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COUNTY OF TRAVIS §

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FIRST AMENDED  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS

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THIS FIRST AMENDED TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS, made on the date and year below written, by **MARSHALL'S HARBOR, LTD.**, a Texas limited partnership (hereinafter referred as the "Declarant")

RECITALS

WHEREAS, The Declarant is the owner of that certain 461 08 acre tract of land in Travis County conveyed to it by deed recorded Document #2000114133, Official Public Records of Travis County, Texas and further described in that certain plat of Marshall's Harbor Subdivision recorded in Document #20000248, Official Public Records of Travis County, Texas, and hereinafter referred to as the "Property" or the "Subdivision", and

WHEREAS, the Declaration of Covenants Conditions and Restrictions for Marshall's Harbor Subdivision was made on June 6, 2000 and recorded on June 9, 2000 in Document #2000089915 (the "Original Declaration"), and

WHEREAS, by error and mistake the first recital incorrectly referenced the Marshall's Harbor Subdivision as having been recorded in Document #1999900289, when in fact Marshall's Harbor Subdivision has been duly recorded in Document #20000248, Official Public Records of Travis County, Texas and

WHEREAS, Declarant also desires to amend said Original Declaration prior to selling any of the lots in the Subdivision and in accordance with the provisions of Section 10.9 of the Original Declaration by substituting and replacing this First Amended Declaration of Covenants Conditions and Restrictions of Marshall's Harbor Subdivision in place of said Original Declaration such that the Original Declaration shall be of no further force or effect and shall be superseded in its entirety by the First Amended Declaration, and

WHEREAS, the purpose of this First Amended Declaration is to preserve so far as possible the natural beauty of this Property, to avoid harsh contrasts between structures and landscape, to guard against the erection of poorly designed or proportioned structures or use of unsuitable materials, to encourage and secure the erection of attractive improvements which are harmonious with their sites, and in general, to enhance the environmental quality and economic value of the Property

NOW THEREFORE, Declarant files this First Amended Declaration of Covenants Conditions and Restrictions and hereby declares that the Property described above shall be held,

sold, used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof

## ARTICLE I DEFINITIONS

- 1.1 "Architectural Control Committee" shall mean the committee created pursuant to Article 6 hereof. Such Architectural Control Committee shall hereinafter sometimes be referred to as the "ACC" or the "Committee"
- 1.2 "Architectural Control Committee Rules" shall mean such rules as are adopted by the ACC pursuant to the authority contained in Article 6 hereof
- 1.3 "Act" shall mean the Texas Revised Limited Partnership Act, Article 6132a-1 of the Revised Civil Statutes of the State of Texas
- 1.4 "Certificate" shall mean Certificate of Limited Partnership of Marshall's Harbor, Ltd, filed in the office of the Secretary of State of the State of Texas, File No 00122735-10 on July 23, 1999, and as from time to time amended.
- 1.5 "Agreement" shall mean the Agreement of Limited Partnership of Marshall's Harbor, Ltd
- 1.6 "Assessment" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration
- 1.7 "Association" or "Homeowners Association" shall mean Marshall's Harbor Homeowners Association, Inc, a Texas non-profit corporation, which Declarant shall cause to be incorporated.
- 1.8 "Board" shall mean the Board of Directors of the Association
- 1.9 "Bylaws" shall mean the Bylaws of the Association adopted by the Board, as from time to time amended
- 1.10 "Commencement of Construction" shall mean the first onsite work for construction on a lot, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of constructing a foundation
- 1.11 "Common Facilities" shall mean and refer to all existing and subsequently provided Improvements upon or within the Common Properties except those as may be expressly

excluded herein. Also, in some instances, Common Facilities may consist of Improvements for the use and benefit of all Owners constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others) which is not a part of the Common Properties. By way of illustration, Common Facilities shall include, but not necessarily be limited to, the following: structures for recreation, storage for protection of equipment, common driveways, electronic gates, and bridges; landscaping; street lights, utility equipment, water pumps, any private roads, and roads which as of the date of this Declaration are public but which may subsequently become private roads, and private access easements, and any portions of public roads not accepted for maintenance by Travis County; and common drain fields for septic facilities and other similar and appurtenant improvements. References herein to the "Common Facilities (any Common Facility) in the Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration and all Supplemental Declarations.

- 1.12 "Common Properties" shall mean and refer to all those areas of land within the Property as shown on the Subdivision Plat as Common Properties
- 1.13 "Creek Areas" shall mean the areas designated on the Subdivision Plat.
- 1.14 "Declarant" shall mean Marshall's Harbor, Ltd., a Texas limited Partnership.
- 1.15 "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this First Amended Declarations of Covenants Conditions and Restrictions for Marshall's Harbor Subdivision, as the same may be amended from time to time.
- 1.16 "Development Plan" shall mean the plan for development of a Lot which is required to be submitted to the ACC pursuant to Article 6 hereof.
- 1.17 "Drainage Easements" and "Conservation Easements" shall be the areas designated on the Subdivision Plat as Drainage Easements or Conservation Easements and shall include any creeks, streams sedimentation basins or bar ditches thereon designated or constructed.
- 1.18 "Exempt Tract" shall mean any combination of contiguous lots exceeding 70 acres in total area under common ownership. Such Exempt Tract shall maintain its status as an Exempt Tract so long as the total acreage of such contiguous lots is not less than 20 acres. Any lot which is part of an Exempt Tract which is later conveyed to another party, shall lose its status as an Exempt Tract lot and shall thereafter be regulated by the entirety of this First Amended Declaration.
- 1.19 "Improvements" shall mean the buildings, garages, carports, streets, roads, antennas, driveways, parking areas, walls, hedges, plantings, planted trees and planted shrubs, lighting and all other structures or landscaping improvements of every kind and type affecting the natural conditions of the Property or the drainage of surface waters on, across or from the Property.

- 1 20 "Lot(s)" shall mean each parcel of land shown as a Lot on the Subdivision Plat of the Property and designated on said plat by a separate number, or any subsequent subdivision thereof; provided, however, that for purposes of any and all rights and obligations of an Owner hereunder, an Owner of two or more adjacent Lots may take such actions as necessary to have the Lots legally re-subdivided as one or more Lot(s) No one Lot may be re-subdivided into two or more Lots without the express written permission of the Board of Directors after such request has first been submitted to the ACC for review and recommendation to the Board
- 1 21 "Members" shall mean and refer to all those Owners who are members of the Association as provided in this Declaration, together with all the Owners who are members of the Association as provided in all Supplemental Declarations
- 1 22 "Owner(s)" shall mean and refer to the recorded Owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title to any Lot The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation Any reference herein to Owners shall include Owners as defined herein and as defined or included in any Supplemental Declaration
- 1 23 "Private Waste Disposal Systems" shall mean any septic tank, tank, septic system, evapotranspiration or other system for the disposal of sewage or waste from a residential structure, including all pipes, fittings, lines and other related equipment or attachments thereto
- 1 24 "Property" shall mean and refer to that certain real property described in Recital No 1 above, inclusive of all Common Properties in the Subdivision or any Property interest created by separate instrument out of property described in the Subdivision Plat of Marshall's Harbor, including the aerial and subsurface rights appurtenant thereto, and such additions thereto as may hereafter be annexed
- 1 25 "Recreational Easements" shall be and include all those areas on or across any Lot or any portion of the Property, as designated by separate document by Declarant, its successors and assigns, subject to the limitations of this Declaration, or as indicated on any current or subsequently recorded plat of the Property or a portion of the Property, which shall only be used for recreational purposes according to such rules as are adopted by the Homeowners Association pursuant to the authority contained in Article 7 hereof or such rules as are adopted by the ACC pursuant to the authority contained in Article 6 hereof
- 1 26 "Single Family Residential Use" shall mean the occupation or use of a Structure as a residence or dwelling unit by a single person, or a group of persons related by blood, marriage or adoption and shall also include foster children and domestic servants, in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other State, County, or Municipal laws, rules, regulations, codes or ordinance. "Single Family Residential Structure" shall mean a structure used for Single Family Residential Use

