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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

KINGS HARBOR

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This Declaration of Covenants, Conditions and Restrictions for Kings Harbor ("Declaration") is made on June 9, 2006 (the "Effective Date"), by Midway Lake Houston Partners, L.P., a Texas limited partnership ("Declarant").

RECITALS:

1. Declarant is the owner and developer of the land located in Harris County, Texas (the "Property") described on Exhibit A attached hereto and made a part hereof; and

2. Declarant desires to develop a project known as Kings Harbor on the Property, which is intended to be a planned, pedestrian-oriented, water-front centered and mixed use development (the "Project"); and

3. The Property is part of a larger development and, in connection therewith, the Property has been subjected to the following restrictive covenants:

(i) Declaration of Covenants, Conditions and Restrictions filed of record under County Clerk's File No. N467646 of the Public Records (the "**Kings Crossing Declaration**");

(ii) Restrictive covenants attached as Exhibit B to Special Warranty Deed from Friendswood Development Company to Kings Harbour JV63 and filed of record under County Clerk's File No. S229900 of the Public Records (the "**Friendswood Restrictions**"); and

(iii) Declaration of Covenants, Conditions and Restrictions filed of record under County Clerk's File No. S850825 of the Public Records (the "**JV63 Restrictions**"). The Kings Crossing Declaration, the Friendswood Restrictions and the JV63 Restrictions are collectively referred to as the "**Existing Restrictions**" and any development of the Property must additionally comply with the Existing Restrictions; and

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4. The mixed use character of the Project is to be created by a mix of various uses, often on separately owned tracts, such that the resulting development of those separately owned tracts results in a mixed use whole of harmonious uses regulated by this Declaration. Some tracts are anticipated to have a single use while others will have multiple uses. Permitted uses will be determined as the Project proceeds and tracts are conveyed.

5. Declarant subjects the Property to the additional easements, restrictions, covenants and conditions in this Declaration to establish a uniform plan for the development of the Property in order to protect the quality of the Property and maintain the value, desirability and attractiveness of the Property over a long period of time for the benefit of the Property and each current and subsequent owner thereof; and

6. Declarant recognizes that a mixed-use development requires attention to the various burdens on the Project by different uses and an equitable allocation of rights, limitations and assessments tailored to the impact of different uses; and

7. Declarant declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner (as defined herein) thereof.

ARTICLE I

DEFINITIONS

Section 1.01 "ACC" or "Architectural Control Committee" shall have the meaning assigned in Section 6.01 of this Declaration.

Section 1.02 "Administrator" shall mean, prior to the Conversion Date, Declarant, or such other Person to whom Declarant or its assignee has assigned the powers and duties of the Administrator hereunder, from time to time, by written instrument filed for record in the Real Property Records of Harris County, Texas. After the Conversion Date, "Administrator" shall mean the Board, or such other Person to whom the Board has assigned the powers and duties of the Administrator hereunder, from time to time, by written instrument filed for record in the Real

Property Records of Harris County, Texas.

Section 1.03 "**Annual Assessment**" shall have the meaning ascribed to it in Section 5.03(e) of this Declaration.

Section 1.04 "**Appraisal District**" shall mean the Central Appraisal District of the county in which the Property lies, or any successor entity or agency to any such Appraisal District.

Section 1.05 "**Assessed Valuation**" for any Parcel or Unit shall mean the value of the Parcel or Unit determined as follows:

- (a) If the value of all Taxable Improvements on a Parcel or Unit are not shown on the Certified Tax Roll, the Assessed Valuation of that Parcel or Unit shall be the fair market value thereof. The fair market value shall be determined by the Board based upon evidence satisfactory to the Board.
- (b) If either (a) there are no Taxable Improvements on a Parcel or Unit or (b) the value of all Taxable Improvements on a Parcel or Unit are shown on the Certified Tax Roll, the Assessed Valuation of that Parcel or Unit shall be the value shown on the Certified Tax Roll.
- (c) If the Appraisal District or any successor entity shall cease to determine such value or fail to determine such value in any year, then the Board shall thereafter adopt, in its sole reasonable good faith discretion, an alternative method of assessment in order to provide sufficient revenue to meet the obligations of the Association.
- (d) For any year that a Parcel or Unit is not separately assessed by the Central Appraisal District, the Board shall determine the allocation between Parcels and Units.
- (e) In the event of any dispute relating to Assessed Valuation, including but not limited to the appropriate value, applicable Certified Tax Roll or the allocation between Parcels and Units, the Assessed Valuation of a Parcel or Unit shall be determined by the Board, which determination shall be set forth in writing delivered to the Owner and shall be final.
- (f) If the Appraisal District adjusts the Assessed Valuation of a Parcel or Unit after the date of the Certified Tax Roll used by the Board to determined Assessed Valuation because an Owner protested the Assessed Valuation of its Parcel or Unit or because of an error in the Assessed Valuation, the adjusted Assessed Valuation of the Parcel or Unit, whether higher or lower than the original Assessed Valuation of the Parcel or Unit, shall be used by the Board instead of the Assessed Valuation of the Parcel or Unit shown in the Certified Tax Roll.

The "Assessed Valuation" for all Parcels or Units shall mean the aggregate of the Assessed Valuation for all Parcels or Units with the intent that a complete valuation of all the Property is the result.

Section 1.06 "**Assessment Information**" shall have the meaning ascribed to it in Section 5.03(g) of this Declaration.

Section 1.07 "**Assessment Lien**" shall have the meaning ascribed to it in Section 5.03(o) of this Declaration.

Section 1.08 "**Assessment Notices**" shall have the meaning ascribed to it in Section 5.03(g) of this Declaration.

Section 1.09 "**Assessment Rate**" shall mean and refer to a specified number of cents for each One Hundred Dollars (\$100.00) as determined by the Board as provided herein to be multiplied times the then current Assessed Valuation of each Parcel or Unit to determine the Annual Assessment for each Parcel or Unit.

Section 1.10 "**Assessments**" shall have the meaning ascribed to it in Section 5.03(a) of this Declaration.

Section 1.11 "**Association**" shall mean and refer to Kings Harbor Owner's Association, a non-profit corporation duly incorporated and operating under the laws of the State of Texas, and the Association's successors, replacements, assigns and designees. The powers granted to the Association under these restrictions shall be vested in the Association's Board of Directors unless otherwise expressly set forth herein.

Section 1.12 "**Board**" or "**Board of Directors**" shall refer to the Board of Directors as described in the Bylaws of the Association, as same may be amended from time to time.

Section 1.13 "**Budget**" shall have the meaning ascribed to it in Section 5.03(f) of this Declaration.

Section 1.14 "**Building Signs**" shall have the meaning ascribed to it Section 3.04 of this Declaration.

Section 1.15 "**Building(s)**" shall mean any permanently enclosed structure(s) which has (have) been, will be or may be constructed within an Owner's Permissible Building Area (as that term is hereinafter defined), but such term does not include Common Area Improvements (as that term is hereinafter defined).

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Section 1.16 "**Business Day**" shall mean any week day other than a national holiday observed by U.S. Government offices being closed.

Section 1.17 "**Certified Tax Roll**" shall mean the most current certified tax roll of the Appraisal District available as of September 1 of each year or as of such other date selected by the Board.

Section 1.18 "**Common Area Costs**" shall have the meaning ascribed to it Section 5.03(c) of this Declaration.

Section 1.19 "**Common Area**" or "**Common Areas**" shall mean (a) any portion of the Property that is designated as a Common Area by the Declarant on the Site Plan or in an instrument recorded in the Public Records, (b) any portion of a Parcel designated by the Owner of the Parcel in an instrument recorded in the Public Records, (c) the Private Drives, and (d) the area that is fifty (50) feet in width and adjacent to the right of way of West Lake Houston Parkway (the "**Landscape Area**"). All Common Areas, unless otherwise stated on the Site Plan or the above referenced instrument recorded in the Public Records, are to be utilized for the common use and enjoyment of all of the Owners, and their heirs, executors, administrators, successors, assigns, occupants and permittees. The designation of the Common Area shall describe the purpose and use of the Common Area.

Section 1.20 "**Common Area Improvements**" shall mean all improvements which will be or may be constructed within the Common Area, including but not limited to, sidewalks, parking areas, access and egress drives, service drives, fountains, landscape, hardscape, bulkhead, signage, lighting standards, and all other improvements which would be part of the "Common Area" as herein defined, and all improvements constructed from time to time in replacement of the same or in such redesign of the same as may be approved by the Association.

Section 1.21 "**Common Utility Facilities**" shall mean utility systems and related facilities from time to time situated on the Common Areas, for use or service in common by the Owners or for the service of the Common Area, such as the following: storm water drainage, retention and disposal facilities, sanitary sewer systems, manholes, underground domestic and fire protection water systems, landscaping irrigation systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and related facilities for such common use or service, including, without limitation,

those installed under the provisions of this Declaration and as replacements thereto.

Section 1.22 "**Conversion Date**" shall mean and refer to the date of the earlier to occur of (i) the fifth (5th) annual anniversary of the Effective Date, (ii) the date on which an instrument executed by Declarant is recorded in the Public Records, which instrument conveys a vacant Parcel or Unit containing a sufficient number of square feet which when added to the aggregate number of square feet in all of the vacant Parcels or Units previously conveyed by Declarant equals 75% or more of the total number of square feet of all Parcels or Units or (iii) the date set forth in a written notice executed by Declarant in which Declarant states that the Conversion Date has occurred, which notice will be filed in the Public Records. The failure to file such notice of record will not affect the validity of the election by Declarant.

Section 1.23 "**C.P.I.**" shall mean and refer to either: (a) the Consumer Price Index (CPI-U) - All items, All Urban Consumers, U.S. City Average, 1982-84 equals 100, published by the U.S. Department of Labor, Bureau of Labor Statistics; or (b) if the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish such index, then such other index as the Board shall select which in their judgment reflects the then broad range of economic factors represented in the Consumer Price Index - All items, All Urban Consumers, U.S. City Average, 1982-84 equals 100.

Section 1.24 "**Declarant**" shall mean Midway Lake Houston Partners, L.P., a Texas limited partnership.

Section 1.25 "**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions for Kings Harbor.

Section 1.26 "**Design Criteria**" shall mean the criteria for design choices regarding Improvements, as further described herein.

Section 1.27 "**Default Rate**" shall mean the lesser of (i) twelve percent (12%) per annum and (ii) the maximum rate allowed by applicable law.

Section 1.28 "**Defaulting Owner**" shall have the meaning ascribed to it in Section 7.01 of this Declaration.

Section 1.29 "**Effective Date**" shall have the meaning ascribed to it in the first paragraph of this Declaration.

Section 1.30 "**Environmental Laws**" shall have the meaning ascribed to it in Section 3.03(x) of this Declaration.

Section 1.31 "**Existing Restrictions**" shall have the meaning ascribed to it in Recital 3(iii) of this Declaration.

Section 1.32 "**Friendswood Restrictions**" shall have the meaning ascribed to it in Recital 3(ii) of this Declaration.

Section 1.33 "**Grantee**" shall mean an Owner to whom an easement is granted, it being intended that the grant shall benefit and include not only such Owner but such Owner's heirs, executors, administrators, successors, assigns, occupants and permittees. Although the easement is not for the direct benefit of occupants and permittees, the Grantee may permit from time to time its occupants and permittees to use such easements; provided, however, that no such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.

Section 1.34 "**Grantor**" shall mean the Owner granting an easement in such Owner's Parcel, it being intended that the grant shall thereby bind and include not only such Owner but also such Owner's heirs, executors, administrators, successors and assigns.

Section 1.35 "**Hazardous Materials**" shall have the meaning ascribed to it in Section 3.03(x) of this Declaration.

Section 1.36 "**Improvements**" shall mean all structures, things or devices (and any appurtenances thereto) of every type or kind, on or affecting any Parcel, including, without limitation: (i) any buildings, appurtenant or temporary structures, sidewalks, walkways, sprinkler pipes, roads, driveways, parking areas, fences, screening walls, retaining walls, bulkheads, stairs, decks, fixtures, poles, signs, exterior equipment (such as, for example but without limitation, air conditioning units, antennas, cable dishes, and communication transmitters and receivers), exterior lighting, and landscaping; (ii) any physical change to an existing Improvement (such as, for example but without limitation, adding or removing square footage area space to or from an existing Improvement, exterior painting or repainting of an existing Improvement, or altering the size, shape or exterior physical appearance of an existing Improvement in any other way); (iii) any excavation, fill or other thing or device that alters the flow of any water or drainage from, upon or across any Parcel; or (iv) any change of grade of any Parcel.

Section 1.37 The word "**in**" with respect to an easement granted "**in**" a particular Parcel or Unit means, as the context may require, "**in**", "**to**", "**on**", "**over**", "**through**", "**upon**", "**across**", and

"under", or any one or more of the foregoing.

Section 1.38 "**Interior Drives**" shall have the meaning ascribed to it Section 1.49 of this Declaration.

Section 1.39 "**JV63 Restrictions**" shall have the meaning ascribed to it in Recital 3(iii) of this Declaration.

Section 1.40 "**Kings Crossing Declaration**" shall have the meaning ascribed to it in Recital 3(i) of this Declaration.

Section 1.41 "**Landscape Area**" shall have the meaning ascribed to it Section 1.19 of this Declaration.

Section 1.42 "**Maximum Assessment Rate**" for any year shall be based on cumulative changes in the C.P.I. and shall be equal to the product obtained by multiplying \$00.15 by a fraction, the numerator of which shall be the most current C.P.I. available as of the 30th day of June of such year and the denominator of which shall be the C.P.I. as of December 31, 2006.

