIONS.** The Association shall have the power to enforce the provisions of this Declaration and any Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and each Member's family, guests, or tenants. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of the Rules and Regulations of the Association by any one or more of the following means: (a) by entry upon any Tract within the Subdivision, without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or Rules and Regulations, as more particularly described in Section 9.6 hereof; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions

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and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or Members' family, guests, or tenants, of this Declaration or such Rules and Regulations unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting a Reimbursement Assessment against any Member for breach of this Declaration, Articles of Incorporation, Bylaws, or such Rules and Regulations by such Member or Member's family, guests, or tenants; and (f) by levying and collecting reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations or resolutions of the Board of Directors of the Association, from any Member or Member's family, guests, or tenants, for breach of this Declaration or such Rules and Regulations by such Member or Member's family, guests, or tenants. In connection with (d) through (f) above, Members shall be given notice of the action of the Board and be given an opportunity to be heard by the Board.

**SECTION 3.8. 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 3.9. BOOKS AND RECORDS.** The books and records of the Association shall be available for review and inspection in the manner prescribed by Article 1396-2.23 of the Texas Non-Profit Corporation Act.

**SECTION 3.10. SAFETY AND SECURITY IN SUBDIVISION.** NEITHER THE DECLARANT, NOR THE ASSOCIATION, THEIR DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AND ATTORNEYS, ("ASSOCIATION AND RELATED PARTIES") SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SAFETY OR SECURITY WITHIN THE Subdivision. THE ASSOCIATION AND 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, IF ANY OWNERS, LESSEE AND OCCUPANTS OF ALL TRACTS, ON BEHALF OF THEMSELVES, AND THEIR GUESTS AND INVITEES, ACKNOWLEDGE THAT THE ASSOCIATION AND 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 TRACTS ON BEHALF OF THEMSELVES, AND THEIR GUESTS AND INVITEES, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION AND RELATED PARTIES ARE NOT

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INSURERS AND THAT EACH OWNER, LESSEE AND OCCUPANT OF ANY TRACT AND ON BEHALF OF THEMSELVES AND THEIR GUESTS AND INVITEES ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLING UNITS AND TO THE CONTENTS OF THEIR DWELLING UNITS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION AND 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.

**SECTION 3.11. KINGS CROSSING TRAIL ASSOCIATION.** The Subdivision is also encumbered with that certain instrument entitled "Declaration of Covenants, Conditions and Restrictions" and filed of record in the Official Public Records of Real Property of Harris County, Texas under Clerk's File No. N467646 (the "Kings Crossing Declaration") and each Tract shall be owned held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in the Kings Crossing Declaration, for the duration thereof. The Kings Crossing Trail Association joins in the execution of this Declaration to evidence its consent to same.

#### **ARTICLE IV ARCHITECTURAL APPROVAL**

**SECTION 4.1. ARCHITECTURAL REVIEW COMMITTEE.** A committee of three (3) members, all of whom shall be appointed by Declarant, except as otherwise set forth herein. Declarant shall have the continuing right to appoint all three (3) members until the Election Date. Thereafter, the Board shall have the right to appoint all members. Members of the Architectural Review Committee may, but need not be, Members of the Association. Members of the Architectural Review Committee appointed by Declarant may be removed at any time and shall serve until resignation or removal by Declarant. The initial Members of the Architectural Review Committee are: Jim McManus, John Coffman and John Hood. Members of the Architectural Review Committee appointed by the Board may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. The Architectural Review Committee shall have the right to designate a Committee Representative by recordation of a notice of appointment in the Official Public Records of Real Property of Harris County, Texas, which notice must contain the name, address, and telephone number of the Committee Representative. All third parties shall be entitled conclusively to rely upon such person's actions as the actions of the Architectural

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Review Committee itself until such time as the Architectural Review Committee shall record a notice of revocation of such appointment in the Official Public Records of Real Property of Harris County, Texas.

**SECTION 4.2. APPROVAL OF IMPROVEMENTS REQUIRED.** As provided in Paragraph 3 of the Protective Covenants, no building, structure, addition, sign or other Improvement on the property may be constructed, remodeled, replaced or altered in any manner until the construction plans and structures have been approved in writing by Friendswood Development Company. The approval of a majority of the members of the Architectural Review Committee or the approval of the Committee Representative shall also be required (as provided in this Article IV) for any Improvement to Property before commencement of construction of such Improvement to Property, other than an Improvement to Property made by Declarant.

**SECTION 4.3. ADDRESS OF COMMITTEE.** The address of the Architectural Review Committee shall be at the principal office of the Association.