- 1 27 "Structure" shall mean anything erected, constructed, placed, laid or installed in, on, or over a Lot, the use of which requires a location on or in the ground, but not including vegetation, trees, shrubs or plantings.
- 1 28 "Subdivision Plat" shall mean that certain recorded map or plat covering any or all of the Property referred to in this Declaration, as well as any other later filed maps or plats relating thereto
- 1 29 "Supplemental Declaration" shall mean any Supplemental Declaration of Covenants, Conditions, and Restrictions for the use and development of the Property or additional property which may be annexed into the Association and the common scheme of development of the Property under the authority in Article 2 hereof. References herein (whether specific or general) to provisions set forth in any "Supplemental Declaration" shall be deemed to relate to all property covered by this or any Supplemental Declaration, unless otherwise expressly provided herein or therein
- 1 30 "Marshall's Harbor Subdivision" shall mean that certain Subdivision of land as recorded document # 200000248 Official Public Records of Travis County, Texas
- 1 31 "Visible from a neighboring Lot" shall mean that with respect to any given object, that such object is or would be in the direct line of sight of a person of average height standing on any part of a Neighboring Property. "Neighboring Property" shall be any portion of the land platted as a portion of Marshall's Harbor Subdivision

ARTICLE 2  
PROPERTY SUBJECT TO RESTRICTION

- 2 1 General Declaration Declarant hereby declares that the Property is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a common plan or scheme for the subdivision, improvement and sale of the Property, and is established for the improvement and sale of the Property, and is further established for the purposes of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, all Owners and their respective successors in interest
- 2 2 Adding and Removing Property Owned by Declarant Declarant reserves, the right, without consent or approval of any other person, to plat or replat the boundaries or dimensions of any Lot or other property owned by Declarant and may increase or decrease or change the size, shape, or dimensions of any Lot or other property owned by Declarant and to designate the Lot(s) or other property owned by Declarant which shall and shall not be entitled to the use and enjoyment of any of the Common Properties and other privileges, subject to the obligations of this Declaration, provided, however, nothing herein shall entitle Declarant to

reduce the size of the areas designated as Common Properties or change Lot boundaries so as to increase the number of Lots within a platted area once a Subdivision Plat has been recorded

- 2 3 Temporary Administration Until such time as Declarant has sold and conveyed seventy-five percent (75%) of the Lots, or the expiration of sixty (60) months after the date this Declaration is filed for record, whichever occurs later, Declarant shall have the right, but shall not have the duty, to act as the sole administrator for the government and administration of the affairs of the Association, and during such period of temporary administration, Declarant shall have the rights, powers, authority, functions and duties of the Association. Declarant may elect, in its sole discretion, to relinquish temporarily or permanently such rights at an earlier time

ARTICLE 3  
LAND USE

3 1 Single Family Residential Use All Lots, except Lots A, B, C, D, 49A and 49B, shall be used, improved and devoted exclusively to Single Family Residential Use. No business or commercial activity to which the general public is invited shall be conducted within the Subdivision except on Lots A & B. Lot 49A is reserved for multi-family development. Lot 49B is reserved for a community marina facility. Nothing contained herein shall be deemed to prevent the leasing of all of a Lot to a single person or group of persons related by blood, marriage or adoption from time to time by the Owner thereof, subject to all the provisions of this Declaration.

3 2 Development plan Each Owner shall be required to submit a detailed Development Plan prior to commencement of construction of any structure on a Lot describing such matters as the ACC shall require from time to time, pursuant to the ACC Rules, and such plan must be approved in writing prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence without the prior written approval of the ACC. All construction and development shall comply strictly with the approved Development Plan. Any person purchasing any portion of the Property acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interest of other Owners and that the ACC or the Association, on behalf of such Owners, shall be entitled to seek injunctive relief, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder at law or in equity.

3 3 Time for Construction

3 3 1 Construction of any Structure or Improvement shall be continuous and shall proceed in an orderly fashion without interruption, and any such Structure or Improvement shall be completed in a reasonable time, not to exceed twelve (12) months from the Commencement of Construction; provided, however, that such twelve (12) months period may be exceeded so long as construction is diligently and continuously pursued thereafter, without interruption. This provision shall not apply to an Exempt Tract

3 3.2 Material and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot and shall not be left on any other Lots, Common Properties or roadways

3 3.3 Prior to construction a trash containment system shall be established on site and a portable toilet delivered to the site

ARTICLE 4  
RESIDENTIAL STRUCTURES AND LOTS

4.1 Requirements All Single Family Residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the Commencement of Construction, provided, however, that the following requirements shall be in addition to those requirements and restrictions established in Section 5.1 of this Declaration. Once approved, no Structure or Improvement may vary from the Development Plan without further written approval of the ACC

4.1.1 Set Backs No Structures or other Improvements other than driveways and gates and gate columns shall be located on any Lot nearer to the front Lot line than ninety feet (90'). The front of a primary dwelling structure shall face the front of a similar structure across the street whenever feasible, and the Architectural Control Committee shall resolve any conflicts arising from this requirement and make the final determination with regard to the orientation of the front of Improvements upon any Lot. No Structure shall be located on any Lot nearer than fifty feet (50') to the edge of any bluff designated by the ACC. No Structure shall be located on any Lot nearer than forty feet (40') to the edge of any 100-year flood plain designated on the most current FEMA maps

4.1.1.1 The minimum slab elevation on Lot 34 shall be 740 feet above mean sea level

4.1.1.2 Unless a Structure is to be located on more than one Lot, no principal structure or out-building shall be located nearer than fifty feet (50') to an interior Lot line

4.1.1.3 No vegetation may be cleared or trimmed within ten feet (10') of the side lot line.

4.1.1.4 Manmade waterfall courses in areas approved by the ACC are exempt from the setback requirements

4.1.2 Minimum Floor Areas: All Single Family residential Structures shall have a floor area, exclusive of porches (open or closed), patios, garages, carports, balconies or decks with a minimum floor area as specified below.

<u>Lots</u>	<u>Square Feet</u>
1-28	3,500
29-30	4,000
31-37	3,500
38-39	4,500
40-41	4,000
42-44	3,500
45	4,000
46-47	4,500
48	5,000
49-66	3,500
67	4,000
68-71	3,500
72	4,000
73-74	4,500

- 4.1.3 **Height Limitations:** The ACC shall have the right to impose limitations on the height of any Structure or Improvement to preserve lines of sight and views enjoyed by neighboring Lots. No Structure will be approved with an exterior height of more than thirty-five feet (35') without a variance being granted for good cause shown. No Structure will be allowed to exceed two stories. Notwithstanding the foregoing, a structure on an Exempt Tract shall be allowed a third-story observation tower.
- 4.1.4 **Architectural Styles:** In no event or circumstance shall a residence be constructed upon the Property which incorporates the following architectural styles: Colonial, Georgian, Federal, or Victorian. The Architectural Control Committee's interpretation of the architectural style of a residence shall be final.
- 4.1.5 **Exterior Color Schemes and Materials:** The ACC shall have the right to impose limitations on the exterior color and materials to be used in any Structure. This includes the color and materials of any roof, all of which shall have a non-reflective finish. All homes will be one-hundred percent (100%) rock or stucco finish. Brick facades shall be prohibited. All solar panels or devices must be constructed as an integral part of the Structure's architecture and approved by the ACC.
- 4.1.6 **Driveway:** The ACC Shall have the right to impose reasonable limitations on driveway design, including materials, aprons, location and point of contact with roads, streets or private driveways in the Subdivision. Driveways must be concrete for the first one hundred feet (100') from the street edge.
- 4.1.7 **Mailbox:** The mailbox for each Single Family Residential Structure shall be subject to the reasonable approval of the ACC. Declarant reserves the right to establish and designate one or more central mail box station areas to the exclusion of all private mailboxes for the Subdivision.