Section 1.43 "**Member**" shall mean an Owner and Declarant.

Section 1.44 "**Monument Sign**" or "**Monument Signs**" shall mean the monument signs to be constructed within the Signage Area(s) (hereinafter defined).

Section 1.45 "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Parcel or Unit, but excluding those having such interest merely as security for the performance of any obligation and the record lessee or tenant, whether one or more, under a ground lease with an initial term and optional extensions of at least forty (40) years covering a Parcel (in which event, the fee simple title holder will not be an Owner).

Section 1.46 "**Owner's Proportionate Share**" shall mean the percentage determined by dividing the Assessed Valuation of the Owner's Parcel or Unit by the Assessed Valuation of all Parcels or Units.

Section 1.47 "**Parcel**" shall mean and refer to those portions of the Property designated as a Parcel on the Site Plan, provided, however, that the boundary lines of each Parcel as designated on the Site Plan are approximate. Declarant may revise the number and size and configuration of the Parcels from time to time by recording a notice in the Public Records referencing this Declaration with a new Site Plan attached. The permanent boundary lines of each Parcel shall be established upon the conveyance of the Parcel by Declarant. Once a Parcel has been established by a conveyance

that is recorded in the Public Records, it cannot be modified or subdivided without the prior written consent of the Association. A Parcel may be divided into Units by filing of a condominium declaration, cooperative agreement or similar shared ownership document valid under applicable law in the Public Records and the rights and obligations relating to the Parcel shall be allocated as provided herein, or if not fully allocated herein, then in accordance with applicable law to effectuate a fair allocation of all rights and obligations among the relevant ownership interests with the intention that the sum of the Parcels and the Units is all of the Property.

Section 1.48 **"Permissible Building Area"** shall mean an area within each Parcel which may be designated in the deed from Declarant to the first purchaser, or if not designated in the deed from Declarant to the first purchaser, then the area on the Parcel excluding the Common Area and any setback required by the ACC. No Building shall be erected or maintained outside of a Permissible Building Area. The Association may permit Parcels to be consolidated or reoriented, in whole or in part and the Permissible Building Area revised, as approved by the Association, with such condition as it deems appropriate. The resulting Parcels shall be considered to be separate Parcels for all purposes under this Declaration, including but not limited to voting as set forth in Article V. If a Permissible Building Area is established in a deed, Declarant shall provide a copy of the recorded deed to the Association. If provided in the deed, the Association may modify the Permissible Building Area.

Section 1.49 **"Private Drives"** shall mean the private non-publicly dedicated interior streets shown on the Site Plan, including, but not limited to Plaza Drive and Harbor Drive. All other private non-publicly dedicated interior streets (**"Interior Drives"**) are not Private Drives and shall be maintained by the Owner of the Parcel within which they are located. Declarant may designate extensions of any portion of the Private Drives by instrument recorded in the Public Records. All Private Drives, unless otherwise stated on the Site Plan or by the above referenced instrument recorded in the Public Records, are to be utilized for the common use and enjoyment of all of the Owners, and their heirs, executors, administrators, successors, assigns, occupants and permittees. The designation of any future Private Drives shall describe the purpose and use of such Private Drives.

Section 1.50 **"Property"** shall mean and refer to that certain real property described on the attached Exhibit A.

Section 1.51 "**Public Records**" shall mean the Official Public Records of Real Property of Harris County, Texas.

Section 1.52 "**Releasee**" shall have the meaning ascribed to it in Section 4.05 of this Declaration.

Section 1.53 "**Releasor**" shall have the meaning ascribed to it in Section 4.05 of this Declaration.

Section 1.54 "**Required Majority**" shall mean fifty percent (50%) plus \$1 of the Assessed Value for all Parcels and Units.

Section 1.55 "**Separate Utility Facilities**" shall mean any of the following not installed under the terms of this Declaration and not for use in common by other Owners or for service of the Common Area: storm water drainage facilities, sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, underground electric power, cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary solely for the use or service of the Improvements situated on that Parcel or Unit.

Section 1.56 "**Signage Area**" or "**Signage Areas**" shall have the meaning ascribed to them in Section 3.05 of this Declaration.

Section 1.57 "**Signage Share**" means, for any Owner, Parcel or Unit that is allocated one or more sign panels on a Monument Sign, a ratio for the Owner, Parcel or Unit determined by dividing the number of square feet of area in the sign panels installed or to be installed by or for such Owner, Parcel or Unit on the Monument Sign, by a denominator, which is the aggregate number of square feet of all of the sign panels on the Monument Sign (exclusive of the panel, if any, displaying the name of the Project).

Section 1.58 "**Sign Criteria**" shall mean the criteria for signage, as further described herein.

Section 1.59 "**Site Plan**" means the Site Plan of the Property attached hereto as Exhibit B. If the Site Plan is revised as authorized herein, the Declarant or Association may cause the revised Site Plan to be recorded in the Public Records with a reference to this Declaration.

Section 1.60 "**Special Assessments**" shall have the meaning ascribed to it in Section

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5.03(k) of this Declaration.

Section 1.61 **"Taxable Improvements"** shall mean and refer to all Improvements which, at the time of the assessment pursuant to Article V hereof, are located on a Parcel or Unit.

Section 1.62 **"Unit"** shall mean each of the following:

- (a) the fee simple title to a condominium unit located on any Parcel; and
- (b) any share, membership or other interest in any cooperative or other entity organized and operated for the purpose of making residential dwelling or commercial units available to its shareholders, members or other beneficiaries whose share, membership or other interest entitles the owner thereof to possession of any residential dwelling or commercial unit located on a Parcel.

Section 1.63 **"Use Multiplier"** shall mean the allocation of burden on the Project determined by Declarant to be appropriate for each of the uses permitted in the Project as shown on Exhibit D attached hereto, and is intended to assess each use based on its actual impact on the Common Area, specifically, and the Project, generally. If the Use Multiplier for a particular use is a range, the actual Use Multiplier for the Parcel or Unit shall be determined (i) by the specification thereof in the deed from Declarant to the first purchaser, or (ii) if not specified in the deed from Declarant, by the Association annually, through an annual review by the Association of the impact on the Common Area and Private Drives of each use and the Use Multiplier shall be consistent as to all Parcels or Units within the same use. The applicable Use Multiplier category for a particular use shall be determined by the Association. The decision of the Association, acting through the Board, on all issues relating to the Use Multiplier shall be final and non-appealable.

Section 1.64 **"Use Restrictions"** shall have the meaning ascribed to it in Section 3.01 of this Declaration.

ARTICLE II

EASEMENTS

Section 2.01 General Provisions. For the purposes of this Declaration, the following will apply:

(a) With the exception of the self-help easements set forth in Section 2.04, all easements granted herein are non-exclusive and are irrevocable and perpetual.

(b) Except as otherwise specifically provided, all easements herein shall be easements appurtenant and not easements in gross.

(c) All easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release by the beneficial owner(s) thereof in respect of all or any part of any Parcel or Unit, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of an Owner, the other Owners will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Owners. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Owner to construct or maintain its Building except as expressly provided in this Declaration.

(d) Enjoyment of the easements granted by Section 2.02 shall commence on the date the Common Area in question is substantially completed.

(e) Each Owner hereby reserves the right to eject from the Common Area on its Parcel or Unit any person not authorized by the Owner to use the same. In addition, each Owner reserves the right to close off the Common Area of its Parcel or Unit for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Areas as provided above, such Owner must give at least fifteen (15) days written notice to each other Owner of its intention to do so and must coordinate its closing with the activities of the other Owners so that no unreasonable interference in the passage of pedestrians or vehicles or with the operation of the Property occurs.

Section 2.02 Easements for Use of Private Drives. Declarant and each Owner, as Grantor pursuant to this Declaration, hereby grant to all Owners, as Grantee pursuant to this Declaration, easements in the Private Drives now existing and hereafter constructed on the Property for the following purposes:

- (a) ingress to and egress from the Grantee's Parcel or Unit;
- (b) the passage of and parking of vehicles (provided, however, the Owner or occupant of a Parcel or Unit and the employees of the Owner or occupant of a Parcel or Unit may only park on such Owner's or occupant's Parcel or Unit and no other Parcel or Unit so that the

permitted parking on the Private Drives is for the public);

(c) the passage and accommodation of pedestrians; and

(d) the doing of such other things as are authorized or required to be done on the Private Drives under this Declaration.

Notwithstanding the forgoing, the rights granted by Declarant to an Owner in a recorded deed to control parking or other uses of the Private Drives shall be reserved to such Owner and the forgoing easements are expressly made and granted subject to such rights.

Section 2.03 Easements for Use of Common Areas. Declarant and each Owner, as Grantor pursuant to this Declaration, hereby grant to all Owners, as Grantee pursuant to this Declaration, easements in the Common Areas for (i) doing such things for which such Common Areas were intended as evidenced by a designation or description on the Site Plan or in a written instrument recorded in the Public Records by Declarant or the Association, (ii) doing such other things as are authorized or required to be done thereon under this Declaration, and (iii) as to the Private Drives and the Landscape Area only, the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities (subject to the prior written consent of the Association) serving the Parcel of the Grantee.

All Separate Utility Facilities installed in the Common Area, whether installed pursuant to this Section or otherwise, and all Common Utility Facilities, shall be underground if reasonably possible.

Except as otherwise provided herein, the Grantees of any easement for Common Utility Facilities under this Section (or the Association, if the Association accepts an assignment of the rights to the Common Utility Facilities and assumes in writing the obligation to maintain such facilities) shall be responsible, as between such Grantees and the Grantor, for the installation, maintenance, repair and removal at Grantees' cost of all Common Utility Facilities installed by the Grantees pursuant to the easement grant. Any such installation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities shall be performed only after thirty (30) days advance notice to Grantor outlining the work proposed. However, in the case of an emergency, any such work may be immediately performed after giving such advance notice to Grantor as is practicable under the circumstances. All such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor (particularly access and parking) as

may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantees, to essentially the same condition as the same were in prior to the commencement of any such work.

The Grantees shall defend, indemnify and hold Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees), incurred in connection with Grantees' installation, use, operation, maintenance, repair, replacement, relocation and removal of the Common Utility Facilities easements under this Section 2.03, except to the extent occasioned by Grantor's negligent or wrongful act or omission to act.

The Grantor of any easement for Common Utility Facilities under this Section 2.03 may use the utility facilities installed pursuant to such easement; provided, however, that the increase in costs incurred in order to make such utility facilities adequate to serve Grantor's additional use shall be borne by such Grantor; and provided, further, that Grantor gives written notice within the time period called for under subparagraph (a) and otherwise complies with the requirements of subparagraphs (b), (c) and (d) of the following paragraph of this Section 2.03.

The Grantor of any easement under this Section 2.03 may relocate on its Parcel any Common Utility Facilities installed thereon under any easement granted by it; provided, however, that such relocation:

(a) may be performed only after Grantor has given Grantee thirty (30) days written notice of its intention to relocate such facilities;

(b) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.03(a)). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both;

(c) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;

(d) shall be located underground, if reasonably possible; and

(e) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by

the Grantee and the Association.

Section 2.04 Easements to Association. Each Owner hereby grants to the Association an easement in gross and a license to enter upon a Parcel or Unit for the purpose of performing its rights and obligations under this Declaration, including without limitation, exercising the cure rights provided under Section 7.02 of this Declaration. The Association may authorize and permit its agents, contractors and permittees to use such easements. The duration of the easements granted under this Section shall be coterminous with the respective provisions of the Declaration which give the Association the right or the obligation to perform any work pursuant to this Declaration.

Section 2.05 Private Drives. The Declarant shall construct the Private Drives as shown on the Site Plan. The costs of initially constructing the Private Drives shall not be included within the calculation of Common Area Costs; provided that the costs of all maintenance, repairs or capital replacements relating to the Private Drives shall be included within the calculation of Common Area Costs. The Association shall be responsible for maintaining and repairing the Private Drives in a first class condition and for replacing the Private Drives when required. The Association shall have the right to adopt and promulgate, from time to time, reasonable rules and regulations pertaining to the use of the Private Drives, the safety and convenience of the users thereof, or which, in the good faith reasonable discretion of the Association, serve to promote the best interests of all the Owners of the Parcels or Units. Notwithstanding the forgoing, the right of the Association to regulate and control the use of the Private Drives shall be subject and subordinate to any right granted by Declarant to an Owner in a recorded deed to control parking or other uses of the Private Drives.

Section 2.06 No Barrier Agreement. No barriers, fences, walls, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Parcels from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Owners of the rights and easements created by this Article II. Notwithstanding the foregoing, each Owner may temporarily close or block traffic on its Parcel in accordance with Section 2.01(e) of this Declaration, and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction in accordance with the terms of this Article II.

ARTICLE III
RESTRICTIONS

Section 3.01 Mixed Use Project/ Specific Permitted Uses. The Project is a mixed-use development consistent with the Existing Restrictions.

Prior to or commensurate with the sale of a Parcel or Unit by Declarant, Declarant will adopt and impose additional restrictions limiting the uses of such Parcel or Unit (the "Use Restrictions"). The Use Restrictions may be made by plats, deeds, declarations or other instruments filed of record in the Public Records. The Use Restrictions may be amended as to any Parcel or Unit as Declarant and the current Owner of that Parcel or Unit may determine in its sole discretion, except that the Use Restrictions may not be amended to allow a Prohibited Use as defined in Section 3.03.

This Declaration and the Use Restrictions shall establish and provide the framework to maintain the mixed use character of the Project. Individual Parcels or Units may be restricted to a single use, with the intention that the collection of separately owned Parcels or Units, appropriately restricted will result in a harmonious mixed use Project.