**SECTION 4.4. SUBMISSION OF PLANS.** Before commencement of work to accomplish any proposed Improvement to Property, the Owner of the Tract proposing to make such Improvement to Property (the "Applicant") shall submit to the Architectural Review Committee at its offices copies of such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Architectural Review Committee reasonably shall request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property, as may be more particularly described from time to time in any Commercial Development Guidelines adopted by the Architectural Review Committee. The Architectural Review Committee may require submission of additional plans, specifications, or other information before approving or disapproving the proposed Improvement to Property. Until receipt by the Architectural Review Committee of all required materials in connection with the proposed Improvement to Property, the Architectural Review Committee may postpone review of any materials submitted for approval.

**SECTION 4.5. CRITERIA FOR APPROVAL.** The Architectural Review Committee shall approve any proposed Improvement to Property only if it determines in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Subdivision as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Subdivision, including, without limitation, quality of materials and location with respect to topography and finished grade elevation; that the Improvement to Property will comply with the provisions of this Declaration and the Plats, ordinances, governmental rules, or regulation; and that the Improvements to Property will not detract from the attractiveness of the Subdivision or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. The Architectural Review Committee may condition its approval of any proposed Improvement to

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Property upon the making of such changes thereto as the Architectural Review Committee may deem appropriate.

**SECTION 4.6. COMMERCIAL DEVELOPMENT GUIDELINES.** The Architectural Review Committee from time to time may adopt, supplement or amend the Commercial Development Guidelines, which provides an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and the Architectural Review Committee may impose other requirements in connection with its review of any proposed Improvements. The initial Commercial Development Guidelines to be used by the Architectural Review Committee are attached to this Declaration as Exhibit "B". If the Commercial Development Guidelines impose requirements that are more stringent than the provisions of this Declaration, the provisions of the Commercial Development Guidelines shall control.

**SECTION 4.7. ARCHITECTURAL REVIEW FEE.** The Architectural Review Committee may require the payment of a reasonable fee to accompany each request for approval of any proposed Improvement to Property and to cover the cost of inspecting and reinspectng any Improvement to Property. The Architectural Review Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the reasonable cost of the proposed Improvement to Property.

**SECTION 4.8. DECISION OF COMMITTEE.** The decision of the Architectural Review Committee shall be made within forty-five (45) days after receipt by the Architectural Review Committee of all materials required by the Architectural Review Committee. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Architectural Review Committee promptly shall be transmitted to the Applicant at the address furnished by the Applicant to the Architectural Review Committee.

**SECTION 4.9. APPEAL TO ASSOCIATION BOARD.** If the Architectural Review Committee denies or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Association and the Architectural Review Committee within twenty (20) days after such denial or refusal. The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such Notice and Hearing to the Applicant and the Architectural Review Committee and shall decide with reasonable promptness whether or not the proposed Improvement to Property shall be approved. The decision of the Board of Directors shall be final and binding on all Persons.

**SECTION 4.10. FAILURE OF COMMITTEE TO ACT ON PLANS.** Any request for approval of a proposed Improvement to Property shall be deemed approved by the



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Architectural Review Committee, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Architectural Review Committee within forty-five (45) days after the date of receipt by the Architectural Review Committee of all required materials, provided, however, that no such deemed approval shall ever operate to permit any Applicant to construct or maintain any Improvement to Property that violates any provision of this Declaration or the Commercial Development Guidelines, the Architectural Review Committee at all times retaining the right to object to any Improvement to Property that violates any provision of this Declaration or the Commercial Development Guidelines.

**SECTION 4.11. PROSECUTION OF WORK AFTER APPROVAL.** After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in strict conformity with the description of the proposed Improvement to Property in the materials submitted to the Architectural Review Committee. Failure to complete the proposed Improvement to Property within twenty four (24) months after the date of approval or such other period of time as shall have been authorized in writing by the Architectural Review Committee (unless an extension has been granted by the Architectural Review Committee in writing) or to complete the Improvements to Property in strict conformity with the description and materials furnished to the Architectural Review Committee, shall operate automatically to revoke the approval by the Architectural Review Committee of the proposed Improvement to Property. No Improvement to Property shall be deemed completed until the exterior of the structure has been finished and all construction materials and debris have been cleaned up and removed from the site. Removal of materials and debris shall not take in excess of thirty (30) days following completion of the exterior.

**SECTION 4.12. NOTICE OF COMPLETION.** Promptly upon completion of the Improvement to Property, the Applicant shall deliver a notice of completion ("Notice of Completion") to the Architectural Review Committee and, for all purposes hereunder, the date of receipt of such Notice of Completion by the Architectural Review Committee shall be deemed to be the date of completion of such Improvement to Property, provided that the Improvement to Property is, in fact, completed as of the date of receipt of the Notice of Completion.