- 4.1.8 Garbage Containers The ACC shall have the right to require each Owner to conform to a specified location for trash service and shall require each Owner to construct a permanent facility at approved location for the placement of garbage containers for collection purposes. Such permanent Structure shall meet the design and materials requirements of the ACC.
- 4.1.9 Tanks The ACC Shall have the right to approve the location and construction of any tank used or proposed to be used in connection with any Lot or Structure, including tanks for storage of fuel, water, oil or propane gas and also including swimming pool filter tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. All tanks shall be screened so as not to be Visible from a neighboring Lot. Propane tanks shall be buried. Well equipment shall be in a wood or masonry enclosure.
- 4.1.10 Exterior Lighting The ACC shall have the right to approve the location, number, size and design of all exterior lighting. No mercury vapor lights will be allowed.
- 4.1.11 Roofs Roofing materials are limited to clay or cement tile, non-reflecting metal, slate or other materials expressly approved by the ACC.
- 4.2 Trees, Shrubs and Landscaping The ACC shall have the right to approve the basic design and major changes relating to the landscaping of Lots, which shall be included in the Development Plan. A maximum of one-half (1/2) acre of non-native grass may be planted, maintained or kept on any Lot. All front yards must have shrubs or other landscaping planted near the foundation of the dwelling Structure to screen the foundation from view. Each owner shall endeavor to use native plants as much as possible in the landscaping of each lot, and areas that are disturbed during construction, but not occupied by buildings or impervious services must be replanted with native vegetation species. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping.

Notwithstanding the foregoing, an Exempt Tract may be allowed a cumulative total of 5 acres of non-native grass and may cultivate an orchard not to exceed 10 acres provided a natural vegetation barrier of 50-feet is maintained between the orchard and any lot outside the Exempt Tract.

- 4.3 A water well or wells may be drilled and maintained on an Exempt Tract.
- 4.4 Fences, Walls and Hedges No barbed wire shall be allowed in the construction of any fence on the Property. Any fence, wall, hedge or other similar Structure or Improvement must be included in the Development Plan with respect to location, height and type of material and must be approved in writing by the ACC. No fence higher than six feet (6'), or composed of a material other than wire or wrought iron, will be approved, except that fences within thirty-five feet (35') of the extended side line of a dwelling Structure and within sixty feet (60') of the rear foundation of a dwelling Structure may be wood or masonry and of a height

up to six feet, six inches (6'6"), provided that such fence does not unreasonably affect the line of sight of neighboring Lots. Stone fence columns at no less than 12-foot intervals in support of a wrought iron fence system are permitted. Chain link fences shall be prohibited. Notwithstanding any other provision of this Declaration to the contrary, a fence location approved by the ACC should be exempt from the front or interior lot line setbacks.

- 4.5 Windmills, Towers and Antennas No visible antenna or other service for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on any lot, whether attached to a building or Structure or otherwise, without the prior approval of the ACC. All such towers and antennae approved shall be completely screened from the view of any other lot or street in the Subdivision. No radio signals, television signals, or any other form of electromagnetic radiation which may unreasonably interfere with the reception of any television or radio signal on any Lot in the Subdivision shall originate from any other Lot in the Subdivision. Windmills are not allowed.
- 4.6 Underground Utility Lines No utility lines, including, but not limited to wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures as approved in writing by the ACC, provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or Structures which have been previously approved in writing by the ACC. The installation method, including, but not limited to the location and type of installation equipment, trenching method and other aspects of installation, for both temporary and permanent utilities, shall be included in the Development Plan and approved in writing by the ACC.
- 4.7 Temporary Structures-Occupancy During Construction No trailer, basement or any incomplete building, tent, shack, garage, bus barn or temporary building of any kind shall be used at any time as a residence on the Property within the Subdivision, either on a temporary or a permanent basis.
- 4.7.1 This provision shall not apply to an Exempt Tract where such structure is not visible from any other lot or street within the Subdivision.
- 4.8 Out Buildings Any proposed out buildings must be included in the Development Plan and approved in writing by the ACC.
- 4.9 Signs No signs or billboards (including, but not limited to, commercial and similar signs) which are visible from any neighboring Lot or visible from streets or access roads shall be erected or maintained on any Lot or parcel or property within the Subdivision, except the following types of signs, each of which must be approved in writing by the ACC:

4 9 1 Signs which may be required by legal proceedings,

4 9 2 Not more than one (1) residential identification sign (street number and/or name of Owner) for a maximum combined total face area of one hundred forty-four square inches (144")

4 9.3 During the time of construction of any building or other Improvement, one job identification sign not larger than three feet by three feet (3' x 3') having a face area not larger than nine (9) square feet;

4 9.4 Such signs, the nature, number and location of which have been approved in advance by the ACC,

4.9 5 A "For Sale" sign advertising that the Lot and Improvements are being offered for sale, provided such sign shall not exceed a total of five (5) square feet

4 10 Improvements and Alterations No Structures, Improvements, alterations, repairs, excavations, installation or construction of anything which would affect the natural conditions of the Property or the drainage of surface waters on, across or from the Property, or other work which in any way alters the exterior appearance of any Structure within the Subdivision or the alteration of any Lot or other Improvements located thereon from its natural or improved condition as it exists on the date such Lot was first conveyed in fee to the current Owner or annexed by Declarant, whichever date is later, shall be made or done without the prior written approval of the ACC

Notwithstanding the foregoing, a helicopter pad and hanger may be maintained and helicopter may be landed on an Exempt Tract The pad shall be located in a central area near the primary dwelling The hanger shall be constructed from the same facade material as the house and with the same roofing material. The hanger shall be located so as to minimize visibility from neighboring lots

4 11 Solar Equipment The written approval of the ACC shall be required for the installation of any type of solar equipment, and a request for such approval shall be included in the Development Plan

4 12 Garages Each Single Family Residential Structure shall have sufficient enclosed garage space, as approved by the ACC, to house all vehicles authorized by this Declaration Each Lot must contain a private garage for not fewer than three (3) automobiles and off-street parking space for a minimum of two (2) automobiles, which off-street parking shall be located no closer than twenty-five feet (25') from the front Lot line with openings facing the side line, and otherwise comply with the side Lot line setbacks as set forth in Section 4 1 1

4 12.1 Owners shall not keep more than one vehicle in such manner as to be visible from a neighboring Lot for a period of more than seventy-two (72) consecutive hours All

such garages shall be side or rear entry unless otherwise approved by the ACC for front entry.

- 4.13 Chemical Fertilizers, Pesticides or Herbicides. No inorganic fertilizers, pesticides or herbicides of any type shall be used on any of the Property. The use of organochlorine or organophosphate pesticides is prohibited. Further, the use of any other type of pesticide in a manner that is not in accordance with the manufacturer's directions is prohibited.
- 4.14 Access to Common properties. No ramps, paths, walls private streets or other access shall be constructed from or over a Lot to any Common property unless the same is approved in writing by the ACC.
- 4.15 Recreational Vehicles. No recreational vehicles shall be parked or stored on any Lot in a location visible from a neighboring Lot or street in the Subdivision.
- 4.16 Recreational Vehicle Garages. Recreational vehicle garages may be constructed on an Exempt Tract provided the same stone and roof materials are used as on the primary dwelling. The doors to such recreational vehicle garage may face in the direction of a Subdivision street so long as the garage is located at least 250-feet from any street provided however, garage doors may not face lots across Cottonwood Hollow
- 4.17 Swimming Pools. Swimming pools are subject to the setbacks established in Section 4.1.1. Any swimming pool constructed on a Lot must comply with all applicable governmental requirements, rules, regulations, codes, standards and ordinances. Nothing in this Section 4.15 is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements. Pools above ground level are prohibited. Any variance to these requirements shall only be granted by the ACC upon application by a Lot Owner which demonstrates that due to unique circumstances or topographic constraints not of the applicant's own making, denial of the variance would create an unreasonable hardship on the applicant Lot Owner.