Section 3.02 Nuisances. No Parcel or Unit shall be used for anything other than purposes which may be permitted by applicable laws, ordinances and zoning rules and regulations, nor shall any Parcel or Unit be used in any manner which could constitute a nuisance or an annoyance to the community.

Section 3.03 Prohibited Uses. During the term of this Declaration, no portion of the Property shall ever be used for any of the following purposes whatsoever:

- (a) A nightclub or discotheque, provided that an entertainment establishment with a dance floor not exceeding ten percent (10%) of the public area of the establishment and not otherwise operated as a dance club is permitted.
- (b) A liquor store or other establishment for the sale of alcoholic beverages for off-premises consumption.
- (c) A fast food eating establishment, but a Starbucks or similar establishment is acceptable.
- (d) An establishment for the sale or lease of automobiles, trucks, mobile homes or recreational motor vehicles.
- (e) A bowling alley, billiard parlor, bingo parlor, arcade, game room or other

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amusement center, provided a Strikes or Slick Willy's is acceptable.

- (f) A fuel service station or an automotive repair shop or truck stop.
- (g) A flea market, pawn shop, "second hand" store, or "surplus" store.
- (h) A training or educational facility.
- (i) A car wash.
- (j) A child day care facility, but "Gymboree" or similar youth educational or

exercise facility is acceptable.

- (k) A dry cleaning plant or central laundry or laundromat.
- (l) A hotel or motel.
- (m) A storage mini-warehouse facility.

(n) An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic materials or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays of a variety involving or depicting sexual themes, nudity or lewd acts).

(o) A massage parlor, provided a Day Spa is acceptable. A "Day Spa" is a business engaged in providing at least two of the following services within the same space: hair cutting and treatment, manicures, pedicures, tanning, body waxing, skin care, makeup artistry and massage therapy, but does not provide overnight accommodations.

- (p) A skating rink.
- (q) A mortuary, crematorium or funeral home.
- (r) A mobile home or trailer court, labor camp, junkyard or stockyard; provided,

however, this provision will not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(s) A land fill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to trash dumpsters located on the Property for the use of the Owners.

- (t) A telephone call center.
- (u) A gambling establishment or betting parlor.
- (v) Any animal raising or keeping facilities, except that a veterinary clinic or pet

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store is not prohibited so long as it does not have any outside runs or kennels.

(w) An assembling, manufacturing, industrial, distilling, refining or smelting facility.

(x) No Owner shall use, or permit the use of, Hazardous Materials on, about, under or in its Parcel or Unit or the balance of the Property, except such use as may be ancillary to and in the ordinary course of such Owner's business operations conducted thereon, and any such use shall at all times be in compliance with all applicable Environmental Laws. Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner and Declarant from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including, but not limited to, costs of environmental investigation, remediation, removal or other response actions, and reasonable attorneys' fees and costs of suit related thereto, arising out of or resulting from such Owner's use and/or release of any Hazardous Materials on such Owner's Parcel, Unit or the Property, whether or not in the ordinary course of business. For the purposes of this subsection (z), the term (i) "**Hazardous Materials**" shall mean and refer to the following: petroleum products and fractions thereof and any additives thereto, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes regulated by any Environmental Law and (ii) "**Environmental Laws**" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with the protection of human health or the environment, all as may be amended from time to time.

Section 3.04 Building Signs. Unless a variance is granted by the ACC (hereinafter defined), all signs located or attached on Buildings ("**Building Signs**") must conform to the following standards and to the Sign Criteria:

- (i) All signs shall identify the occupant by its name and/or business.
- (ii) All signs shall be of such size and shape as shall be established by the ACC or as established by the Sign Criteria.
- (iii) Signs may not project above the roof line of the Improvement on

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which it is attached.

- (iv) Flashing or moving signs are prohibited.
- (v) All signs shall be kept in a first class appearance and operating condition.
- (vi) Each sign must be individually approved by the ACC.

The ACC may prescribe additional standards for all signs within the Property in order to preserve a uniform and pleasant atmosphere within the Property. Attached as Exhibit C is the initial Sign Criteria for the Property. Until the Conversion Date, the Declarant, and thereafter, the ACC, may modify and/or terminate from time to time the Sign Criteria setting forth architectural, color, lighting, material, design, configuration and other elements and requirements for Building Signs, provided, however, that no change in the Sign Criteria shall apply to Building Signs in existence on the date the change was adopted or to Building Signs which were approved by Declarant, the ACC or as provided in this Declaration prior to the date of the change. The Sign Criteria and all modifications thereof shall be recorded in the Public Records and considered part of this Declaration. A copy of any change to the Sign Criteria shall be furnished to each Owner. Sign Criteria may be incorporated in Design Criteria.

The Association shall have authority to remove or cause to be removed any Building Signs which were not approved by Declarant, by the ACC or pursuant to this Declaration or which were approved and do not comply with the terms and conditions of the approval. The cost of any such removal, plus a reasonable amount to defray the overhead and other expenses of the Association incurred in connection with the removal, shall be paid by the Owner of the Parcel or Unit upon which such non-conforming Building Sign shall have been installed. If such Owner shall fail to reimburse the Association within thirty (30) days after receipt of written demand, the Association shall be entitled to claim a lien in accordance with Section 7.03 on the Parcel of the defaulting Owner for the unpaid amount, which amount shall bear interest at the Default Rate from the date of expiration of said thirty (30) day period until paid.

Section 3.05 Monument Signs. Declarant may construct at its sole cost and expense (but subject to the reimbursement obligation set forth herein) five (5) freestanding, multiple-occupant Monument Signs, such Monument Signs being situated in the approximate locations shown on the Site Plan (each, a “**Signage Area**”, and collectively, the “**Signage Areas**”). Declarant may assign to

an Owner Declarant's right to construct any one or more of the Monument Signs. The costs of initially constructing the Monument Signs shall not be included within the calculation of Common Area Costs. However, except as otherwise provided herein, Declarant shall recover from each Owner entitled to utilize the Monument Signs such Owner's "Signage Share" (defined below) of the construction costs incurred by Declarant (or any Owner assignee). The Signage Share due from each such Owner shall be due and payable upon the earlier of (i) closing of the purchase of the Owner's Parcel or Unit (if the Monument Sign is complete), or (ii) within thirty (30) days following its receipt of an invoice therefore after the Monument Sign is complete.

In the event an Owner fails to pay its Owner's Signage Share, which failure continues for a period of ten (10) Business Days after written notice thereof ("**Default Notice**"), the Declarant shall have the authority to remove or cause to be removed the sign panels of the defaulting Owner without any liability for any resulting damage to such sign panels and to revoke the sign panel license of the defaulting Owner. If the sums due from the defaulting Owner are not paid in full within 60 days after the defaulting Owner received the Default Notice, the sign panel license shall be automatically revoked. If a sign panel license is revoked, the Declarant shall have the right to designate which Owner, Parcel or Unit shall be entitled to each sign panel which was subject to the revoked easement. Declarant shall also be entitled to claim a lien in accordance with Section 7.03 on the Parcel or Unit of the defaulting Owner for the unpaid amount as well as the cost of any sign panel removal, as if it were the Association, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) Business Day period until paid.

No other freestanding signs may be located upon any of the Parcels, except (i) signs to facilitate the free direction and flow of traffic and (ii) parking reservation signs approved by the ACC. Notwithstanding the foregoing, freestanding temporary signs used by Declarant or any Owner in advertising the sale or lease of any Parcel or Unit are allowed. Freestanding temporary signs are limited to one (1) per Parcel or Unit and are subject to the Sign Criteria and approval by the ACC.

The Monument Signs will be owned by the Association, unless all sign panels are controlled by a single Owner which is the owner of the Parcel on which the sign is located, in which case that sign is owned by that Owner.

Each side of the Monument Signs shall be designed to accommodate one or more sign panels for Owners of Parcels or Units. Declarant grants to the Owners (or such Owner's tenant) who are

entitled to sign panels on the Monument Signs a non-exclusive easement over and across the Parcel on which such Monument Signs are located for access to and from the Signage Area for the installation, maintenance, repair and replacement of each such Owner's sign panel on the Monument Signs.

Declarant shall have the right to make the initial allocation of sign panels on the Monument Signs and establish the size and configuration of the sign panels. Declarant's allocation of sign panels to the Parcels and Units and establishment of their size and configuration shall be shown on an instrument recorded in the Public Records setting forth such matters.

Declarant grants to the Owners of the Parcels or Units by an instrument recorded in the Public Records a license to place one or more sign panels on the Monument Signs at the location and in the size and configuration as shown therein. This sign panel license shall be subject to revocation provided herein. Each Owner allocated a sign panel shall supply and maintain its own sign panel at its sole cost and expense, in good and clean condition. All sign panels shall comply with the Sign Criteria. Declarant, initially, and the Association, after the Conversion Date, shall have the right to approve the design and content of each such sign panel, such approval not be unreasonably withheld, conditioned or delayed. The Declarant or Association may delegate this approval right to the ACC. The Owners of such Parcels or Units shall have the right to transfer and convey the sign panel license to its successors, assigns and to all lessees of the Owners' Parcels or Units under the terms of a ground lease with an initial term and optional extensions of at least forty (40) years. A conveyance of fee simple title of a Parcel or Unit or the grant of a ground lease to a Parcel with an initial term and optional extensions of at least forty (40) years shall also convey the sign panel license to the purchaser or ground lessor of the Parcel.

The Owner of a Parcel or Unit on which a Monument Sign is located and to which Owner Declarant has allocated all of the sign panels on the Monument Sign (each a "**Single Owner Sign**" and collectively, the "**Single Owner Signs**") shall own the sign and shall, at its sole expense, keep the Monument Sign lit, maintain the Monument Sign and the sign panels in a good and clean condition and repair, and shall replace the Monument Sign, when necessary. Such Owner is not responsible for contributions toward the cost of any other Monument Sign.

The Association shall, at all times, keep all Monument Signs other than Single Owner Signs lit, and maintain those Monument Signs (but not the sign panels) in a good and clean condition and

repair, and shall replace the Monument Signs when necessary at the cost and expense of the Association, subject, however, to reimbursement from the Owners determined based upon the Signage Share of each Owner with a license to place one or more sign panels on these Monument Signs. The Signage Share due from each such Owner shall be due and payable within thirty (30) days following its receipt of an invoice therefor. In the event an Owner fails to pay its Owner's Signage Share, which failure continues for a period of ten (10) Business Days after written notice thereof ("**Default Notice**"), the Association shall have the authority to remove or cause to be removed the sign panels of the defaulting Owner without any liability for any resulting damage to such sign panels and to revoke the sign panel license of the defaulting Owner for period during which the payment of any sums due hereunder from such Owner remain unpaid. If the sums due from the defaulting Owner are not paid in full within 180 days after the defaulting Owner received the Default Notice, the sign panel license shall be automatically revoked. If a sign panel license is revoked, the Association shall have the right to designate which Owner, Parcel or Unit shall be entitled to each sign panel which was subject to the revoked easement and shall have the right to approve the design and content of each such sign panel, such approval not be unreasonably withheld, conditioned or delayed. The Association may delegate this approval right to the ACC. The Association shall also be entitled to claim a lien in accordance with Section 7.03 on the Parcel or Unit of the defaulting Owner for the unpaid amount as well as the cost of any sign panel removal, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) Business Day period until paid.

Section 3.06 Design Criteria. Until the Conversion Date, the Declarant, and thereafter the ACC, may modify and/or terminate from time to time Design Criteria setting forth architectural, landscaping, signage, color, material, design, configuration and other elements and requirements for Improvements, provided, however, no change in the Design Criteria shall apply to Improvements which were previously approved by Declarant or the ACC as of the date that the Design Criteria is changed. The Design Criteria and all modifications thereto shall be recorded in the Public Records and considered part of this Declaration.

Section 3.07 Fireworks and Use of Firearms. The sale or use of fireworks, of any kind whatsoever, the use or discharge of firearms, air rifles, pistols, pellet guns or similar devices, and hunting of any kind, and by any method, including but not limited to firearms, air rifles and pistols, pellet guns, traps, snares, bow and arrows, or manually propelled missiles is prohibited, except by

written permit granted by the Association. If such permits are granted, the Association may set aside certain specifically delineated areas for these activities, which must be conducted in accordance with the permit and all applicable federal, state and local laws.

Section 3.08 Prohibition of Nuisances. No portion of the Property shall ever be used for any purpose that is a nuisance or is otherwise noxious or offensive.

Section 3.09 Keeping of Animals. Except for customary household pets, no animals shall be kept or maintained on any Parcel or within any Improvements unless specifically authorized in writing by the Association. No animal shall be allowed or permitted on any portion of the Property except the Parcel or Unit of its owner except under the control of its owner or another person by leash, rope, chain or other restraining device. No animal shall be allowed on any Parcel without the permission of the owner of that Parcel. The Association shall have authority to seize and impound, or cause to be seized or impounded, any animal on the Property in violation of this Section 3.09 or the regulations established hereunder.

The Association shall have authority to impose reasonable fees for animal registration or other animal control services, and to impose reasonable regulations setting forth the type and number of animals that may be kept on any Parcel or Unit, and providing a method for disposing of animals which are unclaimed after a reasonable period of time. No dog or cat over six months of age shall be kept on the Property without a current rabies inoculation.

Section 3.10 Parking. The Association shall have the authority to adopt reasonable rules and regulations regarding the parking of motor vehicles and no motor vehicle may be parked in violation thereof.

Section 3.11 Utilities. All utilities shall be underground, except as approved in writing by the Association.