**SECTION 4.13. INSPECTION OF WORK.** The Architectural Review Committee or its duly authorized representative shall have the right, but not the obligation, to inspect any Improvement to Property before or after completion, provided that the right of inspection shall terminate sixty (60) days after the Architectural Review Committee shall have received a Notice of Completion from the Applicant.

**SECTION 4.14. NOTICE OF NONCOMPLIANCE.** If, as a result of inspections or otherwise, the Architectural Review Committee finds that any Improvement to Property has been constructed or undertaken without obtaining the approval of the Architectural Review Committee, or has been completed other than in strict conformity with the description and materials furnished by the Applicant to the Architectural Review Committee, or has not been

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completed within the required time period after the date of approval by the Architectural Review Committee, the Architectural Review Committee shall notify the Applicant in writing of the noncompliance ("Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

**SECTION 4.15. FAILURE OF COMMITTEE TO ACT AFTER NOTICE OF COMPLETION.** If, for any reason other than the Applicant's act or neglect, the Architectural Review Committee fails to notify the Applicant of any noncompliance within sixty (60) days after receipt by the Architectural Review Committee of a written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to Property in fact was completed as of the date of Notice of Completion; provided, however, that no such deemed approval shall operate to permit any Applicant to construct or maintain any Improvement to the Property that violates any provision of this Declaration or the Commercial Development Guidelines, the Architectural Review Committee at all times retaining the right to object to any Improvement to Property that violates this Declaration or the Commercial Development Guidelines.

**SECTION 4.16. APPEAL TO BOARD OF FINDING OF NONCOMPLIANCE.** If the Architectural Review Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Architectural Review Committee within thirty (30) days after receipt of the Notice of Noncompliance by the Applicant. Additionally, if, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Architectural Review Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Association and the Applicant within thirty (30) days after delivery to the Applicant of a Notice of Noncompliance from the Architectural Review Committee. In either event, the Board of Directors shall hear the matter with reasonable promptness after reasonable notice of such Notice and Hearing to the Applicant and the Architectural Review Committee and shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof and required corrective action. The decision of the Board of Directors shall be final and binding on all Persons.

**SECTION 4.17. CORRECTION OF NONCOMPLIANCE.** If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option but with no obligation to do so, (a) record a Notice of Noncompliance against the Tract on which the noncompliance exists in the Official Public Records of Real Property of Harris County, Texas; (b) remove the noncomplying Improvement to Property; and/or (c) otherwise remedy the noncompliance (including, if applicable, completion of the Improvement in question), and, if the Board elects to take any action with respect to such violation, the Applicant shall reimburse the Association

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upon demand for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Reimbursement Assessment for such costs and expenses against the Owner of the Tract in question. The permissive (but not mandatory) right of the Association to remedy or remove any noncompliance (it being understood that no Owner may require the Board to take such action) shall be in addition to all other rights and remedies that the Association may have at law, in equity, under this Declaration, or otherwise.

**SECTION 4.18. 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 to Property. Specifically, the approval by the Architectural Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel against withholding approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property by such Person or otherwise.

**SECTION 4.19. POWER TO GRANT VARIANCES.** The Architectural Review Committee may authorize variances from compliance with Article IV and V and the Commercial Development Guidelines, 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 only become effective when signed by at least a majority of the members of the Architectural Review Committee. Notwithstanding anything contained in this Declaration to the contrary i) the Committee Representative shall not have the power to grant a variance, and ii) no variance granted by either the Architectural Review Committee or Friendswood Development Company shall be binding on the other. 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 4.20. 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 4.21. RECORDS OF ACTION.** The Architectural Review Committee shall report in writing to the Board of Directors all final action of the Architectural Review