#### ARTICLE 5 RESTRICTIONS

- 5.1 Animals: Horses-Household Pets. No animals other than those generally considered to be non-exotic, domestic household pets within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animals which may be kept on the Property shall be allowed to make unreasonable amounts of noise or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner, or the Lot of the Owner of an adjacent Lot who has agreed to such access. Upon the written request of the Owner, the ACC shall conclusively determine at its sole discretion, in accordance with its rules, whether an animal is a domestic household pet or whether an animal is a nuisance. The decision of the ACC in such matters is final and shall be enforced as other restrictions contained herein. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration and no kennels or breeding operations will be

allowed on the Property No animal which pursuant to this section may be kept on the Property shall be allowed to run at large and all such animals shall be kept within an area which must be neat, clean, sanitary and reasonably free of refuse, insects and waste at all times No food shall be provided for any pet in such a manner that wild animals may also may be able to obtain food Each Owner shall be required to erect and maintain a fenced enclosure or other ACC approved method of keeping and maintaining of the domestic pets allowed pursuant to this section Said enclosure shall be of a reasonable design and construction so as to adequately contain such animals in accordance with the provisions hereof and shall meet all the requirements herein as to fencing or other forms of construction

Notwithstanding the foregoing, horses are permitted on an Exempt Tract provided the number of horses shall not exceed 1 horse for every sixteen acres owned All horses shall be enclosed in a fence area within the Exempt Tract

5 2 Maintenance of Property. Each Owner shall keep all shrubs, grass and plantings of every kind located either on its Lot or on set back areas, utility easements, rights-of-way or other public or private property adjacent to such Owner's Property, properly cut and cultivated, and shall keep such Owner's Lot free of trash and other unsightly material This section shall not apply to any Common Facilities or Common Properties that are to be maintained by the Association. Upon an Owner's failure to maintain its Lot in accordance with the standards set forth in this section, Declarant, the Association and the ACC shall have the right at any reasonable time, upon ten (10) days' written notice stating the nature of the problem requiring attention, to enter upon such Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at Owner's sole expense

5.3 Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot in a manner which will be visible from the street or any other lot in the Subdivision.

5 4 Hunting, Trapping, Firearms, Bows & Arrows, Fireworks Hunting, trapping and discharge of firearms, bows and arrows and fireworks are expressly prohibited within the Subdivision, except to the extent such discharge of firearms is legal and necessary for the Owner's self-defense, or for the defense of the Owner's family or guests

Notwithstanding the foregoing, fireworks shall be permitted on an Exempt Tract on the Fourth of July provided any falling debris shall be confined to the Exempt Tract

5 5 Bird and Wildlife Sanctuary The Subdivision in its entirety is intended as a bird and other wildlife sanctuary It is prohibited to trap, shoot or molest in any manner any birds, eggs or other wildlife.

5 6 Dumping Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Subdivision

- 5.7 Mineral Exploration No mining, quarrying, tunneling, excavation, exploratory drilling or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted on the Property
- 5.8 Business Activities No business or commercial activity to which the general public is invited shall be conducted within the Subdivision
- 5.9 Nuisances No nuisance, obnoxious or offensive activities shall take place on any Lot, or shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision and no odors shall be permitted to accumulate on or adjacent to any of the Property within the Subdivision and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or any other devices which are audible from any neighboring Lot (except security devices exclusively for security purposes) shall be located, used or placed on any Lot
- 5.10 Garbage No garbage or trash shall be kept on any Lot except in covered containers of standard type, which shall be located as provided in Section 4.1.9 In no event shall such containers be maintained so as to be visible from a neighboring Lot All rubbish, trash and garbage shall be removed regularly from Lots and shall not be allowed to accumulate. No incinerator shall be kept on any Lot No garbage or trash shall be permitted to be buried or burned on any Lot
- 5.11 Vehicles and Equipment No bus, truck larger than a one ton pickup, semi-trailer, tractor, machinery or equipment shall be kept, placed (except during the course of making deliveries for the purpose of loading or unloading), maintained, constructed, reconstructed or repaired within the Subdivision. No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired within the Subdivision in such a manner as to be visible from a neighboring Lot Authorized vehicles including tractors, mowers or other equipment necessary for the ordinary maintenance needs of a large lot which are intended to be kept on a lot by the owner thereof, must be placed in such a manner that they will not be visible from a neighboring lot or from adjacent lots No motorized vehicle of any kind may be operated off the paved streets or in any manner which is dangerous, noisy or which creates a nuisance No passenger vehicles may be operated off of paved Subdivision road surfaces
- 5.12 No Overnight Parking No vehicle shall be allowed to park overnight on any road or street within the Subdivision
- 5.13 Emergency or Temporary Maintenance Vehicles The provisions of this Declaration shall not prevent any emergency vehicle repairs or the operation of any emergency vehicle (such as an ambulance or fire engine) within the Subdivision The provisions of this Declaration shall not prevent the operation or temporary use of construction trailers, vans, or other trucks, machinery/equipment, construction shelters or facilities maintained during and used

exclusively in connection with the construction of any Improvement approved in writing by the ACC

- 5 14 Motorcycles, Three Wheelers, Four Wheelers, and Golf Carts The use of motorcycles within the Subdivision shall be limited to those which are legal for street use. Such use shall be absolutely limited to the streets within the Subdivision and shall be for Subdivision ingress and egress only. All motorcycles operated within the Subdivision shall be operated in such a manner as not to create an excessive amount of noise or dust, or otherwise create a nuisance. Three-wheeler and four-wheeler off-the-road or recreational vehicles are not to be operated in the Subdivision. Four wheel drive automobiles and trucks are not allowed off of the paved Subdivision roads. Electric golf carts shall be allowed but their use shall be restricted to roads, streets and approved trails

Notwithstanding the foregoing, on an Exempt Tract, three wheeler and four wheeler off the road or recreational vehicles may be operated, provided they are not regularly operated within 200-feet from the exterior boundaries of the Exempt Tract in order to provide noise control for neighboring lots in the Subdivision

- 5 15 Continuing Adequacy of Repair or Maintenance No building or structure located within the Subdivision shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior structure which was included in the Development Plan approved by the ACC approval

- 5 16 Service and Storage Yards Any service yard, storage yard, wood pile or storage pile shall be located so as not to be visible from a neighboring Lot or streets or access roads. Any structure of a permanent nature is to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC

- 5 17 Outdoor Burning No outdoor burning of any nature is allowed

- 5.18 Mercury Vapor Lights Mercury vapor lights are prohibited. All exterior lighting shall be approved by the ACC

- 5 19 Vegetation Clearing The cutting of hardwood trees with diameters greater than five (5) inches is strictly prohibited. Any cutting of these size trees must be approved by the ACC, even those trees falling within a building site

- 5 20 Boat Dock

5 20 1 All private boat docks will be built according to the "Marshall's Harbor Boat Dock Criteria" set out in the Architectural Control Committee Rules

5 20 2 Plans for all boat docks must be approved by the Architectural Control Committee in advance of commencement of construction or any re-model or addition to existing docks