Section 3.12 Truck, Trailer, Recreational Vehicle and Boat Parking. No trailer, trailer house, recreational vehicle, mobile home, boat, semi-truck tractor or trailer, or other truck with a licensed capacity in excess of one ton shall be stored except in an enclosed structure or other manner which does not permit it to be seen at ground level from adjacent Parcels, Units or streets. Temporary standing or parking for short periods preparatory to taking a vehicle to some other location for use or storage is permitted. Portable or temporary buildings or trailers are permitted as field offices by contractors during construction, with prior approval by the Association.

ARTICLE IV

MAINTENANCE, TAXES AND INSURANCE

Section 4.01 Maintenance. The Association shall have the duty to maintain the all Common Area and Common Area Improvements (including but not limited to the Private Drives and the Landscape Area) in good order and first class condition and state of repair including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs.

Each Owner shall have the duty to maintain the Building(s) and Improvements on its Parcel or Unit in good order and first class condition and state of repair including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs. Each Owner covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its Buildings clean and clutter-free; will maintain its Buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash, rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed. The maintenance and repair of the Buildings and Improvements on each Parcel or Unit should be of such a character that their appearance will be that of a unified, first class mixed use residential and professional business project and, accordingly, the Owners agree to cooperate with each other in good faith with respect to said maintenance and repair and, to the extent reasonably possible, coordinate such repair and maintenance.

Notwithstanding the foregoing, the Association is authorized to coordinate the removal of trash and the repair and maintenance of the Common Area and the Common Area Improvements and to assess the prorated expense therefore against each Parcel or Unit based on an equitable formula adopted by the Board. An Owner shall pay its proportional share of all such costs and fees within

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thirty (30) days following its receipt of a detailed invoice therefor. If such Owner shall fail to reimburse the Association within 30 days after receipt of demand, the Association shall be entitled to claim a lien in accordance with Section 7.3 on the Parcel or Unit of the defaulting Owner for the unpaid amount, which amount shall bear interest at the Default Rate from the date of expiration of said thirty (30) day period until paid.

Section 4.02 Damage and Destruction. In the event of the destruction and damage to any extent to any of the Buildings and Improvements on a Parcel or Unit, the Owner thereof, at its sole cost and expense, of said Buildings and Improvements shall (1) diligently commence (subject to the provisions of Article VI) and pursue completion of the repair or restoration of the Building and Improvements on the Owner's Parcel or Unit to be substantially similar in appearance to the prior Building and Improvements or to other Buildings or Improvements in the Property, and/or (2) within thirty (30) days or such reasonable time thereafter as may be necessary after the destruction or damage clear away the ruins and leave the Parcel or Unit in a clean, orderly, sightly and safe condition. In the event of the destruction and damage to any extent to the Common Area Improvements, the Association shall (1) diligently commence and pursue completion of repairs or restoration so that the Common Area Improvement is repaired or restored to be substantially similar in appearance to that prior to the damage or destruction, and/or (2) with respect to the Common Area Improvements only, within thirty (30) days or such reasonable time thereafter as may be necessary after the destruction or damage clear away the ruins of the Common Area Improvements and leave the area in a clean, orderly, sightly and safe condition. The Association's reasonable costs and expenses incurred in connection therewith shall be a Common Area Cost.

Section 4.03 Default in Maintenance Responsibilities. In the event that an Owner fails in its maintenance obligations as set forth in Section 4.01 or 4.02, which failure continues for a period of thirty (30) days (ten [10] Business Days in the event of a failure to pay money) after receipt of written notice thereof from the Association specifying the particulars of such failure, such failure shall constitute a default under this Declaration and the Association may thereafter perform such maintenance obligations without any liability for damages for wrongful entry, trespass or otherwise to any person, in addition to the Association's other remedies. In the event that the Association fails to cure any Owner default for which it has the power to cure as set forth above, and such failure continues for a period of thirty (30) days after receipt of written notice thereof from an Owner

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specifying the particulars of such failure, then the Owner providing the notice may thereafter perform such maintenance obligations without any liability for damages for wrongful entry, trespass or otherwise to any person, in addition to the Owner's other remedies. The defaulting Owner shall pay to the curing Owner the reasonable cost of the cure within thirty (30) days after receipt of written demand for payment with an invoice detailing the cost to cure. The unpaid amount shall accrue interest at the Default Rate from the date of the demand until paid.

Section 4.04 Taxes. The Owner of each Parcel or Unit shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against such Owner's Parcel or Unit. In the event an Owner fails to pay when due all taxes and assessments described herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a default under this Declaration and the Association may, in addition to the Association's other remedies, thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. In such event, the Association shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have ten (10) Business Days within which to pay the bill. If the defaulting Owner does not so pay, the Association shall be entitled to claim a lien in accordance with Section 7.03 on the Parcel or Unit of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of the expiration of said ten (10) Business Day period until paid.

Section 4.05 Insurance; Indemnification; Waiver of Subrogation. Each Owner will at all times maintain or cause to be maintained with respect to its Parcel or Unit and all Buildings and Improvements thereon: (i) commercial property insurance against loss or damage by fire, lighting and other risks customarily covered by a special form policy of property insurance for the full replacement cost of the Building(s) and Improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Owner's Parcel or Unit with combined single limit coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence. Each such Owner will provide copies of such insurance to the other Owners and shall name the Association and other Owners (including Declarant, so long as Declarant is an Owner) as additional insureds. In the event an Owner fails to maintain the insurance described above, which failure continues for a period

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of ten (10) days after written notice thereof, such failure shall constitute a default under this Declaration and the Association may, in addition to such Association's other remedies, thereafter obtain and pay for such insurance. The Association shall then bill the defaulting Owner for the expenses incurred. The defaulting Association shall have ten (10) Business Days within which to pay the bill. If the defaulting Owner does not so pay, the Association shall be entitled to claim a lien in accordance with Section 7.03 on the Parcel or Unit of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) Business Day period until paid.

The Association shall maintain commercial general liability insurance (including contractual liability coverage) or the equivalent against claims for bodily injury, death or property damage occurring on, in or about the Common Areas with combined single limit coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.

EACH OWNER (THE "RELEASOR") HEREBY RELEASES THE OTHER OWNERS AND THE ASSOCIATION AND THEIR RESPECTIVE SHAREHOLDERS, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS (COLLECTIVELY THE "RELEASEE") FROM ANY AND ALL LIABILITY OR RESPONSIBILITY TO THE RELEASOR OR ANYONE CLAIMING THROUGH OR UNDER THE RELEASOR BY WAY OF SUBROGATION OR OTHERWISE FOR ANY INCURRED LOSS OR DAMAGE TO ANY PERSON OR PROPERTY CAUSED BY FIRE OR OTHER PERIL OR OTHER SUCH LOSS, DAMAGES, OR OTHER INSURED EVENT OR NEGLIGENCE OF THE RELEASEE, OR ANYONE FOR WHOM SUCH RELEASEE MAY BE RESPONSIBLE; PROVIDED, HOWEVER, THAT THIS RELEASE SHALL BE APPLICABLE AND IN FORCE AND EFFECT ONLY TO THE EXTENT OF INSURANCE IN EFFECT AND WITH RESPECT TO LOSS OR DAMAGE OCCURRING DURING SUCH TIME AS THE RELEASOR'S POLICY OR POLICIES OF INSURANCE SHALL CONTAIN A WAIVER OF SUBROGATION ENDORSEMENT, TO THE EFFECT THAT ANY SUCH RELEASE SHALL NOT ADVERSELY AFFECT OR IMPAIR SAID POLICY OR POLICIES OR PREJUDICE THE RIGHT OF THE RELEASOR TO RECOVER THEREUNDER.

ARTICLE V

PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. The Association is to be created to act on behalf of the Owners and the Declarant, as provided in this Declaration. The Declarant and the Owners shall be the only Members of the Association, provided, however, that no Owner who has leased its Parcel or Unit pursuant to a ground lease with an initial term and optional extensions of at least forty (40) years shall be a Member. The tenant under the ground lease shall be the Member in place of the Owner. Anyone having a security interest in a Parcel or Unit is not a Member, unless it forecloses its lien and becomes an Owner. No tenant under a lease with a term of less than forty (40) years shall be an Owner.

Section 5.02 Classes of Voting Members. The Association has two (2) classes of Members:

(a) Class A Members are all Members other than the Declarant. Class A Members are entitled to one (1) vote for each dollar of Assessed Valuation of the Parcels or Units owned by that Member. If two (2) or more persons or entities hold undivided interests in any Parcel or Unit, including without limitation the owners of condominium units, all such persons or entities shall be Class A Members, the vote for such Parcel or Unit shall be exercised as they, among themselves, determine, but in no event shall more than the votes determined above be cast with respect to each such Parcel or Unit and they shall file with the Association a written notice setting out their agreement.

(b) The Class B Member is the Declarant. The Class B Member is entitled to four (4) votes for each dollar of Assessed Valuation of the Parcels or Units owned by Declarant until the Conversion Date, after which time there shall be no Class B Member.

(c) Voting rights may be assigned, in whole or in part, by an Owner to a ground tenant with a term of not less than forty (40) years, including renewal options.

Section 5.03 Annual Assessments; Special Assessments, Budget.

(a) Each Owner, other than the Declarant and the Association, by acceptance of a deed, whether or not it shall be so expressed in any such deed, agrees to pay to the Association the following (the "Assessments"):

(i) annual assessments per Section 5.03(e) (the "Annual Assessment");

(ii) special assessments per Section 5.03(k) (the "**Special Assessments**").

Assessments shall be fixed, established, and collected from time to time as provided in this Declaration.

(b) The Assessments shall be used to promote the comfort, health, safety, and welfare of the Owners and to carry out the purposes and obligations of the Association as stated in its Certificate of Formation and in this Declaration, including payment of the Common Area Costs. Among these purposes are the installation, maintenance and operation of any Common Areas, the maintenance and operation of Monument Signs (per Section 3.05), removal of debris, junk, dirt and other trash from the Common Areas of the Property, and mowing, landscaping and cleaning the Common Area (if not done by the Owners), maintenance and landscaping of esplanade/medians of public streets adjacent to the Property and retaining of professionals to operate the Association, to advise the Association and the ACC and to otherwise assist in the management of the affairs of the Association and the furtherance of its business.

(c) All real property taxes assessed against any Common Areas located outside a Parcel or Unit, the costs of any insurance policies covering Common Areas, general liability and other forms of insurance covering the Declarant, Administrator and/or the Board of Directors, any costs designated as Common Area Costs in this Declaration, and any costs or expenses incurred by the Declarant or the Association in repairing, maintaining or replacing utility lines, the Common Area, the Common Areas Improvements, the Common Utility Facilities, the Private Drives, the Monument Signs (per Section 3.05), and all other common use facilities for the general benefit and development of the Parcels or Units, or in carrying out the obligations and rights of the Administrator hereunder and/or enforcing this Declaration, plus a reasonable management fee, not to exceed five percent 5% of such expenses, shall be referred to as "**Common Area Costs.**" "Common Area Costs" shall not include (i) the costs of initially constructing the Private Drives and the Monument Signs **or the landscaping in the Landscape Area** and for the payment of any other cost or expense of the construction of any other initial improvement to the Property which the Declarant has agreed to or is obligated to pay, (ii) real estate taxes and assessments for any portions of any Parcel or Unit, which costs shall be paid solely by the Owner of such Parcel or Unit, (iii) the costs of installing, maintaining, repairing or replacing any utility lines or related facilities on any Parcel of Unit, which costs shall be paid solely by the Owners of the Parcels or Units served by such utility

lines and facilities, (iv) the costs of constructing, repairing, maintaining or replacing any Improvements on any Parcel or Unit, which costs, except as described in (iii) above, shall be paid solely by the Owner of such Parcel or Unit, or (v) any costs specifically allocated to one or more Owners pursuant to this Declaration.

(d) Each Owner (including Declarant) of a Parcel or Unit, by acceptance of a deed therefor, is deemed to covenant and agree to pay an Annual Assessment and any Special Assessments to the Association.

(e) The Assessment Rate for the year 2007 shall be \$00.15 for each One Hundred And No/100 Dollars (\$100.00) of the current Assessed Valuation of each Parcel or Unit multiplied by the Use Multiplier, which is hereby assessed as a charge against each Parcel or Unit for the year 2007. For each subsequent year, the Board shall determine the Assessment Rate and thereafter assess against each Parcel or Unit a charge equal to the Assessment Rate multiplied by the then current Assessed Valuation of each Parcel or Unit multiplied by the Use Multiplier. Such charge for each of 2007 and all subsequent years shall be hereinafter referred to as the "**Annual Assessment**" as to one year and "**Annual Assessments**" as to all years. Annual Assessments shall be due and payable annually in advance. In making each Annual Assessment, the Board shall separately assess each Parcel or Unit. If the Board fails, refuses or is unable for any reason to establish an Assessment Rate for any year, then the Assessment Rate for such year shall be equal to the Assessment Rate for the previous year. The Assessment Rate may be increased only when the Board determines that an increase in the Assessment Rate for the following year is necessary to establish adequate capital and operating reserves, and to meet the anticipated expenses, costs of operation and planned expansion of the Association. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not (i) increase the Assessment Rate except pursuant to this Section, (ii) take formal action on or impose an increase in the Assessment Rate more than once in any year, or (iii) increase the Assessment Rate over the Maximum Assessment Rate.

The collection of the Annual Assessments is for the purpose of creating a fund to be used as provided herein. The Annual Assessments shall be payable in the amounts specified in, and within thirty (30) days after delivery of, written notice thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claims that the Declarant, the Board or the Administrator is not properly exercising its duties and powers under this Declaration or

abandonment of any portion of the Parcels or Units or from any action taken to comply with any law or any determination of the Association or for any other reason.