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

**SECTION 4.22. 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 to Property or with respect to whether any Improvement to Property was made in compliance herewith. 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 4.23. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING PROVIDED IN THIS DECLARATION TO THE CONTRARY, NEITHER THE DECLARANT, THE ARCHITECTURAL REVIEW COMMITTEE, THE ASSOCIATION, NOR ANY AGENT, EMPLOYEE, REPRESENTATIVE, MEMBER, SHAREHOLDER, PARTNER, OFFICER OR DIRECTOR THEREOF, SHALL HAVE ANY LIABILITY OF ANY NATURE WHATSOEVER FOR ANY DAMAGE, LOSS OR PREJUDICE SUFFERED, CLAIMED, PAID OR INCURRED INCLUDING CLAIMS BASED UPON THEIR SOLE OR CONTRIBUTORY NEGLIGENCE BY ANY PERSON ON ACCOUNT OF (A) ANY DEFECTS IN ANY PLANS AND SPECIFICATIONS SUBMITTED, REVIEWED, OR APPROVED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE IV ABOVE, (B) ANY DEFECTS, STRUCTURAL OR OTHERWISE, IN ANY WORK DONE ACCORDING TO SUCH PLANS AND SPECIFICATIONS, (C) THE FAILURE TO APPROVE OR THE DISAPPROVAL OF ANY PLANS, DRAWINGS, SPECIFICATIONS OR OTHER DATA SUBMITTED BY AN OWNER OR OCCUPANT OF A DWELLING UNIT FOR APPROVAL PURSUANT TO THE PROVISIONS OF ARTICLE IV, (D) THE CONSTRUCTION INSPECTION OR PERFORMANCE OF ANY WORK RELATED TO SUCH PLANS, DRAWINGS AND SPECIFICATIONS, (E) BODILY INJURIES (INCLUDING DEATH) TO ANY PERSON OR OTHER DAMAGE TO ANY DWELLING UNIT, IMPROVEMENTS OR THE PERSONAL PROPERTY OF ANY PERSON, WHICH MAY BE CAUSED BY, OR ARISE AS RESULT OF, ANY DEFECT, STRUCTURAL OR OTHERWISE, IN ANY DWELLING UNIT OR IMPROVEMENTS OR THE PLANS AND SPECIFICATIONS THEREOF OR ANY PAST, PRESENT OR FUTURE SOIL AND/OR SUBSURFACE CONDITIONS, KNOWN OR UNKNOWN AND (F) ANY OTHER LOSS, CLAIM, DAMAGE, LIABILITY OR EXPENSE, INCLUDING COURT COSTS AND ATTORNEY'S FEES SUFFERED, PAID OR INCURRED BY ANY PERSON ARISING OUT OF OR IN CONNECTION WITH THE USE AND OCCUPANCY OF ANY TRACT, OR ANY IMPROVEMENTS SITUATED THEREON.

**SECTION 4.24. CONSTRUCTION PERIOD EXCEPTION.** During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Architectural Review Committee may temporarily suspend the provisions of this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided,

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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 Subdivision.

**ARTICLE V**  
**USE RESTRICTIONS**

**SECTION 5.1. GENERAL.** No Owner shall use or permit such Owner's Tract to be used for any purpose that would (a) void any insurance in force with respect to the Subdivision; (b) make it impossible to obtain any insurance required by this Declaration; (c) constitute a public or private nuisance, which determination may be made by the Board in its sole discretion; (d) constitute a violation of the Declaration, Commercial Development Guidelines, Rules and Regulations or any applicable law or (e) unreasonably interfere with the use and occupancy of the Subdivision by other Owners.

**SECTION 5.2. REMOVAL OF TRASH AND DEBRIS DURING CONSTRUCTION.** During the construction, repair, and restoration of Improvements, all tree stumps, tree-limbs, branches, underbrush, and all other trash or rubbish cleared from the Tract to permit construction of the Improvements, including landscaping shall be removed and hauled from the Tracts. No burning of trash or other debris is permitted on any Tract, and no materials or trash hauled from any Tract may be placed elsewhere within the Subdivision, unless approved in writing by the Architectural Review Committee. Additionally, each Owner during construction of Improvements, shall continuously keep the Tract in a reasonably clean and organized condition. Papers, rubbish, trash, scrap, and unusable building materials are to be kept, picked up, and hauled from the Tract on a regular basis. Other useable building materials are to 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 inadvertently spilling or getting into the street or street gutter shall be removed, without delay, no less frequently than daily.

**SECTION 5.3. DAMAGE OR DESTRUCTION OF IMPROVEMENTS.** In the event of damage to any Improvement (not the product of normal wear and tear), the Owner shall have the shorter of the period permitted by applicable laws or sixty (60) days to begin repairing or demolishing the destroyed or damaged portion, and, once timely commenced, such repairs or demolition must be pursued diligently to completion. If, however, damage to the Improvements is not covered by insurance, or if the Owner's claim is not approved by the Owner's insurance company, or if the Owner decides not to restore the Improvements at such time, then the Owner may apply for a "hardship" extension to the operation of this restriction to be submitted to the Board within sixty (60) days from the date of such destruction or damage. The Board shall rule on the Owner's Application for a "hardship" extension within thirty (30) days from the date of submission. In no event shall the granting of a "hardship" extension in a particular case be deemed a waiver of the right to enforce this restriction thereafter. If a

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hardship extension is granted, the Owner thereafter immediately shall cause the damaged or destroyed Improvement to be demolished and the Tract to be suitably landscaped, subject to the approval of the Architectural Review Committee, so as to present a pleasing and attractive appearance.