- 5 20 3 A private boat dock shall not be allowed on lot 52.
- 5 20 4 Boats exceeding 36 feet in length shall not be moored or docked in Cottonwood Hollow except in a 40-foot slip in the Subdivision Marina.
- 5 21 Marina Grantor intends to develop, operate and maintain a marina on Lot 49B in the Subdivision The operation, maintenance and construction of such facility shall not be deemed, in any manner whatsoever, to be in conflict with any of the residential restrictions or any other conditions, covenants or limitations contained in this Declaration, or in any supplements or amendments filed hereto.
- 5 21 1 Marina Parking No vehicle may be parked outside the designated area
- 5 21.2 No vehicle or trailer may be left overnight in the parking area
- 5 22 Feeding Deer and Birds Feeding of deer on the property with or without feeders of any kind is prohibited. Providing food for birds is allowed if provided in tube or thistle feeders with small seeds (such as thistle or oilseed) or in feeders designed only for hummingbirds, except as may otherwise be allowed by the approved Wildlife Management Plan
- 5 23 Irrigation Water. Lakefront Lot Owners may draw water from Lake Travis within any limits and restrictions set by the Lower Colorado River Authority ("LCRA"), but any pipes used in this connection must be buried in a trench or covered with rocks bonded together with concrete so as to present a natural appearance and resistant composition of the covering rocks Final cosmetic appearance is subject to ACC approval Any pipe which becomes exposed with the passage of time must be recovered as provided herein within 30-day written notice from the ACC.

ARTICLE 6  
ARCHITECTURAL CONTROL COMMITTEE

- 6 1 Establishment and Composition There is hereby established an Architectural Control Committee (the "ACC"), which shall consist of three members The following persons are hereby designated as the initial members

<u>Position</u>	<u>Name</u>	<u>Address</u>
Office No 1	Josephine Brown	11200 Westheimer Suite 414 Houston, Texas 77042
Office No 2	Steven Morse	112200 Westheimer Suite 414 Houston, Texas 77042
Office No 3	Buckner Hightower	P O Box 161733 Austin, 78716

Members of the ACC shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

6 2 Voting. Except as otherwise provided herein, a vote or written consent of a majority of the regular members of the ACC at a meeting or otherwise shall constitute the act of the Committee

6 3 Terms of Office Unless the initial members of the ACC have resigned or have been removed, their terms of office shall be for the period of time indicated below (except as provided in Section 6 4 below)

6 3 1 The term of office of Position No 1 shall expire five (5) years after commencement

6 3 2 The term of office of Position No 2 shall expire five (5) years after commencement

6 3 3 The term of office of Position No 3 shall expire five (5) years after commencement.

Thereafter, the term of each ACC member appointed shall be for a period of three (3) years provided terms shall be staggered, so only one Member's term shall expire each year, and initial appointees shall draw for a one, two, or three year initial term(s) Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term Members who have resigned or whose terms have expired may be reappointed.

6 4 Appointment and Removal Notwithstanding any other provisions to the contrary, the right to appoint and remove all members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in Declarant until the latter of the following (i) December 31, 2004, (ii) such time as Declarant owns fewer than 25% of the Lots in the Subdivision, Declarant reserves the right to record a waiver of the right herein retained in the Real Property Records of Travis County, Texas Upon any such event, the Board shall appoint all members of the ACC in accordance with the Bylaws of the Association

6 5 Resignations Any member of the ACC may resign at any time from the Committee by giving written notice thereof to Declarant or the Association as the situation requires

6 6 Vacancy. Vacancies on the ACC, however caused, shall be, except as provided in Section 6 4 of this Article, filled by Declarant. A vacancy shall be deemed to exist in case of death, incapacity, resignation or removal of any regular member

6 7 Transfer of Authority to the Association The duties, rights, powers, and authority of the ACC constituted hereby may be assigned at any time, at the sole election of a majority of the regular members of the ACC, to the Board, and from and after the date of such assignment, and the acceptance thereof by the Board, the Board shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein (and in the Bylaws of the Association)

6 8 Address Development Plans and requests for action by the ACC shall be submitted to the ACC at P O. Box 161733, Austin, Texas, 78716, or such other place as may from time to time be designated by the ACC by written instrument recorded in the real Property Records of Travis County, Texas, and the last instrument so recorded shall be deemed the Committee's proper address

6 9 Duties

6 9 1 General It shall be the duty of the ACC to receive, consider and act upon all proposals, plans complaints, requests for determination, Development Plans or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration

6 9.2 Consultant The ACC, may, but need not, hire specialized consultants and incur expenses to aid it in reviewing Development Plans and their incidents The ACC shall not incur consultant fees and expenses that aggregate in excess of \$350 00 without approval from the submitting Owner The cost of such specialized consultants and expenses shall be considered to be a cost of the Development Plan of the Owner and payment of such costs shall be considered as a filing requirement of the Development Plan and such Development Plan will not be considered complete unless and until such costs are paid. Said costs shall be in addition to any required Submission Fee as provided for in Section 6 20 herein

6 10 Meetings The ACC shall meet at its discretion from time to time to perform its duties hereunder. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise

6 11 Action Without Formal Meeting The ACC may take action without formal meeting by consenting in writing to any matter which they might consider at a formal meeting Such written consent shall constitute the act of the Committee For the purpose hereof, written consent shall mean writing signed by two (2) members of the ACC

6 12 Procedure for Submission and Approval of Development Plan

6 12.1 Submission and Approval of a Development Plan shall be in accordance with the Rules promulgated by the

6 12.2 If the ACC fails to approve or disapprove any material or Development Plan submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt, or fails to give notice of its actions as above required, it shall be conclusively presumed that the Committee has approved such materials as submitted If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such

additional or amended materials are received by and receipted for by the Committee. An additional fifteen (15) day extension shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall be deemed automatically disapproved, but may be resubmitted.

6.13 Waiver and Estoppel The ACC's approval of any Development Plan, specifications, drawings or any accompanying materials which require the approval of the ACC shall not be deemed to constitute a waiver of, or create any right of estoppel against the Committee's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

6.14 ACC Rules

6.14.1 The ACC shall have the authority to adopt, amend, add to, replace, rescind or revise procedural or substantive rules from time to time to make more definite and certain, and to carry out the purpose and intent of the provisions of this Declaration. Any conflict between such rule(s) and any provision of this Declaration shall be resolved in favor of the provisions of this Declaration. A copy of such rules, as in effect from time to time, shall be provided to any Owner requesting the same in writing.

6.14.2 Unless and until a political subdivision of the State of Texas regulates such matters by law, the rules promulgated by the ACC relating to the Property may include building codes governing all types of construction on the Property, a sanitary code governing the installation and maintenance of any water wells, wastewater disposal systems, animal sheltering or refuse handling or other health related matters, a fire code, a housing code and other similar codes as the ACC deems necessary and desirable. These building codes, sanitary codes and other codes shall be printed and made available through the ACC to all Owners for inspection.

6.15 Basis for ACC Approval or Disapproval The Subdivision is intended by Declarant to be a unique and cohesive development composed of homes of high quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. Declarant intends that the ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan: (i) compliance or noncompliance with certain objective standards set out in this Declaration or in any rules or guidelines subsequently published or adopted by the ACC, (ii) the nature and quality of the building materials and methods of construction to be used, (iii) the location of the proposed Improvements on the Lot, (iv) the visual impact of the proposed Improvements from the standpoint of style and consistency with other Improvements constructed or approved by the ACC for construction in the Subdivision, (v) such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate. Any person proposing to purchase any Lot in the Subdivision is advised to consult with the ACC concerning intended Improvements prior to purchasing such lot.