(f) Not later than November 1 of each calendar year, the Board shall establish a budget of estimated operating expenses of the Association for the next calendar year (the "**Budget**"), and shall provide each Owner with a copy of the Budget.

(g) In addition, not later than November 1 of each calendar year, the Board shall send a written statement of the Annual Assessment (the "**Assessment Notice**") to each Owner (or to the mortgage company holding a contractual lien upon a Parcel or Unit or the applicable mortgage servicing company if the Owner has notified the Association in writing that the Annual Assessment is to be paid out of escrow funds established and collected by said mortgage company for the purpose of paying the Annual Assessment to the then current address of the mortgage company or mortgage servicing company on file with the Association) stating as to each Parcel or Unit owned by such Owner (i) the Assessed Valuation of each such Parcel or Unit; (ii) the Assessment Rate for the year in question; (iii) the amount of the Annual Assessment assessed against each such Parcel or Unit, stated in terms of the total sum due and owing as the Annual Assessment; and (iv) that unless the Owner shall pay the Annual Assessment by the later of (v) March 1 of the year in question if the Statement was mailed prior to January 1 of the year in question or (iv) sixty (60) days following the mailing of the statement if the statement was mailed subsequent to January 1 of the year in question, the same shall be deemed delinquent. The Board shall use its best reasonable efforts to provide to each Owner the written statement of Annual Assessments provided for herein (a) for the year in which this Declaration was first recorded in the Public Record, within ninety (90) days following such recordation, and (b) for each subsequent year, prior to January 1 of each year for which the Annual Assessment is being made; provided, however, that failure of the Board to provide such written statement within the time stated shall not in any manner affect the validity of such Annual Assessment, or the right to enforce the Assessment Lien (as defined herein). The Annual Assessment assessed against a Parcel or Unit for the year 2007 shall be prorated based on the number of days remaining in 2007 after this Declaration was recorded. At the same time, the Board shall provide all Owners with the amount of the Annual Assessment to be paid by all Owners and an explanation as to how these amounts were determined (the "**Assessment Information**"). The amount of the Annual Assessment payable by each Owner shall be such Owner's Proportionate Share of the

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Budget.

(h) The Budget shall not include any cost of the acquisition or construction of capital improvements. The financing of capital improvements shall be handled by Special Assessments as provided herein. The Budget shall include the estimated expense of operating existing capital improvements.

(i) In the event the Board fails to provide the Assessment Notice by November 1 of any calendar year, each Owner shall pay an Annual Assessment equal to the Annual Assessment payable for the previous year, which shall be due and payable on December 1.

(j) The Board shall have the right to adopt and from time to time revise and amend the procedures for the purpose of making Annual Assessments and the billing and collection of Annual Assessments, provided such procedures are not inconsistent with the provisions hereof.

(k) Declarant, for each Parcel or Unit it owns within the Property, hereby covenants, and each Owner of any Parcel or Unit 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, in addition to the Annual Assessments, occasional assessments (each a **"Special Assessment"**, collectively the **"Special Assessments"**) for the purpose of paying the costs and expenses of certain capital improvements benefiting all of the Property only and cannot be used for the purpose of paying normal maintenance and repair costs and expenses. The consent of the Required Majority shall be necessary to assess Special Assessments. The amount of Special Assessments payable by each Owner shall be such Owner's Proportionate Share of the total amount of Special Assessments so approved by the Required Majority. Prior to the due date of each Special Assessment, written notice of the amount thereof and due date shall be sent to each Owner. Any Special Assessments not paid within sixty (60) days after the due date specified in such notice shall be deemed delinquent.

(l) Annual Assessments commence as to each Parcel upon recordation of this Declaration in the Public Records.

(m) The Annual and Special Assessments are the personal, corporate, company or partnership debt of the Owner (including the Declarant) of the Parcel or Unit covered by such Assessments. No Owner is exempt from liability for such Assessments, whether or not they participate in the Association or derive any benefits from the Assessments. In the event of default in the payment of any such Assessment, each Owner must pay interest at the Default Rate from the due

date until paid, together with all costs, including reasonable attorneys' fees, incurred in collection. Additionally, if Assessments are not paid on or before the date they become delinquent, then an additional amount of five percent (5%) of such Assessments shall be immediately due and payable as a late fee, provided such late fee may be reduced or waived by the Board for good cause. The late fee shall also bear interest at the Default Rate from the date it becomes due until paid. The late fee is assessed to compensate for the administrative costs and expenses of collection of the Assessments.

(n) The judgment of the Board in the expenditure of Annual Assessments and of Special Assessments shall be final and conclusive so long as said judgment is reasonable and exercised in good faith. Without limiting the generality of subsection (b) above, Annual Assessments received by the Association pursuant to this Declaration may be applied to any of the following:

(i) The payment of ad valorem taxes when due on Common Areas outside any Parcel or Unit;

(ii) The payment of Common Area Costs;

(iii) The repayment of all advances with eight percent (8%) simple interest made by Declarant to or on behalf of the Association to the extent such advances were made to pay Common Area Costs, or otherwise to carry out the rights, duties and obligations of the Association hereunder (provided that such funds shall not be used to repay any expenses incurred by Declarant for the initial construction of the Private Drives, the Monument Signs or the landscaping in the Landscape Area and for the payment of any other cost or expense of the construction of any other initial improvement to the Property which the Declarant has agreed to or is obligated to pay);

(iv) The operating costs and expenses of the Association and the Administrator, if any, in carrying out its rights, duties and obligations hereunder, including but not limited to any powers or duties specifically granted to the Association herein;

(v) The payment of all organizational costs and reasonable attorneys' fees incurred by the Association in preparing, adopting and imposing this Declaration (including the repayment of all advances made by Declarant without interest to or on behalf of the Administrator for the payment of such expenses);

(vi) The establishment and maintenance of reasonable capital and operating reserves which the Board in the exercise of reasonable business judgment determines to be

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necessary or desirable; and

(vii) For the benefit of the Property, applying such funds to the costs of enforcement of this Declaration.

(o) All Annual Assessments and Special Assessments, including any late fees, interest and costs of collection, are a continuing lien (the "**Assessment Lien**") and charge on the Parcel covered by such sums and shall bind the Parcel or Unit and run with the land. The Assessment Lien is superior to all other liens and charges, including homestead rights, encumbering the Parcel or Unit to which the Assessment Lien applies, except tax liens. The Association may, but is not obligated to, subordinate the Assessment Lien to any other lien. To evidence the Assessment Lien, the Association may prepare and record in the Public Records a written notice of the Assessment Lien. The filing of this notice, however, shall not be necessary to create or perfect the Assessment Lien. The recordation of this Declaration in the Public Records is notice to all third parties of the existence and character of the Assessment Lien. The notice of the Assessment Lien shall include the following information:

- (i) The name and address of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a non-defaulting and/or curing Owner;
- (iii) An identification by name and address (if known) of the Owner or reputed Owner of the Parcel or Unit or interest therein against which the lien is claimed;
- (iv) A description of the Parcel or Unit against which the lien is claimed;
- (v) A description of the reason for the lien;
- (vi) A statement itemizing the total amount due, including interest; and
- (vii) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date land recordation number hereof.

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been provided to the Owner against whom the lien is claimed, by personal delivery or by mailing pursuant to Section 8.03 below. The Assessment Lien may be enforced (a) non-judicially, by foreclosure in like manner as a deed of trust lien on real property or (b) in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of Texas law. The President of the Association is appointed the

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trustee for the purposes of a non-judicial foreclosure. The Association may appoint a successor trustee at any time without first obtaining the resignation of the President or other trustee and without any formality other than a written appointment recorded in the Public Records. In any foreclosure proceeding, whether judicial or non-judicial, the Owner is required to pay the costs and reasonable attorneys' fees incurred by the Association. The Association may credit bid the amount due from the defaulting Owner at the foreclosure sale and acquire the Parcel or Unit being foreclosed. Notwithstanding the forgoing, the Association shall not conduct a non-judicial foreclosure or trustee's sale of a Parcel or Unit without giving all parties with recorded liens on the Parcel or Unit at least sixty (60) days prior written notice of the sale sent certified mail, return receipt requested, to the most current address of the party on file with the Association or set out in the recorded lien instruments. If there is no address on file and there is no address in the recorded lien instrument, the Association is not required to give this notice.

(p) The Association may utilize professional advisors, including attorneys, engineers, land planners, architects and other development consultants who may also represent Declarant. The Association recognizes that there is mutual benefit to the Declarant and the Association for use of the same professionals. In consideration of those professionals agreeing to render services to the Association, the Association waives any claims or causes of action for or relating to any conflict of interest with the respect to the representation of both the Declarant and the Association by the same professional advisor.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 6.01 The ACC. The Board of Directors may designate and appoint an Architectural Control Committee (the "ACC") composed of at least one (1) person, who shall serve at the pleasure of the Board of Directors. Members of the ACC may also serve as members of the Board of Directors of the Association. If the ACC has more than one (1) member, one (1) member of the ACC must also be a member of the Board of Directors. For the benefit of the Owners and to maintain the aesthetics of the Property, the ACC shall implement and oversee the architectural control set forth in these restrictions and the architectural standards and guidelines that may be promulgated by the Board of Directors. The ACC shall report its findings and recommendations to the Board of

Directors with respect to compliance with the architectural standards for new construction, or modifications of or additions to existing Improvements within the Property. Members of the ACC may, at any time, be relieved of their position and substitute members therefor appointed, respectively, by majority vote of the Board of Directors. The Board of Directors shall perform the duties of the ACC during any period of time in which an ACC has not been designated by the Board of Directors.

Section 6.02 Function and Powers of ACC. No Improvement, except Improvements which have been approved by Declarant pursuant to the procedure, if any, set out in the deed to a Parcel or Unit from Declarant to the Owner of the Parcel or Unit, shall be erected, constructed, placed or altered on any Parcel or Unit (excluding any Parcel owned by Declarant) until plans and specifications in such form and detail as the ACC may reasonably deem necessary shall have been submitted to and approved in writing by the ACC. If the ACC has more than one (1) member, the decision of a majority of the members of the ACC, acting singly or at a meeting, shall be final, conclusive and binding upon the Owner and the ACC. If the Board of Directors has not appointed an ACC and is therefore exercising the functions and powers of the ACC, the consent of a majority of the Directors shall be final, conclusive and binding upon the Owner and the ACC (when and if constituted). The ACC may designate a professional representative to advise it or to act on its behalf and may charge any applicant a reasonable fee to defray the cost of such representative. The ACC may enter any portion of the Property, including any Improvements, to inspect them for compliance with this Declaration. The inspection of Improvements shall be after reasonable advance notice of at least 24 hours and shall occur during normal business hours.

Section 6.03 Content of Plans and Specifications. Unless approved by Declarant pursuant to the procedure, if any, set out in the deed to a Parcel from Declarant to the Owner of the Parcel or Unit, prior to the commencement of construction of any Improvements, three (3) sets of plans and specifications prepared by a licensed architect as evidenced by such architect's stamp or seal shall be submitted to the ACC and, unless waived in advance and in writing by the ACC, shall include the following:

- (a) A site plan showing the location of all Improvements.
- (b) Exterior elevations.
- (c) Exterior materials, colors, textures and shapes, including color and reflective intensity

of exterior glass surfaces.

(d) Exterior illumination, including location, manufacturer's fixture number and supporting photometric test data.

(e) Fire protection system.

(f) Building signs, including size, shape, color, materials and location.

(g) Landscaping plans.

(h) Proposed use of such Parcel or Unit.

(i) The location, screening and configuration of antennas and satellite dishes.

If the ACC neither approves nor rejects such plans and specifications in writing within forty-five (45) days after submission of the last of any required documentation to the ACC, the proposed plans and specifications shall be deemed to be approved, subject to compliance with this Declaration or any amendments thereto. Approval of plans and specifications shall not cover or include approval for any other purpose and specifically, but without limitation, shall not be construed as any representation as to, or responsibility for, the quality, safety or design of the improvement or the ultimate construction thereof. Should an Owner or occupant proceed to place any Improvement upon or proceed with any construction, alteration or exterior change on any Improvements located on a Parcel or Unit without first applying for and receiving written approval of the ACC, such Owner or occupant shall be in violation of this Declaration and will be thereafter required to submit plans and specifications, together with such other documents as the ACC may deem appropriate, even after construction has commenced. The ACC shall have thirty (30) days from receipt of the last of any required documentation submitted after commencement of construction, alteration or exterior changes without prior written approval, to respond by approval, disapproval or modification requirements. If the ACC does not provide the affected Owner written notice of disapproval or modification within the thirty (30) day period, the documentation submitted shall be deemed approved. The Association shall have the right to obtain restraining orders and/or temporary or permanent injunctions to terminate or halt construction, alterations or exterior changes which have not been reviewed and approved by the ACC in accordance herewith. All enforcement costs and reasonable attorneys' fees incurred by the Association in connection with the Associations' exercise of the right to obtain restraining orders and/or temporary or permanent injunctions under this Section shall be recoverable against the Owner

in violation of this Declaration. Where an Owner has neglected to submit plans and specification for approval, failure of the ACC to exercise the powers granted by this Article VI shall never be deemed a waiver of its right to do so either before or after the Building or other Improvements or any exterior addition or alteration thereto has been completed.

Section 6.04 Approval Criteria for the ACC. Approval of plans and specifications shall be based, among other things, on conformity to this Declaration; the specific and general intent hereof, as determined by the ACC; general adequacy of structural design; relation of finished grades and elevations to neighboring sites; compatibility with a first class mixed use project; compliance with applicable governmental requirements; and compliance with the most recent Design Criteria.