**ARTICLE VI**  
**COVENANTS FOR ASSESSMENTS**

**SECTION 6.1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** The Declarant, for each Tract owned within the Subdivision, hereby covenants, and each Owner of any Tract by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual Assessments;
- (b) Special Assessments; and
- (c) Reimbursement Assessments.

The Annual, Special, and Reimbursement Assessments (the "Assessments"), together with interest, costs and reasonable attorney's fees, shall also be a charge on the land and shall be a continuing lien upon the property against which the Assessments are made. The Assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the Assessments fell due. The personal obligation for delinquent Assessments shall not pass to his/her successors in title unless expressly assumed by them.

**SECTION 6.2. PURPOSE OF ANNUAL ASSESSMENTS.** Each Tract in the Subdivision is hereby subjected to an Annual Assessment for the purpose of creating a fund to be designated and known as the "Maintenance Fund", which Annual Assessment will be paid by the Owner or Owners of each Tract within the Subdivision to the Association, on or before January 1 of each year, in advance annual installments, commencing on a date and in a manner to be promulgated by the Board of Directors of the Association. The rate at which each Tract will be assessed will be determined annually and may be adjusted from year to year by the Association, as hereinafter provided as the needs for the Subdivision may, in the judgment of the Association, require. The Association shall use the proceeds of said Maintenance Fund for the use and benefit of all residents of the Subdivision, as well as any other subdivision brought within the jurisdiction of the Association; provided, however, that other subdivisions to be entitled to the benefit of this Maintenance Fund must be impressed with and subjected to the Annual Assessment on a uniform basis, equivalent to the Annual Assessment imposed hereby. The uses and benefits to be provided by the Association shall include, by way of clarification and not limitation, at its sole option, any and all of the following: establishing and maintenance

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of a reserve fund, constructing and/or maintaining paths, parks, landscape reserves, parkways, easements, esplanades, fences, cul-de-sac and street medians, payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions and conditions affecting the Subdivision to which the Maintenance Fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the Assessments; employing service providers; and doing other things necessary or desirable, in the opinion of the Association, to keep the Subdivision neat and in good order or which is considered of general benefit to the Owners or occupants of the Subdivision. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith. Nothing herein shall constitute a representation that any of the above will, in fact, be provided by the Association.

**SECTION 6.3. MAXIMUM ANNUAL ASSESSMENT.** Until January 1 of the year immediately following the conveyance of the first Tract to a resident Owner other than Declarant, the maximum annual Assessment shall be \$0.021 per square foot of land per year.

- (a) From and after January 1 of the year immediately following the conveyance of the first Tract to an Owner other than Declarant, the maximum Annual Assessment may be increased each year not more than twenty percent (20%) above the Annual Assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Tract to an Owner other than Declarant, the maximum annual assessment may be increased above twenty percent (20%) by the written consent of two-thirds (2/3rds) of the Members.
- (c) The Board of Directors may fix the Annual Assessment at an amount not to exceed the maximum permitted herein.

**SECTION 6.4. SPECIAL ASSESSMENTS.** In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any use or benefit provided for herein in Section 6.2. Provided, however, any such assessment shall have the written assent of two-thirds (2/3rds) of the Members.

**SECTION 6.5. UNIFORM RATE OF ASSESSMENT.** Both Annual and Special Assessments must be fixed at a uniform rate per square foot of land.

**SECTION 6.6. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENTS.** The Annual Assessments provided for herein shall commence as

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to all Tracts on the first day of the month following the conveyance of a Tract to an Owner by Declarant. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Tract at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

**SECTION 6.7. REIMBURSEMENT ASSESSMENTS.** The Board of Directors, subject to the provisions hereof, may levy a Reimbursement Assessment against any Member if the failure of the Member or the Member's invitees, guests, or tenants to comply with this Declaration, the Articles of Incorporation, the Bylaws, Commercial Development Guidelines, or the Rules and Regulations shall have resulted in the expenditure of funds or the determination that funds will be expended by the Association to cause such compliance. The term Reimbursement Assessment shall also include any fines levied by the Association. The amount of the Reimbursement Assessment shall be due and payable to the Association ten (10) days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is owing.

**SECTION 6.8. ESTOPPEL CERTIFICATES.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Managing Agent of the Association setting forth whether the Assessments on a specified Tract have been paid. A properly executed certificate of the Association as to the status of assessments on a Tract is binding upon the Association as of the date of its issuance.

**SECTION 6.9. ATTRIBUTION OF PAYMENTS.** If any Owner's payment of an Assessment payment is less than the amount assessed and the payment does not specify whether it should be applied against a Common Assessment, Special Assessment, or Reimbursement Assessment, the payment received by the Association from the Owner shall be credited in the following order of priority: (a) Reimbursement Assessment until the Reimbursement Assessment has been satisfied; (b) Special Assessment until the Special Assessment has been satisfied; and (c) Annual Assessment until the Annual Assessment has been satisfied. In each of the foregoing cases, payments received shall be credited first to interest, attorney's fees, and other costs of collection, and next to principal reduction, satisfying the oldest obligations first, followed by more current obligations, in accordance with the foregoing order of priority.