- 6 16 Decisions Conclusive All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or rejection of all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration
- 6 17 Liability Neither the ACC nor any member thereof shall be liable to any Owner, or any person or association or entity, for any damage, loss or prejudice suffered or claimed on account of (i) the approval or rejection of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith, (iii) the development of the Property, (iv) the structural capacity or safety features of the proposed Improvement or Structure, (v) whether or not the location of the proposed Improvement or Structure on the building site is free from possible hazards from flooding, or from any other possible hazards whether caused by conditions occurring either upon or off the Property, (vi) soil erosion causing sliding conditions, (vii) compliance with governmental laws, ordinances and regulations; (viii) any decision made or action taken or omitted to be taken under the authority of this Declaration, or (ix) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him Without in any way limiting the generality of any foregoing provisions of this Section, the ACC, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any Development Plan, or any materials submitted to the ACC
- 6 18 Modifications and Waivers The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Article 4 or Article 5 of this Declaration or the ACC Rules Such applications shall contain such information as the Committee may prescribe, and shall affirmatively show that application of such requirements under the circumstances creates unnecessary and undue hardship, and that its modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to Declarant or the Owner of any other Lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it, or may allow oral presentation in support of, or in opposition to the application prior to the decision, at its discretion The Committee shall render a written decision, and shall forward one copy to the applicant, and retain one copy in its records Without limiting the general applications of such sections, the provisions of Section 6 16 and Section 6.17 of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.
- 6 19 Governmental Agency and Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval (s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement of construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy

of such approval(s), certificate(s) or permit(s) be provided to the Committee as a final condition to approval of a Development Plan, or as additional assurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements

- 6 20 **Fees.** In addition to any fees for consultants provided for Section 6 9 2 above, the ACC shall have the right to require a reasonable submission fee ("Submission Fee") for each proposed Development Plan. This fee shall not exceed \$150 00, without approval from the submitting Owner

#### ARTICLE 7

#### Marshall's Harbor HOMEOWNERS ASSOCIATION, INC

- 7.1 **The Association** Declarant shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the Texas Non-Profit Corporation Act, charged with the duties and invested with the powers prescribed by law and set forth in the Certificate, Bylaws and this Declaration. Neither the Certificate nor Bylaws shall for any reason be amended or otherwise change or interpreted so as to be inconsistent with this Declaration
- 7 2 **Membership** Each Owner (whether one or more persons or entities) of a Lot shall, upon and by virtue of becoming such Owner, automatically become a member of the Association and shall remain a member thereof until their ownership ceases for any reason, at which time their membership in the Association shall automatically terminate. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary for any instrument to provide for transfer of such membership in the Association, and no certificate of membership will be issued.
- 7 3 **Voting** All Owners of Lots shall be entitled to one (1) vote for each Lot owned. Any property interest in a Lot entitling the Owner thereof to vote as herein provided which is held jointly or in common by more than one Owner shall require that such Owners thereof designate, in writing, a single Owner who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest. A copy of such written designation shall be filed with the Board before any such vote may be cast, and upon the failure of the Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.
- 7 4 **Quorum for Membership Action** At the first call of any annual or special membership meeting of the Association, such meeting, the presence at the meeting in person or by proxy of 67% of the total votes of the membership shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned to a new date not more than seven (7) days from the current date and the required quorum at such meeting shall be one-half (1/2) the required quorum at the immediately preceding meeting. This procedure shall be

continued until a quorum has been obtained, provided, however, that such reduced quorum shall not be applicable at a subsequent meeting held more than fifteen (15) days following the originally scheduled meeting

- 7.5 Board and Officers The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Certificate and the Bylaws, as the same may be amended from time to time
- 7.6 Powers and Duties of the Association The Association shall have such rights, powers and duties as are set forth in the Certificate and Bylaws, as the same may be amended from time to time
- 7.7 Control of the Association Until the last to occur of (a) conveyance by Declarant of seventy-five percent (75%) in number of Lots in the Subdivision or (b) December 31, 2004, Declarant shall have the exclusive right to elect the members of the Board, unless sooner relinquished by Declarant in its discretion, and the members of the Association shall have no voting rights. Thereafter, the members shall have the right to elect the members of the Board. Members shall retain the right to vote on all other matters properly put before the members, all in accordance with the Certificate and the Bylaws, including the right to modify this Declaration or the Declarant imposed Subdivision Plat Restrictions.
- 7.8 Personal Liability/Indemnity No member of the Board, of any committee of the Association or any of the officers of the Association shall be personally liable to any Owner, or any other party (including the Association), for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, negligence of the Association, the Board, any officer or any other representative or employee of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against all claims and expenses including attorneys' fees reasonably incurred by such person in connection with such action, suit or proceeding, if it is found and determined by the Board or a court that such person (i) acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association, or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith or in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is a director, officer, committee member, employee, servant or agent of the Association or the Board, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise

79 Maintenance Fund Except for the Annual Tax Assessments and Road Assessments described below in Sections 7.11 and 7.12 below, all funds collected by the Association from the Assessments provided for in this Declaration, together with all funds collected by the Association from Assessments imposed on the Lots in the Subdivision by all Supplemental Declarations, shall constitute and be known as the "Maintenance Fund" The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all members to promote the health, safety, recreation, and welfare of the members, including without limitation (i) the installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of the Common Properties and Common Facilities in the Subdivision and any other areas provided by this Declaration or any Supplemental Declaration to be developed or maintained by the Association, such as shrubbery, trees, trails and walkways, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the members, (ii) payment of utility charges in connection with the operation of Common Facilities or use of Common Properties, (iii) payment of charges for private fire protection, garbage collection and other services contracted for by the Association; (iv) charges for liability and property insurance and other insurance related to the Common Facilities, Common Properties and their use and operation, (v) the removal of restrictions or obstructions to flow in any Drainage Easements, (vi) the maintenance of a common antenna or satellite dish for television and radio (if any), (vii) the maintenance of any Common Properties trails, and (viii) the maintenance of the Common Properties and Common Facilities and payment of ad valorem taxes and other Assessments on said Common Properties and Common Facilities.

In the event Declarant shall designate Common Facilities for the use and benefit of all the Owners in the Subdivision which are situated on property owned by Declarant but which then has not been brought within the scheme of this Declaration under the authority provided in Article 2 hereof, the Association shall have the right and authority to allocate and expend such amounts from the Maintenance Fund for construction, repair, operation, administration, management, preservation, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities as its Board shall determine, all at the Board's sole discretion

The Association may, in the Board's sole discretion, give one or more of the purposes set forth in this Section 7.9 preference over other purposes, and it is agreed that expenditures and decisions made by the Association in good faith shall be binding and conclusive on all members

In the event Declarant shall operate any Common Facility in the Subdivision, or such Common Facility shall be operated by others on behalf of Declarant under agreement authorized hereby, and the actual proceeds realized by Declarant from such operation shall be less than the actual costs incurred by Declarant in connection with operation and maintaining any such Common Facility, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all costs actually incurred by Declarant in maintaining and operating such Common Facility in excess of the actual proceeds realized by Declarant from

such operation, as such costs are incurred, to the extent that the balance of the Maintenance Fund from time to time existing exceeds the amount then designated by the Board in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association. Further, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all ad valorem taxes and other Assessments in the nature of property taxes fairly allocable to the Common Properties and Common Facilities prior to the date on which title to such Common Properties and Common Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

7.10 Assessments. The Association shall have the right to make Assessments, including but not limited to the Annual Assessment, Annual Tax Assessment, Road Assessments, Marina Costs Assessment, Wildlife Plan Assessment and Special Assessments described herein, in accordance with this Declaration. The Assessments levied by the Association shall be limited to those reasonably necessary for the performance of the duties and functions of the Association and shall be levied on a uniform basis against each Lot within the Property for the purpose of promoting the recreation, health, safety, and welfare of the residents within the Property and for the improvement and maintenance of the Common Properties and Common Facilities. The Association shall have no right to assess for, nor to create, or construct swimming pools, tennis courts, and other similar recreational facilities.