Section 6.05 Limitation of Liability. Neither the ACC nor the Association (or its Members) shall be liable to anyone submitting plans and specifications for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications. Each Owner waives any liability of or claims against the ACC and the Association (and its Members) relating thereto.

Section 6.06 Variances. The ACC may issue variances from the strict terms of this Declaration, provided the ACC finds that the variance is due to hardship, the general benefits intended from this Declaration are achieved, the variance is not material in character and the variance is in the best interests of the Property and the Owners. Variances may be granted retroactively or prospectively. A notice of variance signed by a representative of the ACC recorded in the Real Property Records of Harris County, Texas, will be evidence of the proper issuance of a variance and may be relied upon by the Owner and third parties.

ARTICLE VII

DEFAULT: REMEDIES

Section 7.01 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing party (the **"Defaulting Owner"**):

- (a) The failure to perform any obligation of Article IV hereof within the time requirements cited therein;
- (b) The failure to make any payment required to be made hereunder within the cure periods provided herein and if no cure period is provided, within ten (10) Business Days of the

due date provided herein; or

(c) The failure to observe or perform any of the other covenants, conditions or obligations of this Declaration or to abide by the restrictions and requirements herein provided, other than as described in (a) above, within thirty (30) Business Days after the issuance of a notice by the Association specifying the nature of the default claimed.

Section 7.02 Right to Cure. With respect to any default under Section 7.01 above, the Association shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner; provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Association, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Association shall have the right to enter upon the Parcel or Unit of the defaulting Owner (but not into any Building, except in an emergency) without notice to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. Each Owner shall be responsible for the non-performance or default of its occupants and lessees. In the event the Association shall cure a default, the defaulting Owner shall reimburse the Association for all costs and expenses incurred in connection with such curative action, plus interest at the Default Rate, within ten (10) Business Days of receipt of demand, together with reasonable documentation supporting the expenditures made.

Section 7.03 Lien. In addition to the Assessment Lien, costs and expenses accruing and/or assessed pursuant to Section 7.02 above and the amounts described in Section 7.01 shall constitute a lien against the defaulting Owner's Parcel or Unit. The lien shall attach and take effect only upon recordation of a claim of lien in the Public Records by the Association. The claim of lien shall include the following:

- (i) The name and address of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a non-defaulting and/or curing Owner;
- (iii) An identification by name and address (if known) of the Owner or reputed

Owner of the Parcel or interest therein against which the lien is claimed;

- (iv) A description of the Parcel or Unit against which the lien is claimed;
- (v) A description of the reason for the lien;
- (vi) A statement itemizing the total amount due, including interest; and
- (vii) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date land recordation number hereof.

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been provided to the Owner against whom the lien is claimed, by personal delivery or by mailing pursuant to Section 8.03 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced (a) non-judicially, by foreclosure in like manner as a deed of trust lien on real property or (b) in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of Texas law. The President of the Association at the time the notice is recorded is appointed the trustee for the purposes of a non-judicial foreclosure. The Association may appoint a successor trustee at any time without first obtaining the resignation of the President or other trustee and without any formality other than a written resignation and appointment recorded in the Public Records. In any foreclosure proceeding, whether judicial or non-judicial, the Owner is required to pay the costs and reasonable attorneys' fees incurred by the Association. The Association may bid at the foreclosure sale and acquire the Parcel or Unit being foreclosed. Notwithstanding the foregoing, the Association shall not conduct a non-judicial foreclosure or trustee's sale of a Parcel or Unit without giving all parties with recorded liens on the Parcel or Unit at least sixty (60) days prior written notice of the sale sent certified mail, return receipt requested, to the most current address of the parties on file with the Association or set out in the recorded lien instruments. If there is no address on file and there is no address in the recorded lien instrument, the Association is not required to give this notice.

Section 7.04 Other Remedies. The Association shall have the right to prosecute any proceedings at law or in equity against any defaulting Owner hereto, or any other person violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages (including costs and reasonable attorneys' fees) for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation

by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 7.05 No Waiver. No delay or omission in the exercise of any right accruing upon any default of any Owner or occupant shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. No waiver of any default under this Declaration shall be effective or binding unless made in writing by the Association and no such waiver shall be implied from any omission to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration.

Section 7.06 No Termination for Breach. No breach, whether or not material, of the provisions of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect, in any manner, any other rights or remedies which any Owner may have hereunder by reason of any breach of the provisions of this Declaration.

Section 7.07 Limitation of Liability. Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel or Unit, or any portion thereof, shall be bound by this Declaration only as to the Parcel or Unit or portion of the Parcel or Unit acquired or possessed by such person. In addition, such person shall be bound by this Declaration only during the period such person is the lessee or fee Owner or occupant of such Parcel or Unit or portion of the Parcel or Unit; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section 7.07, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcels or

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Units running with the land.

Section 7.08 Breach. In the event of a breach hereof, the non-prevailing party shall pay the costs and reasonable attorney's fees of the prevailing party.

Section 7.09 Enforcement by Owner. Any Owner may enforce this Declaration and exercise the remedies set out herein against anyone in default of this Declaration. The Association shall have the right to intervene in any such proceeding.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Estoppel Certificates. Each Owner shall, upon not less than thirty (30) days written notice from the other Owner, execute and deliver to such requesting Owner a certificate in recordable form stating that (i) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge the requesting Owner is in default in any respect under this Declaration and if in default, specifying such default. The Association or Declarant shall, upon not less than thirty (30) days written notice from an Owner, execute and deliver to such requesting Owner a certificate in recordable form stating that (i) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); (ii) whether or not to the best of its knowledge the requesting Owner is in default in any respect under this Declaration and if in default, specifying such default; and (iii) whether any assessments or other sums due to the Association under the terms of this Declaration are unpaid and if so, the amount thereof.

Section 8.02 Term, Amendment and Perpetuity. The agreements, conditions, covenants, and restrictions created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect, to the benefit of and being binding upon all Owners, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease with an initial term plus optional extensions of at least forty (40) years and the customers, employees and invitees of such parties, until the expiration of sixty (60) years from the date this Declaration is recorded in the Public Records, unless amended by the consent of the Owners entitled to vote 67% of the votes, or terminated by the consent of the Owners entitled to vote 90% of the votes, in each case as votes are allocated under Section 5.02. The results of the vote shall be evidenced in a writing recorded in the Public Records declaring this Declaration amended or

terminated as decided by such votes. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

Notwithstanding the foregoing, with the exception of the self-help easements set forth in Section 2.05, the easements contained herein binding and benefiting the Parcels or Units shall be perpetual and shall run with the land.

Upon termination of the agreements, conditions, covenants and restrictions of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as related to the easements cited and mentioned herein, with the exception of the self-help easements set forth in Section 2.04, shall terminate and have no further force or effect.

Section 8.03 Notices. Any notice required or permitted to be given under this Declaration shall be in writing and shall be deemed to have been given upon deposit in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the Owner being notified at the address given below (or such other address which any Owner may designate for itself from time to time hereafter by written notice to the Association):

Declarant: Midway Lake Houston Partners, L.P.
34 S. Wynden Drive, 3rd Floor
Houston, Texas 77056
Attention: E. R. Sanford II

Other Owner: The address of the Parcel or Unit owned by such Owner provided to the Association by the Owner.

Section 8.04 Ground Lessee Assignment. The rights and obligations of any Owner hereunder shall be assigned to any tenant under a ground lease with an initial term and optional extensions of at least forty (40) years and may be assigned in whole or in part to any other lessee or tenant which rights and obligations shall be expressly assumed by such lessee or tenant for the term of the lease. Written notice of any such assignment shall be given the Association.

Section 8.05 Harmony. The Owners agree to cooperate in creating a reasonably harmonious exterior appearance for the Buildings and Improvements to be constructed within the professional office park. After initial construction of Buildings and other Improvements, no Owner shall make

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alterations that will substantially change the exterior of its Buildings in a manner which will detract from the harmonious exterior appearance of the Project.

Section 8.06 Severability. In the event any provision or portion of this Declarant is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 8.07 No Public Dedication. Nothing contained herein shall be deemed or implied to be a gift, grant or dedication of the Property or any portions thereof, to the general public, or for any public use or purpose whatsoever. Except as may be specifically provided herein, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third party, nor shall any third party be deemed or considered to be a beneficiary of any of the provisions herein contained.

Section 8.08 Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Owners. It is understood that the relationship between the Owners is an arm's length one that shall at all times be and remain that of separate owners of real property. No Owner shall have the right to act for or on behalf of another Owner, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Owner to be charged or bound, except as otherwise specifically provided herein.

Section 8.09 Additional Restrictions and Rights. Declarant may, in the deed to any Parcel or Unit, establish additional restrictions on or grant additional rights to the grantee therein. Declarant may assign the right to enforce those restrictions to the Association or provide the Association the direct right to enforce those restrictions. Additional rights may include, but are not limited to the following rights relating to the conveyed Parcel or Unit: the right to control various aspects of the Private Drives and Common Area, limitation of Assessments, or rights to additional signage or to control Monument Signs. In the event of conflict between the provisions of a deed from Declarant and this Declaration, the provision of the deed control.

Section 8.10 Amendments by Declarant. Notwithstanding Section 8.02, the Declarant shall have and reserves the right at any time prior to the Conversion Date, without the joinder of or consent from any other party, to amend this Declaration by an instrument in writing duly signed,

acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency. All other proposed amendments by Declarant must be approved pursuant to Section 8.02. No amendment shall not impair or affect the vested property or other rights of any Owner or an Owner's mortgagee.

[Signatures on the following page]

SP01-EG-S20 JM
025-03-1048

Executed the day and year first written above.

DECLARANT:

MIDWAY LAKE HOUSTON PARTNERS, L.P.,
a Texas limited partnership

2006

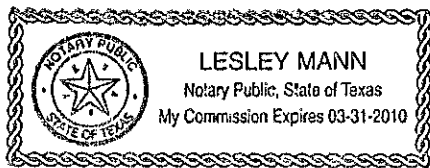
By: Midway Lake Houston, Inc.,
A Texas corporation,
Its General Partner

By: *[Signature]*
E. R. Sanford II
Executive Vice President

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared E.R. Sanford II, Executive Vice President of Midway Lake Houston, Inc., the General Partner of Midway Lake Houston Partners, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19 day of July, 2006.



[Signature]
NOTARY PUBLIC, IN AND FOR THE
STATE OF TEXAS

LESLEY J. MANN
AMERIPOINT TITLE
34 S. WYNDEN DR., STE 340
HOUSTON, TX 77056
0621025

1-101-80-520 11

Consent and Subordination by Lienholder

Lienholder, as the holder of liens on all or a portion of the Property, consents to the foregoing Declaration of Covenants, Conditions and Restrictions (the "**Declaration**"), including the terms and conditions set forth therein, other than liens that may arise pursuant to Section 7.3 of the Declaration, and Lienholder subordinates its liens to the rights and interests set forth in the foregoing Declaration so that a foreclosure of the liens held by Lienholder will not extinguish the rights and interests set forth in the foregoing Declaration.

Woodforest National Bank, a national banking association

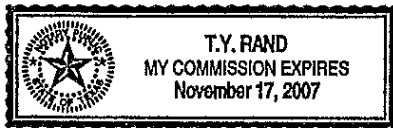
By: *Michael H. Richmond*
Michael H. Richmond
Vice Chairman

THE STATE OF TEXAS

§
§
§

COUNTY OF MONTGOMERY

This instrument was acknowledged before me this 19 day of July, 2006, by Michael H. Richmond, as Vice Chairman of Woodforest National Bank, a national banking association, on behalf of said banking association.



T.Y. Rand
Notary Public in and for the State of Texas

My Commission Expires:

Nov. 17, 2007

1045-03-02-02

List of Exhibits:

- Exhibit A - Legal Description of Property
- Exhibit B - Site Plan of Property
- Exhibit C - Sign Criteria for the Property
- Exhibit D - Use Multiplier

AFTER RECORDING RETURN TO:

RF 025-03-10-16

EXHIBIT A – PROPERTY SUBJECT TO THE DECLARATION

The following described three (3) tracts of land containing 6.7559 acres, 4.9459 acres, and 8.4955 acres.