**SECTION 6.10. EFFECT OF NONPAYMENT OF ASSESSMENTS.** Any assessments not paid within thirty (30) days after the due date shall be delinquent and shall be subject to the following:

- (a) late charges, interest at the rate of eighteen percent (18%) per annum from the due date, and all costs of collection, including reasonable attorney's fees; and



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- (b) all rights of the Owner as a Member of the Association shall be automatically suspended until all Assessments and related costs are paid in full and during such suspension, such Owner shall not be entitled to vote upon any matters coming before the membership.

The Association may bring an action at law against the Owner personally obligated to pay same or foreclose the Association's lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale, and each Owner expressly grants to the Association a power of sale in connection with the non-judicial foreclosure of the Association's lien and the right to appoint trustees to exercise said power of sale. Non-judicial foreclosure shall be conducted by notice and posting of sale in accordance with the then applicable laws of the State of Texas; and the Board of Directors of the Association is expressly empowered hereby to designate a trustee in writing from time to time to post or cause to be posted any required notices and to conduct any such non-judicial foreclosure sale. The Association, acting on behalf of the Owners, shall have the power to bid on the Tract at any foreclosure sale, and to acquire, hold, lease, mortgage, or convey the same. As referenced in Section 3.5 of this Declaration, it is contemplated that one or more of the Tracts may be replatted and developed for multi-family use and ownership, in which case the Assessments shall be a part of the Assessment the owners of the individual units pay to the property owner's association established in the restrictive covenants applicable to that Tract. Provided, however, should said property owner's association established for the multi-family use and ownership Tract fail to pay the Assessments by the due date, the Association retains the right to foreclose its lien against the individual units and any common area in said Tract. As used in this Section 6.10, the term "multi-family use and ownership" does not apply to apartment projects; rather, the term is meant to apply to condominium regimes, townhouse developments or other similar type developments.

**SECTION 6.11. NO OFFSETS.** The Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration or abandonment of the Owner's Tract or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

**SECTION 6.12. SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the Assessments provided for herein shall be subordinate to the liens of any Mortgagee and the lien of the Kings Crossing Trail Association. Sale or transfer of any Tract shall not affect the lien of the Assessment; however, the sale or transfer of any Tract pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Tract from liability for the Assessments thereafter becoming due or from the lien thereof.

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**SECTION 6.13. REIMBURSEMENT OF DECLARANT.** Recognizing that the initial cost of administration and maintenance of the Association may have to be subsidized by Declarant, the Directors (whether the Directors are same as the Declarant, his/her agents, servants, or employees and without being liable for any claim made by any Member of the Association that the Directors' fiduciary duty to the other Members of the Association has been breached due to a conflict of interest) may execute promissory notes and/or other instruments evidencing any debt the Association owes the Declarant for monies expended by the Declarant or loaned to the Association by Declarant for and on behalf of the Association.

**ARTICLE VII  
EASEMENTS AND UTILITIES**

**SECTION 7.1. TITLE TO UTILITY LINES.** The title conveyed to any Tract within the Subdivision shall be subject to any easement affecting same for utility or other purposes and shall not be held or construed to include the title to the water, gas, electricity, telephone, cable television, security, storm sewer, or sanitary sewer lines, poles, pipes, conduits, or other appurtenances or facilities constructed by the Declarant, the Association, or public or private utility companies upon, under, along, across, or through such utility easements; and the right (but no obligation) to construct, maintain, repair, and operate such systems, utilities, appurtenances, and facilities is reserved to the Declarant or the Association and their successors and assigns. The Owners of the respective Tracts shall not be deemed separately to own pipes, wires, conduits, or other service lines running through their property that are used for or serve other Tracts, but each Owner shall have an easement for such use of the aforesaid facilities as shall be necessary for the use, maintenance, and enjoyment of their Tract.

**SECTION 7.2. ASSOCIATION EASEMENTS.** The Association, its agents, servants, and employees shall have all other such easements as specifically referenced throughout this Declaration.

**ARTICLE VIII  
AMENDMENT TO DECLARATION AND DURATION OF RESTRICTIONS**

**SECTION 8.1. AMENDMENT BY OWNERS.** The terms of this Declaration may be amended at any time by an instrument signed by the President of the Association after having been approved by those Owners owning at least two-thirds (2/3rds) of the votes in the Association. Any such amendment must also be approved by Friendswood Development Company (for so long as Friendswood Development Company is still in existence) or until Friendswood Development Company waives this right in writing. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Harris County, Texas.