7.11 Annual Tax Assessment. Ad valorem taxes and other assessments in the nature of property taxes on the Common Facilities and Common Properties will be prorated among all Owners, including all Lots owned by Declarant. The total Common Facilities and Common Properties taxes will be prorated among all Owners and each Owner will pay a share, the numerator of which will be one (1) (for each Lot owned) and the denominator of which will be the number of Lots in the Subdivision(s) at the time the taxes are due.

On January 2<sup>nd</sup> of each year, immediately following the conveyance of the first Lot to an Owner, or at such other time as the Board deems appropriate, the Board shall set the Annual Tax Assessment for payment of taxes for the previous year.

7.12 Road Assessments. Any cost of maintaining, repairing or replacing any private roads included in the Common Properties will be prorated among all Owners, including all Lots owned by Declarant, and shall be assessed either together with or separately from other Assessments provided for herein.

Notwithstanding the foregoing, plat dedicated streets which provide access only to an Exempt Tract if not built at the time Declarant conveys title to the Exempt Tract to an Owner will not be built by Declarant provided however, such Exempt Tract Owner may elect to build such streets within the dedicated Street Easement only and at the Exempt Tract Owner's sole cost and expense and thereafter such street or streets, if built in accordance with the Street Construction Plans as approved by the City of Lago Vista and Declarant, shall thereafter be accepted by the Association and maintained in accordance with relevant provisions of Article VII of this First Amended Declaration.

7 13 Marina Costs Assessments The costs and expenses of the Association in performing, satisfying and observing its obligations, duties, and agreements pursuant to the Declaration of Marina and Boat Slip Easements, Covenants and Conditions and Restrictions ("Marina Declaration") shall be charged to paid by and assessed only to those owners who are Boat Slip Owners as defined in the Marina Declaration and shall be prorated among those Boat Slip Owners and shall be assessed at the same time as other assessments provided for herein

7 14 Annual and Special Assessments

7 14.1. Until changed by the Association in accordance with the Bylaws and this Section, there shall be an annual Assessment (the "Annual Assessment") for each Lot, excluding all Lots owned by Declarant, to be used as provided in Section 7 9 Except as otherwise provided below, the maximum Annual Assessment on each Lot shall be \$300 per Lot, payable in lump sum annually within twenty days following notification of assessment, exclusive of the Annual Tax Assessment and Road Assessment

7.14 1 1 On January 2<sup>nd</sup> of each year, immediately following the conveyance of the first Lot to an Owner, or at such other time as the Board deems appropriate, the Board may set the Annual Assessment for the calendar year at whatever level they deem appropriate within the \$300 limitation set forth above

7.14 1 2 Until such time as the Board sets the Annual Assessment for each Lot, the Annual Assessment shall be \$300 per Lot

7 14 1 3 Once the Annual Assessment has reached the maximum level, the Board may increase the Annual Assessment by a Maximum of fifteen percent (15%) without the express consent of 25% of the membership qualified to vote on such matters

7 14 1 4 Any increase in Annual Assessment not provided for in this Section shall require the assent of seventy-five percent (75%) of the membership qualified to vote on such matters

7 14 2 In addition to the Annual Assessment, the Board may impose a Special Assessment to cover costs arising from the actions of governmental and regulatory agencies, and those in the nature of an emergency 7.15. Collection of Assessments. All Assessments shall be due within twenty (20) days from the date the amount of such Assessment(s) are set by the Board, or, if such Assessment is payable monthly as determined by the Board, in its sole discretion, then such monthly payments shall be due within five (5) days from the monthly payment date set by the Board Any Assessment not paid when due shall accrue interest at the rate of fifteen percent (15%) per annum until paid If, following a failure to pay an Assessment, collection is referred to an attorney, the non-paying Owner will also be responsible for reasonable attorneys' fees Said Assessment(s) shall be subject to the provisions of Section 7 16 and the other enforcement provisions hereof

- 7 15 Succession in Interest. At such time as Declarant or the ACC shall transfer authority to the Association in accordance with the provisions of Section 6.7 hereof, the Association shall, when applicable, assume administration of the ACC in accordance with the Certificate and the Bylaws
- 7 16 Assessments to Run With Land. Each Owner, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and Assessments against such Owner's Lot and/or assessed against such Lot Owner by virtue of his/her ownership thereof, as the same shall become due and payable, without demand
- 7 17 Continuation, Creation and Enforcement of Lien All Assessments and other charges provided for herein which are not paid when due, together with interest and collection costs and expenses as herein provided, shall be secured by a continuing lien and charge in favor of the Association on the Lot subject to such Assessment and any Improvements thereon, which shall bind such Lot and Improvements and the Owner thereof and such Owner's heirs, devisees, personal representatives, successors or assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of such Assessments. To evidence any Assessment liens hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of any unpaid Assessments, the name of the Owner subject to such Assessments, and a description of such Lot, which shall be signed by an officer of the Association and may be recorded in the Office of the County Clerk of Travis County, Texas. Any Assessment liens hereunder shall attach with the priority set forth herein from the date payment is due. Upon the written request of any mortgagee, the Association shall report to such mortgagee any Assessments then unpaid with respect to any Lot on which such mortgagee holds a mortgage

Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Board the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code §51.002 (as same may be amended or revised from time to time hereafter), and in addition to and in connection therewith, by acceptance of the deed to such Lot, expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for), such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Assessments, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and filed in the Office

of the County Clerk of Travis County, Texas. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such liens, it shall be the duty of the trustee, or his successor, as herein above provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto in accordance with the statutory procedures for judicial or non-judicial foreclosure sales in Texas

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its liens, together with costs and attorneys' fees, and to apply as a cash credit against its bid all sums due to the Association covered by the liens foreclosed. From and after any such foreclosure, the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice

It is the intent of the provisions of this Section to comply with the provisions of Texas Property Code §51 002, relating to non-judicial sales by power of sale and, in the event of the amendment of said §51 002 hereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Office of the County Clerk of Travis County, Texas, amend the provisions hereof so as to comply with said amendments to §51 002

In the event such foreclosure is by court proceedings, or arbitration proceedings as provided herein, reasonable legal fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the Association to the extent permitted by law and this Declaration. Each Owner, by becoming an Owner of a Lot in the Subdivision, HEREBY EXPRESSLY WAIVES any objection, including exemption from foreclosure under the homestead provisions of the Constitution of the State of Texas, to the enforcement and foreclosure of the Constitution of the State of Texas, to the enforcement and foreclosure of the herein provided liens in this manner

7 19 Covenant to Pay Assessment Each Owner of any Lot, their heirs, executors, successors, administrators and assigns, by acceptance of a deed therefor, or by entering into a contract of purchase therefor, whether or not it shall be expressed in any such deed, contract of purchase, or other conveyance hereby covenants and hereby agrees

7 19 1 That they will pay to the Association all Assessments and charges assessed by the Association on or prior to their due date, including interest as set forth in this Declaration, costs and reasonable attorney's fees, and

7 19 2 That the Assessments, together with the continuing obligation to pay all future Assessments shall be and remain a charge on the land and shall be secured by a continuing vendor's lien and a lien with a power of sale upon such Owner's Lot