HP 025-03-1047

**DESCRIPTION OF
6.7559 ACRES OR 294,286 SQ. FT. (TRACT I)**

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 KING'S 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 MIDWAY KING'S HARBOR PARTNERS, L.P. AS TRACT II IN THAT CERTAIN WARRANTY DEED FILED UNDER HARRIS COUNTY CLERKS FILE NO. X-963690, WITH SAID 6.7559 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BEING BASED ON THE RECORDED PLAT OF KING'S HARBOR CENTER SECTION TWO:

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 431.92 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 2500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 09 DEG. 53 MIN. 56 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 05 DEG. 09 MIN. 11 SEC. EAST, A DISTANCE OF 431.38 FEET TO A 5/8 INCH IRON ROD FOUND 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 5/8 INCH IRON ROD FOUND MARKING 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 FOUND 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 FOUND 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 FOUND MARKING A POINT OF TANGENCY;

THENCE SOUTH 89 DEG. 52 MIN. 05 SEC. EAST, A DISTANCE OF 27.87 FEET TO A 5/8 INCH IRON ROD FOUND 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;

**DESCRIPTION OF
6.7559 ACRES OR 294,286 SQ. FT. (TRACT D)
CONTD.**

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 38.52 FEET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 88 DEG. 17 MIN. 52 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 34 DEG. 02 MIN. 47 SEC. WEST, 34.83 FEET TO THE POINT OF BEGINNING AND CONTAINING 6.7559 ACRES OR 294,286 SQUARE FEET OF LAND, AS SHOWN ON THE SURVEY, JOB NO. 36309WC-NORTH TRACT UPDATE, FILED IN THE OFFICES OF WINDROSE LAND SERVICES, INC, HOUSTON, HARRIS COUNTY, TEXAS

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30523
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**DESCRIPTION OF
4.9459 ACRES OR 215,442 SQ. FT. (TRACT II)**

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 MIDWAY KINGS HARBOR PARTNERS, L.P. IN THAT CERTAIN WARRANTY DEED FILED UNDER HARRIS COUNTY CLERKS FILE NO. Y-286336, WITH SAID 4.9459 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BEING BASED ON THE RECORDED PLAT OF KINGS HARBOR CENTER SECTION TWO:

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 431.92 FEET, WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 2500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 09 DEG. 53 MIN. 56 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 05 DEG. 09 MIN. 11 SEC. EAST, A DISTANCE OF 431.38 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 LEFT HAVING A RADIUS OF 2500.00 FEET, SUBTENDING A CENTRAL ANGLE OF 06 DEG. 03 MIN. 41 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-074566, 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;

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 FOUND MARKING THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

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**DESCRIPTION OF
4.9459 ACRES OR 215,442 SQ. FT. (TRACT II)**

THENCE NORTH 89 DEG. 52 MIN. 05 SEC. WEST, A DISTANCE OF 27.87 FEET TO A 5/8 INCH IRON ROD FOUND 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 FOUND 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 FOUND 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 FOUND 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, AS SHOWN ON THE SURVEY, JOB NO. 36309WC-NORTH TRACT UPDATE, FILED IN THE OFFICES OF WINDROSE LAND SERVICES, INC. HOUSTON, HARRIS COUNTY, TEXAS

MP 025-03-1051

**DESCRIPTION OF
8.4955 ACRES OR 370,066 SQ. FT.**

A TRACT OR PARCEL OF LAND CONTAINING 8,4955 ACRES OR 370,066 SQUARE FEET OF LAND SITUATED IN THE AMASA TURNER SURVEY, ABSTRACT NO. 737, HARRIS COUNTY, TEXAS BEING A PORTION OF UNRESTRICTED RESERVE "C" AND ALL OF RESTRICTED LANDSCAPE RESERVE "E", BLOCK 1 OF KINGS HARBOR CENTER SECTION TWO, MAP OR PLAT THEREOF RECORDED IN FILM CODE NO. 395014 OF THE HARRIS COUNTY MAP RECORDS, BEING THE RESIDUE OF THAT CERTAIN TRACT OF LAND DESCRIBED TO MIDWAY KINGS HARBOR PARTNERS, L.P. IN THAT CERTAIN WARRANTY DEED FILED UNDER HARRIS COUNTY CLERKS FILE NO. X-963690, WITH SAID 8.4955 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BEING BASED ON THE RECORDED PLAT OF SAID KINGS HARBOR, SECTION TWO

COMMENCING AT A 5/8 INCH IRON ROD FOUND ON THE EASTERLY 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", SAME BEING THE MOST NORTHERLY CORNER OF A CALLED 3.3570 ACRE TRACT OF LAND DESCRIBED TO HWD, LTD IN THAT CERTAIN WARRANTY DEED FILED FOR RECORD UNDER H.C.C.F. NO. Z-065309;

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 SAID 3.3570 ACRE TRACT;

THENCE SOUTH 47 DEG. 29 MIN. 31 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" FOUND FOR THE MOST EASTERLY CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 47 DEG. 29 MIN. 51 SEC. WEST, CONTINUING ALONG SAID LINE, A DISTANCE OF 359.83 FEET TO A SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 52 DEG. 30 MIN. 18 SEC. WEST, ALONG AND WITH A NORTHERLY LINE OF SAID LAKE HOUSTON, A DISTANCE OF 554.86 FEET TO AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 85 DEG. 40 MIN. 52 SEC. WEST, ALONG AND WITH A NORTHERLY LINE OF SAID LAKE HOUSTON, A DISTANCE OF 239.90 FEET TO AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 18 DEG. 58 MIN. 58 SEC. WEST, ALONG AND WITH THE SAID WESTERLY LINE OF LAKE HOUSTON, SAME BEING THE EASTERLY LINE OF SAID RESTRICTED RESERVE "E", A DISTANCE OF 518.40 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE MOST SOUTHERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 73 DEG. 03 MIN. 44 SEC. WEST, A DISTANCE OF 10.93 FEET TO A 5/8 INCH IRON ROD FOUND IN THE EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY (VARYING WIDTH) AS DESCRIBED IN H.C.C.F. NO. N-250837, MARKING THE MOST SOUTHERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 11 DEG. 13 MIN. 38 SEC. EAST, ALONG AND WITH THE EASTERLY RIGHT OF WAY LINE OF SAID LAKE HOUSTON PARKWAY, A DISTANCE OF 301.50 FEET TO A 5/8 INCH IRON ROD FOUND MARKING AN ANGLE POINT;

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 5/8 INCH IRON ROD FOUND MARKING A POINT OF CURVATURE;

REF 025-03-1052

**DESCRIPTION OF
8.4955 ACRES OR 370,066 SQ. FT. (CONTD.)**

THENCE IN A NORTHERLY DIRECTION, CONTINUING ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF LAKE HOUSTON PARKWAY, AN ARC DISTANCE OF 149.70 FEET WITH A CURVE TO THE LEFT HAVING A RADIUS OF 2500.00 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, A DISTANCE OF 149.68 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF A CUTBACK AT THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF SAID LAKE HOUSTON PARKWAY, WITH THE SOUTHERLY RIGHT OF WAY LINE OF SAID MAGNOLIA COVE DRIVE;

THENCE IN A NORTHEASTERLY DIRECTION, ALONG SAID CUTBACK, AN ARC DISTANCE OF 38.53 FEET, WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, SUBTENDING A CENTRAL ANGLE OF 88 DEG. 17 MIN. 34 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 57 DEG. 39 MIN. 22 SEC. EAST, A DISTANCE OF 34.83 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE NORTHEAST CORNER OF SAID CUTBACK;

THENCE SOUTH 78 DEG. 11 MIN. 43 SEC. EAST, ALONG AND WITH THE SAID SOUTHERLY RIGHT OF WAY LINE OF MAGNOLIA COVE DRIVE, A DISTANCE OF 85.50 FEET TO A 5/8 INCH IRON ROD FOUND MARKING A POINT OF CURVATURE;

THENCE IN AN EASTERLY DIRECTION, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY LINE, AN ARC DISTANCE OF 34.71 FEET, WITH 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. 03 SEC. EAST, A DISTANCE OF 34.70 FEET TO A 5/8 INCH IRON ROD 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 5/8 INCH IRON ROD FOUND MARKING A POINT OF CURVATURE;

THENCE IN A NORTHEASTERLY DIRECTION, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY LINE, AN ARC DISTANCE OF 106.54 FEET, WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET, SUBTENDING A CENTRAL ANGLE OF 33 DEG. 34 MIN. 33 SEC., AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 80 DEG. 52 MIN. 12 SEC. EAST, A DISTANCE OF 104.99 TO A CAPPED 3/4 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" FOUND MARKING THE MOST-WESTERLY CORNER OF THE CUTBACK 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 THE PLAT OF KINGS HARBOR STREET DEDICATION, FILED FOR RECORD UNDER FILM CODE NO. 586157 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 TO 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" FOUND 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" FOUND MARKING A POINT 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" FOUND 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" FOUND MARKING A POINT OF REVERSE CURVATURE;

MP 025-09-1053

**DESCRIPTION OF
8.4955 ACRES OR 370,066 SQ. FT. (CONTD.)**

THENCE IN A SOUTHEASTERLY DIRECTION, CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 254.65 FEET WITH THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET, SUBTENDING A CENTRAL ANGLE OF 243 DEG. 10 MIN. 26 SEC. AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 58 DEG. 11 MIN. 53 SEC. EAST, 102.22 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" FOUND MARKING THE SOUTHWEST CORNER OF SAID 3.3570 ACRE TRACT;

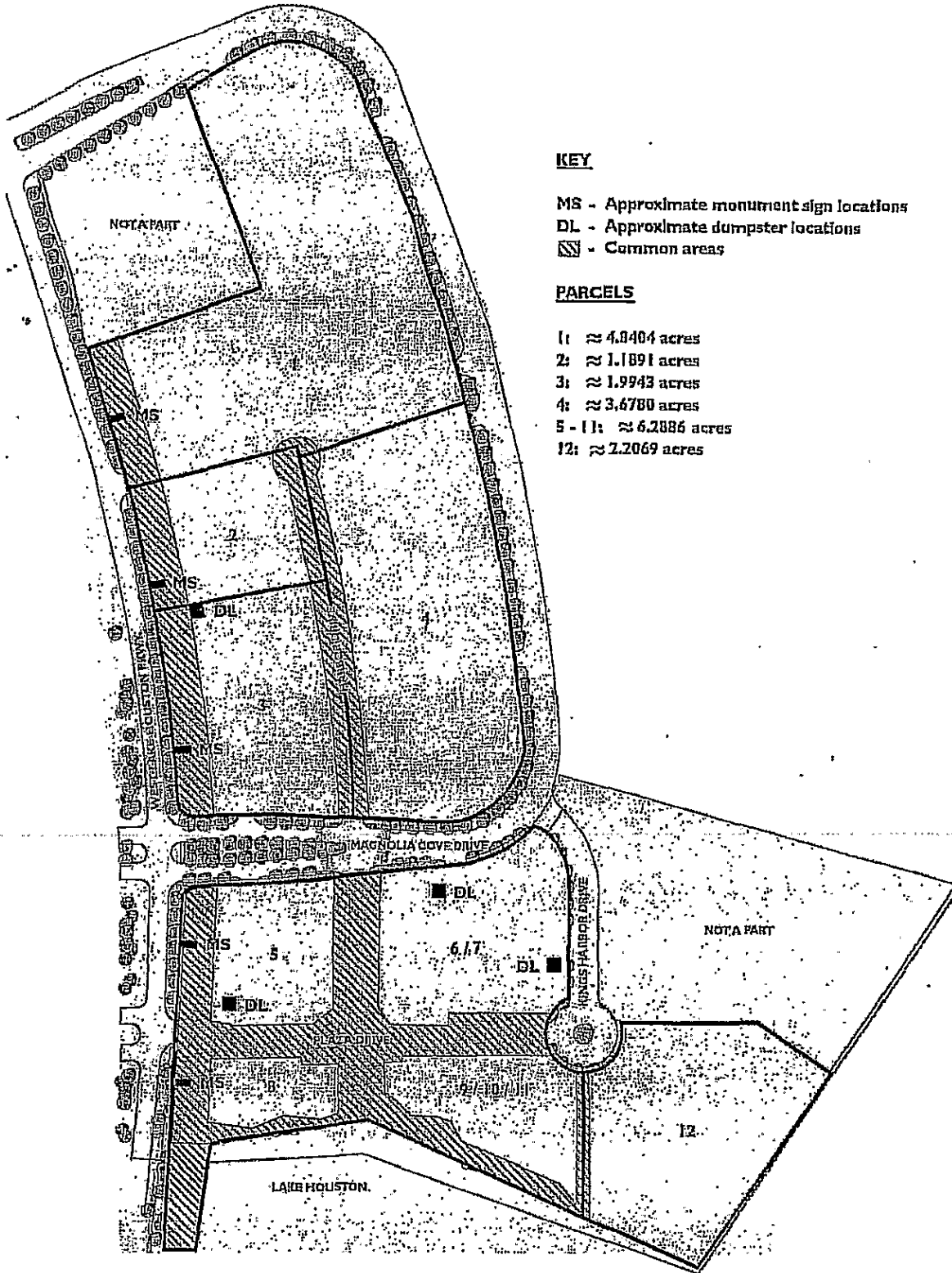
THENCE SOUTH 76 DEG. 17 MIN. 27 SEC. EAST. ALONG AND WITH THE SOUTHERLY LINE OF SAID 3.3570 ACRE TRACT, A DISTANCE OF 157.50 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" FOUND MARKING AN ANGLE POINT;

THENCE SOUTH 66 DEG. 23 MIN. 35 SEC. EAST, CONTINUING ALONG SAID SOUTHERLY LINE, A DISTANCE OF 70.25 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" FOUND MARKING AN ANGLE POINT;

THENCE SOUTH 42 DEG. 30 MIN. 09 SEC. EAST, CONTINUING ALONG SAID SOUTHERLY LINE, A DISTANCE OF 111.85 FEET TO THE POINT OF BEGINNING AND CONTAINING 8.4955 ACRES OR 370,066 SQUARE FEET OF LAND, AS SHOWN ON THE SURVEY, JOB NO. 36309WC-SOUTH TRACT UPDATE, FILED IN THE OFFICES OF WINDROSE LAND SERVICES, INC., HARRIS COUNTY, TEXAS.

RP 025-08-1054

EXHIBIT B – SITE PLAN



RP 025-03-1055

EXHIBIT C – SIGN CRITERIA



The objective of these guidelines is to promote high standards for Kings Harbor is overall graphic image, and to encourage tenants to create quality signage that is compatible with their specific storefront. A variety of components, styles, materials, and colors contribute to the texture of a streetscape.

The varying nature of storefronts within Kings Harbor dictates differences in the manner in which tenant signage is treated. Tenants can select from a variety of signing solutions for their storefront identification.

Freestanding letterforms on canopies, signage suspended from overhangs, flag-mounted signs or banners, two-dimensional signs on glass are each effective and appropriate for different storefronts. In some instances a viewer must see from some distances, and in others small scale identification at eye level may be more effective by drawing the shopper closer to the storefront.