**SECTION 8.2. AMENDMENT BY DECLARANT.** Declarant shall have and reserves the right at any time and from time to time before the Election Date, without the

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consent of other Owners or the representatives of any mortgagee to amend this Declaration for the purpose of: (a) securing to the Owners the benefits from technological advances, such as security, communications, or energy-related devices or equipment that did not exist or were not in common use in similar subdivisions at the time this Declaration was adopted; (b) prohibiting the use of any device or apparatus developed or available for use following the date of this Declaration, if the use of such device or apparatus would adversely affect the Association or the Subdivision or would adversely affect the property values within the Subdivision; or (c) clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors, or omissions herein; provided, however, that no such amendment shall change the voting rights of the Declarant or other Members, annexation rights of Declarant, any Owner's proportionate share of Assessments, or the property description of any Owner and such Owner's mortgagee who do not join in the execution of such correction instrument. Any such amendment shall become effective upon the recordation of a written instrument setting forth such amendment in the Official Public Records of Real Property of Harris County, Texas.

**SECTION 8.3.** **DURATION.** This Declaration shall remain in full force and effect until April 15, 2007, and shall be extended automatically thereafter for successive ten (10) year periods; provided however, that this Declaration may be amended at any time, as set forth in Sections 8.1 and 8.2 hereof.

#### **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.** **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 9.4.** **ENFORCEABILITY.** This Declaration shall run with the Subdivision and shall be binding upon and inure to the benefit of and be enforceable by the Association and each Owner of a Tract in the Subdivision, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. In the event any action to enforce

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this Declaration is initiated against an Owner or occupant of a Tract by the Association, the Association or other Owner, as the case may be, shall be entitled to recover reasonable attorney's fees from the Owner or occupant of a Tract who violated this Declaration.

**SECTION 9.5. REMEDIES.** In the event any Person shall violate or attempt to violate any of the provisions of the Declaration, the Association, each Owner of a Tract within the Subdivision, 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 9.6. RIGHT OF ENTRY; ENFORCEMENT BY SELF HELP.** The Association shall have the right, in addition to and not in limitation of all the rights it may have under this Declaration, to enter upon any Tract, including any Improvements located thereon, for emergency, maintenance, or repair which right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after no less than ten (10) days notice to the Owner or occupant of the Tract or Improvements. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Improvements or any portion of a Tract to abate or remove, using such force as reasonably may be necessary, any Improvement to Property, other structure, or thing or condition that violates this Declaration, Commercial Development Guidelines, the Bylaws, the Rules and Regulations, or any use restrictions. Unless an emergency situation exists, such self-help shall be preceded by written notice. All costs of self-help, including reasonable attorney's fees actually incurred, should be assessed against the violating Owner and shall be collected as provided for herein for the collection of the Assessments. All such entries shall be made with as little inconvenience to the Owner or occupant of the Tract as is practicable in the judgment of the Association and any damages caused thereby (as distinguished from repairs with respect to which the Association is entitled to a Reimbursement Assessment) shall be borne by the Maintenance Fund of the Association.

**SECTION 9.7. VIOLATIONS OF LAW.** Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Subdivision hereby is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

**SECTION 9.8. REMEDIES CUMULATIVE.** Each remedy provided under this Declaration is cumulative and not exclusive.

**SECTION 9.9. NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the

516-84-1237.

Subdivision, or any improvement thereon, its or their physical condition, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof, unless and except as specifically shall be set forth in writing or incapable of being waived by law.

**SECTION 9.10. VACATING OF PLATS OR CORRECTION OF PLATS BY DECLARANT AND OWNERS.** No provision of this Declaration shall preclude the Declarant or Owners of Tracts in the Subdivision from vacating a plat or filing a replat to correct any error in the original platting or replatting of such Tracts in the Subdivision, or from otherwise recording a partial replat, provided that such vacating or replatting is i) done in accordance with applicable Texas statutes, and ii) approved in writing by the Declarant, if prior to the Election Date, or the Board if after the Election Date.

**SECTION 9.11. LIMITATION ON LIABILITY.** NEITHER THE ASSOCIATION, THE BOARD, THE ARCHITECTURAL REVIEW COMMITTEE, DECLARANT, OR ANY OFFICER, AGENT, OR EMPLOYEE OF ANY OF THE SAME ACTING WITHIN THE SCOPE OF THEIR RESPECTIVE DUTIES DESCRIBED IN THIS DECLARATION SHALL BE LIABLE TO ANY PERSON FOR ANY REASON OR FOR ANY FAILURE TO ACT IF THE ACTION OR FAILURE TO ACT WAS IN GOOD FAITH AND WITHOUT MALICE.

**SECTION 9.12. CAPTIONS FOR CONVENIENCE.** The titles, headings, captions, article and section numbers used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration. Unless the context otherwise requires, references herein to articles and sections are to articles and sections of this Declaration.

**SECTION 9.13. GOVERNING LAW.** This Declaration shall be construed and governed under the laws of the State of Texas.

## **ARTICLE X ANNEXATION OF ADDITIONAL LAND**

**SECTION 10.1. ADDITIONAL LAND.** Additional property and outside of the Subdivision that is adjacent to or in the proximity of the Subdivision, at any time and from time to time, may be annexed by the Declarant into the Subdivision, without the consent of the Owners or any other parties prior to the Election Date; provided, however, that such additional property is made subject to similar terms and conditions as set forth in this Declaration and that such annexed property is impressed with and subject to at least the Assessments imposed pursuant to this Declaration. Such additional property may be annexed into this Subdivision by a written instrument executed by the Declarant and recorded in the Official Public Records of Real Property of Harris County, Texas. After the Election Date, any annexation of additional

516-84-1238

property must be approved.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed the foregoing instrument on this 8th day of January, 1998.

KINGS HARBOUR JV63, a Texas Joint Venture

Luna Bay, Ltd., Managing Venturer

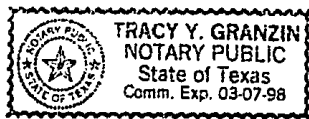
By: Arcanum VII LB-GP, Inc., its sole general partner

By: [Signature]  
John J. Coffman, President

(3)  
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102  
102

STATE OF TEXAS §  
                                  §  
COUNTY OF HARRIS §

This instrument was executed before me on this 8th day of January, 1998 by John Coffman, President of Arcanum VII LB-GP, Inc., as the sole general partner of Luna Bay, Ltd., Managing Venturer of Kings Harbour JV63, a Texas Joint Venture for the purposes and consideration expressed therein.



[Signature]  
NOTARY PUBLIC - STATE OF TEXAS

**CONSENT OF LIENHOLDER**

The undersigned, being a lienholder against the properties encumbered by the "Declaration of Covenants, Conditions and Restrictions of Kings Harbor Center, A Harris County Subdivision" (the "Declaration"), does hereby consent to the Declaration.

**KINGS CROSSING TRAIL ASSOCIATION**

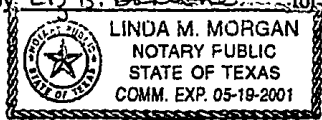
By: [Signature]  
Print Name: H.L.B. DANTONE  
Title: PRESIDENT

Jan. 25, 1998  
Date

516-84-1239

STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

This instrument was executed before me on this 26<sup>th</sup> day of JANUARY, 1998 by Liz B. Dentone for the purposes and consideration expressed therein.



Linda M. Morgan  
NOTARY PUBLIC - STATE OF TEXAS

**CONSENT OF FRIENDSWOOD DEVELOPMENT COMPANY**

As required by Paragraph No. 2 of Exhibit "B" to Special Warranty Deed between Friendswood Development Company and Kings Harbour JV63 (which is filed of record in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number S229900) Friendswood Development Company hereby approves the foregoing "Declaration of Covenants, Conditions and Restrictions of Kings Harbor Center, a Harris County Subdivision".

**FRIENDSWOOD DEVELOPMENT  
COMPANY, LTD.**  
a Texas limited partnership

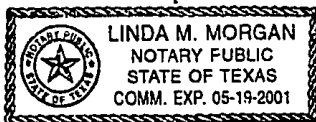
By: **FRIENDSWOOD LAND  
DEVELOPMENT COMPANY,**  
a Texas corporation, as Attorney-in-Fact

By: [Signature]  
Joseph L. Stunja, Vice President

1-26-98  
Date

STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

This instrument was executed before me on this 26<sup>th</sup> day of JANUARY, 1998 by Joseph L. Stunja, Vice President of Friendswood Land Development Company, a Texas corporation, as Attorney-in-Fact for Friendswood Development Company, Ltd., a Texas limited partnership for the purposes and consideration expressed therein.



Linda M. Morgan  
NOTARY PUBLIC - STATE OF TEXAS

42377

Ret

Butler Hailer  
5718 Westheimer, Suite 1600  
Houston, TX 77057

516-84-1240

FILED

98 FEB -6 PM 3:53

*Beverly L. Kaufman*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE FULL, FREEDOM, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID 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 Central Public Records of Real Property of Harris County, Texas or.

FEB 6 1998



*Beverly L. Kaufman*

COUNTY CLERK  
HARRIS COUNTY TEXAS