Please be attentive to appropriate viewing distances and type sizes, as well as viewing angles.

RP 025-03-1056

A-Board A freestanding sign hinged at the top, also called a sandwich sign. These are not allowed.

Blank Sign A two-sided sign with the display surface in a plane perpendicular to the storefront.

Canopy Identification A sign either suspended from or mounted to a projecting architectural canopy with the display surface of the sign in a plane parallel to the canopy.

Eggshell Finish A paint finish with gloss levels less than 20%, as measured using a spectrophotometer; maximum gloss allowed in compliance with ADA.

Freestanding Sign Any sign which is freestanding through the use of a base supporting the vertical sign. Exterior freestanding signs must be approved by the Owner.

Foot Frontage The length of the facade measured along the base line separating the premises from the adjacent tenant.

Governing Authorities Persons or entities having jurisdiction over the jurisdiction over the development and occupancy of the Property. This includes, but is not limited to, The Owner, Kings Harbor, State of Texas.

Graphic Zone Any and all areas defined herein as being designated for placement of signage and graphics.

Monument Sign Any sign which is placed on the streetscape, and is intended to identify and convey the overall image of the Property. Monument signs may only be placed by The Owner, and shall never be placed by lessee.

Pole Sign Any sign which is placed on the streetscape which is supported above grade by any type of post(s) or pole(s). Pole signs may only be placed by The Owner, and shall never be placed by lessee.

Projecting Sign A sign that mounts projecting off the storefront or canopy. Signs must comply with ADA requirements.

Secondary Storefront Identification Any sign visible through and/or affixed to a window or exterior glass door that is visible from exterior, including signs located inside a store but visible primarily from the outside of the store.

Sign Area The area included within the outer dimensions of a sign. The area of rectangle surrounding all of the letters of the sign. Where upper and lower case letters are used, the average height of letters shall be used to determine the height of the rectangle. On signs with more than one face, that face or faces faces visible from any one direction at one time will be counted as 100 percent of visible area. Also the area shown on the elevation indication where locations of signs are allowed.

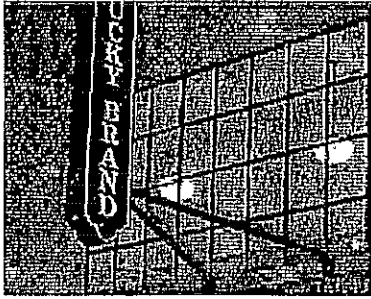
Signage / Graphics Any item, object, structure, or attachment which conveys information to the public bearing lettering, logos, photographic images or symbols.

Storefront The street facing side of a retail location, and the construction system involved.

Suspended Signs A sign which is suspended from a canopy, awning, or ceiling space.

Wall Sign Any sign which is mounted to a building face, and is intended to be viewed from a position standing facing the same building face.

Window Sign Any sign which is placed in a storefront window or on the glass itself.



Two sided or three dimensional signs may be mounted perpendicular to your storefront as long as they are tasteful and in keeping with the streetscape.

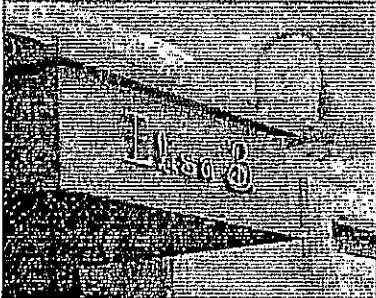
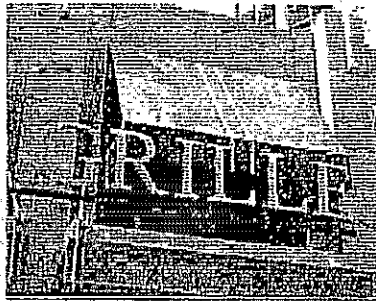
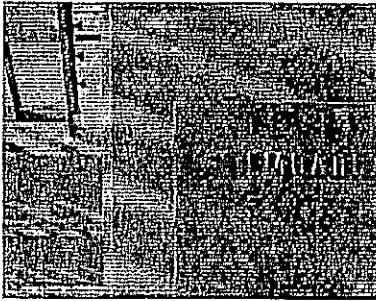
Far Left
Letters are backlit within a metal signbox. Plastic signfaces are not allowed.

Right
A painted metal sign hangs from a custom metal bracket.

Far Left
Please arrange for a metal tie or rod to prevent signface from swinging in the winds.

Right
Tasteful and contextual three dimensional signs will be permitted in moderation along Main Street.

RP 025-03-1058



We encourage the use of materials and methods shown on this page:

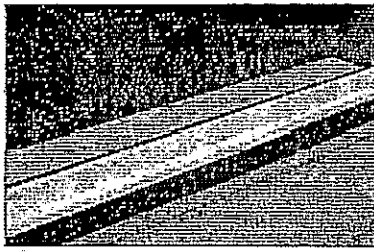
Far Left
Pin-mounted letterforms on a brightly colored plaque contrasts with the natural concrete storefront.

Right
Pin-mounted letterforms are freestanding above or below a metal canopy, and are a satin finished natural metal.

Far Left
Pin-mounted letterforms are mounted off the face of a metal canopy, and contrast with the background color.

Right
Prismatic metal letterforms are pin-mounted off a stone storefront. Avoid using metals or mounting pins that will rust in the Chicago weather and create streaks on the stone.

HP 025-03-1059



Graphics on the interior surface of storefront glass should be tasteful and minimal. Signage in this format is pedestrian friendly and smaller graphics frequently draw the viewer closer to a window display thereby engaging them in your merchandising zone.

Far Left

This may serve as the only store identification in a subtle form.

Right

Note play of light and shadow.

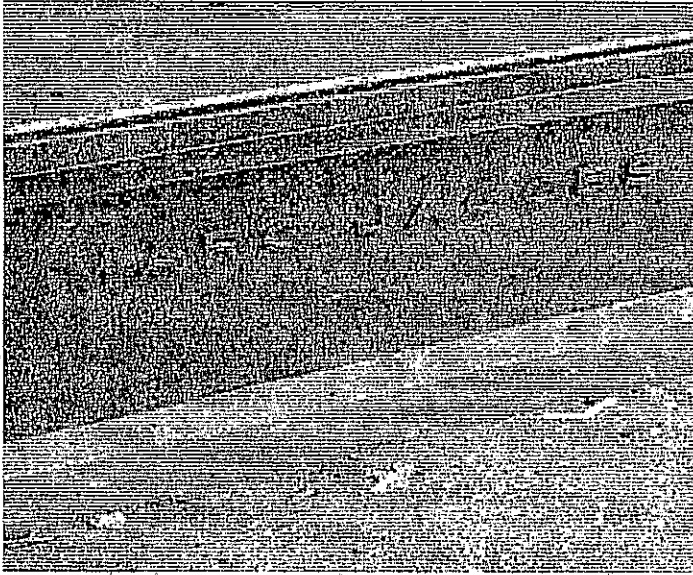
Far Left

This serves as the only store identification in a very visible position on the storefront windows.

Right

We discourage the larger scale and repetition of these graphics on glass. The subtler gold color and the adjacent bold tile work helps tone down the size.

RP 025-03-1060



We encourage the use of:

- cut metal letterforms – freestanding or suspended
- applied or pin-mounted cut
- metal letterforms/logotypes wall mounted metal or porcelain enamel plaques
- stencil cut metal – visible from one side
- sandblasted glass or metal
- metal channel letters with halo illumination
- screenprinted logotypes on canvas or metal awnings
- screenprinted logotypes on canvas or metal banners
- screenprinted or gold leafed logotypes on glass
- clean, simple, minimally visible attachments
- hardware matching adjacent sign finishes
- satin finished metals rather than highly polished

Not allowed:

- plastic signfaces or sign boxes
- internally illuminated plastic letters or signfaces
- formed or injection molded plastic signs
- paper or nylon signs or banners
- animated, flashing, blinking, or audible signs
- signs with exposed lamps or tubing
- advertising placards, banners, pennants, sale or other temporary signs
- signs projecting beyond or below code compliance

NR 025-03-1064



We encourage the use of materials and methods shown on this page:

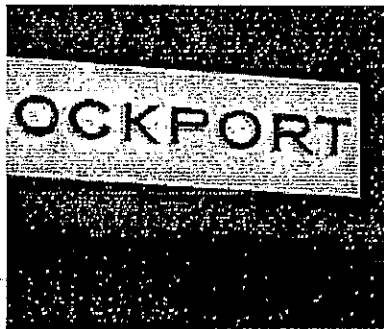
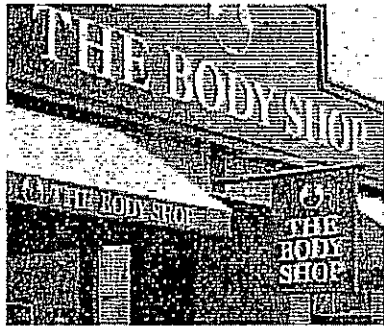
Far Left
Freestanding pin-mounted letterforms contrast with building facade. Note unfortunate use of visible dark metal rods to attach logotype.

Right
Freestanding pin-mounted letterforms on metal canopy.

Far Left
Stencil cut metal numerals in metal sign band add a tactile quality.

Right
Half lit letterform are pin-mounted off building facade. "Swoosh" is selectively washed in light.

1062-03-025



We discourage the use of materials and methods shown on this page:

Far Left
Avoid combining too many elements i.e. graphics flag mounted, on awning, and on overhead sign which is out of scale.

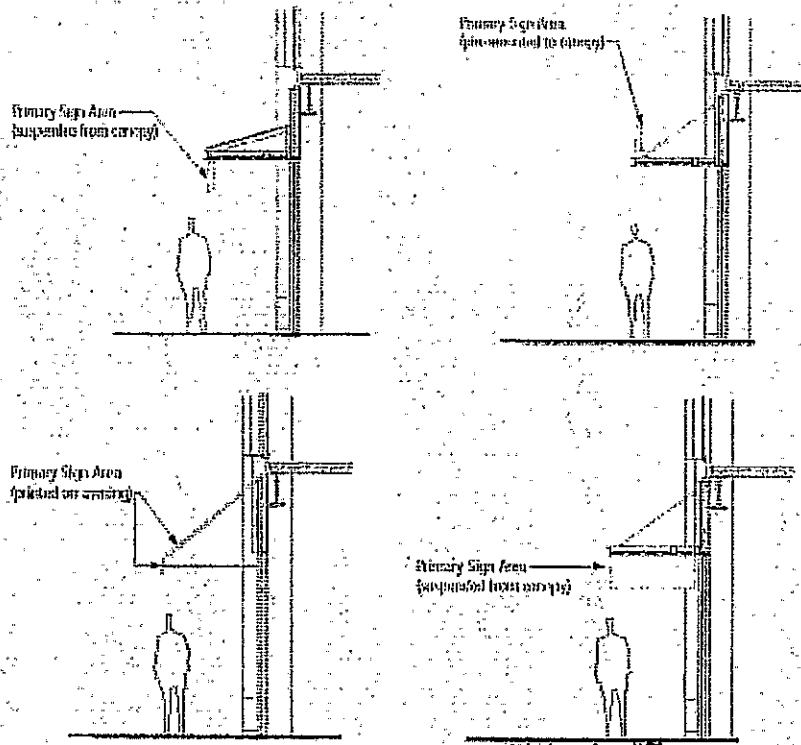
Right
Avoid internally illuminated plastic letterforms or signfaces.

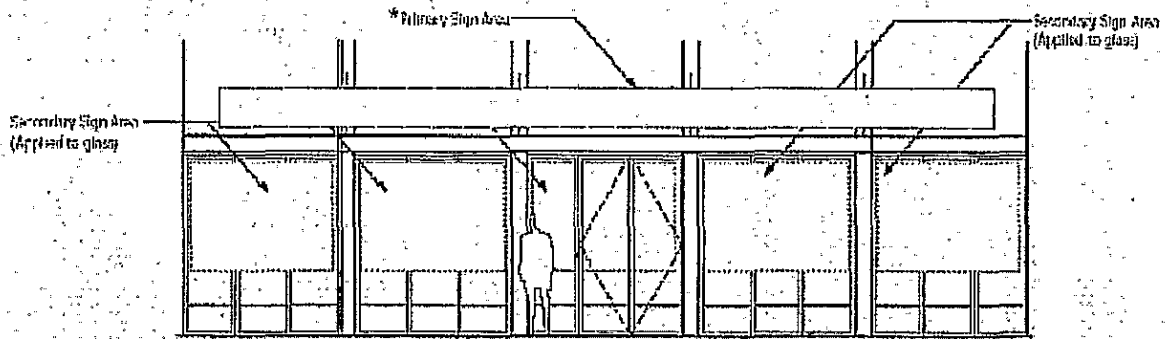
Far Left
Avoid internally illuminated plastic sign panels or letterforms.

Right
Banners are not allowed.

RF 025-03-1063

RP 025-03-1064





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EXHIBIT D – USE MULTIPLIER

Use	Use Multiplier	
	Minimum	Maximum
Retail/Restaurant	4.00	7.00
Retail/Office	4.00	7.00
Financial/Mixed-Use	1.00	1.00
Single Family Residential	0.50	1.00
Condominium	0.50	1.00
Multi-Family Residential	1.00	1.50

0001-30-0000

RECORDER'S MEMORANDUM:
 At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

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 the number Sequence on the date and at time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County Texas on

JUL 20 2006



Dorothy B. Kayman
 COUNTY CLERK
 HARRIS COUNTY, TEXAS

Dorothy B. Kayman
 COUNTY CLERK
 HARRIS COUNTY, TEXAS

06 JUL 20 AM 11:32

FILED