- 7 20 Owner's Liability for Payment of Assessments In addition to assuming the charge and liens imposed by Section 7.17 hereof, each Owner of each Lot, by the acceptance of a deed therefor or by entering into a contract of purchase therefor, shall be deemed to have covenanted, bargained and agreed to be PERSONALLY LIABLE for the payment of each Assessment and any interest and attorneys' fees as provided by this Declaration or applicable law and imposed by the Association during the period in which such Owner holds title to said Lot
- 7 21 Subordination of Lien to Mortgage The liens as provided for in Section 7 17 above, shall be subordinate only to the lien of any first priority mortgage granted or created by the Owner of any Lot to secure the payment of monies advanced and used for the purpose of purchasing and improving such Lot, provided such purchase money or improvement lien shall have been duly perfected prior to the date such Assessments became due The sale or transfer of any Lot shall not affect said liens; however the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the liens of such Assessments as to payments which become due prior to such sale or transfer, provided, however, that such foreclosure or proceeding in lieu thereof shall not extinguish or in any way affect the personal liability of the then record Owner of any such Lot
- 7 22 Association Rules The Association, in addition to and in conjunction with its authority, power and duties as provided herein and in the Certificate and Bylaws, shall have the authority to adopt, amend, add to, replace, rescind or revise rules for the use, enjoyment, and access to, the Common Facilities and Common Properties by the Owner, their tenants, guests, invitees, relatives or other persons. Any conflict between such rule(s) and any provision of this Declaration shall be resolved in favor of the Declaration A copy of such Association rules, as in effect from time to time, shall be provided to any Owner or other user of the Common Facilities or Common Properties requesting the same in writing

## ARTICLE 8 COMMON PROPERTIES

- 8 1 Title to Common Properties, Insurance. Once the Association is formed, Declarant shall convey the Common properties and Common Facilities to the Association, free and clear of all encumbrances, and the Association shall thereafter be responsible for the operation and maintenance of the Common Properties and Common Facilities Any mortgage, pledge, or other conveyance of Common Properties and Common Facilities shall require assent of two-thirds (2/3rds) of the members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter. The Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable Improvements on the Common Properties against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the insurable Improvement on the Common Properties in the event of damage or destruction from any such hazard The Board shall also obtain a public liability policy covering the Common Properties, the Association, and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and may, at the discretion of the Board, obtain directors' and

officers' liability insurance The public liability policy shall have at least a One Million Dollars (\$1,000,00 00) per person limit, as respects bodily injury, and a One Million Dollar (\$1,000,000 00) minimum property damage limit Premiums for all insurance on the Common Properties shall be at the expense of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost

8 2 Extent of Easement The rights and easements of enjoyment created hereby shall be subject to the following

8.2 1 The right of the Association to prescribe rules and regulations for all use, enjoyment, and maintenance of the Common Properties

8 2.2 The right of the Association to sell and convey the Common Properties, or any part thereof, provided such sale or conveyance is approved by two-thirds (2/3<sup>rd</sup>) of the votes of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter, written notice shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting,

8 2 3 The right of the Association to borrow money for the purpose of improving the Common Properties, or any part thereof, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred

8.2.4 The right of the Association to take such steps as are reasonably necessary to protect the Common Properties, or any part thereof, against foreclosure,

8 2.5 The right of the Association to suspend the easements of enjoyment of any member of the Association during which time any Assessment levied under this Declaration remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations

#### ARTICLE 9 EASEMENTS

9 1 Existing Easements The Subdivision Plat may dedicate for use as such, subject to the limitations set forth therein, certain streets, rights-of-way and easements shown thereon, and such Subdivision Plat will establish dedications, limitations, reservations and restrictions applicable to the Property. Declarant and its successors in title may, prior to the Property becoming subject to this Declaration, grant, create, and dedicate by recorded instrument (s) certain other easements, restrictions, right-of-way and related rights affecting the Property All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements, right-of-way and restrictions made by Declarant or successors in title, prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract,

deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property

- 9 2 Changes and Additions. Declarant reserves the right to make changes and additions to the above easements and right-of-way for the purpose of more efficient and economic installation of the Improvements or to create additional easements for use by the Owners. Declarant further reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time and from time to time, rights-of-way and easements for public utility purposes (including, without limitations, gas, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line. Declarant further reserves the right, without the necessity of the joinder of any Owner or other person or entity to grant, dedicate, reserve or otherwise create, at any time and from time to time, rights-of-way and easements for drainage purposes, sanitary purposes and conservational purposes in favor of any person or entity over any portion of the Property.
- 9 3 Installation and Maintenance. There is hereby created an easement upon, across, over and under all the Property for ingress and egress in connection with the installation, replacement, repair, and maintenance of all utilities, including, but not limited to water, gas telephones, electricity, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Structure. Notwithstanding anything contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be located or relocated on the Property until approved by Declarant or the ACC. The utility companies furnishing service shall have the right to remove any trees situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on portions of the Properties abutting such easements.
- 9 4 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Declarant's Improvements require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the Drainage Easements. There shall be no development, Improvements or Structures in any Drainage Easement, except as approved in writing by the ACC.
- 9 5 Easements for Access. Declarant, the ACC and the Association shall have the right and are granted a permanent easement to enter upon any and all Lots for the purpose of maintenance, repair and inspections relating to compliance with this Declaration. Declarant, the ACC and the Association shall have the right to enter any Lot for the purpose of correction of any violation of any covenant contained herein.
- 9 6 Surface Areas. The surface of easement areas for underground utility services may be used for the planting of shrubbery, trees, lawns or flowers. Neither Declarant nor the supplier of any utility service using any easement area shall be liable to any Owner or the Association.

for any damage done by them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area

ARTICLE 10  
GENERAL PROVISIONS

- 10 1 Cost of Performance The cost and expense for performing any obligation or responsibility in this Declaration shall be borne by the person, association or entity charge with such performance or responsibility and shall be subject to the provision of Section 7 17
- 10 2 Extension for Time for Performance If the performance of any act or obligation required by this Declaration is prevented or hindered by act of God, war, labor dispute or other cause or causes beyond the control of the person, association or entity responsible for such performance, then the time for performance of such act or obligation will be extended for the period that such performance was prevented or delayed by such cause, provided, however, this provision shall not apply to the payment of any fees, charges or Assessments required hereunder
- 10 3 Breach Not Ground for Rescission No breach or continuing breach of the restrictions, covenants, condition, duties, or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision hereof
- 10 4 Notice Before Enforcement. Except where damage or injury to persons or property is imminent as a result of the performance of (or failure to perform) any obligation imposed by this Declaration, no proceeding for the enforcement of the restrictions, covenants condition, right and duties imposed, allowed or granted by this Declaration shall be commenced until ten (10) days written notice of wrongful performance or failure of performance is given to the person, association, or entity responsible for such performance and such wrongful performance (or failure to perform) has not been cured within such time Such notice shall be deemed to be given if deposited in the U S Mail, postage prepaid, certified or registered mail, return receipt requested The above ten (10) day period shall commence to run on the date such notice is deposited in the United States Mail in the manner specified above
- 10 5 Enforcement Declarant, the ACC, the Board or any Owner shall have the right to enforce, by proceeding at law or in equity, for damages or injunction or both, all restrictions, covenants, conditions, ACC Rules, Association Rules, rights and duties imposed, allowed or granted by the provisions of this Declaration In any such proceeding, the prevailing parties shall be entitled to recover their costs and expenses, including reasonable attorneys' fees, and such costs and expenses shall be subject to the provisions of Section 7 17 Failure by Declarant, the ACC, the Board or any Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time

- 10 6 Attachment of Covenant on Resale or Remodel This Declaration shall be applicable to the lease or resale of the Property or any Lot, and any remodel or other alteration of any Improvement which must be approved by the ACC through the Development Plan process
- 10 7 Deviation from Approved Development Plan. All Development Plans approved in writing by the ACC shall be strictly followed. Any deviation, change or alteration not in compliance with said Development Plan must be further approved in writing by the ACC. Violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration
- 10 8 Covenants to Run With the Land. The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run with the land within the Property, and shall inure to the benefit of the Owner of any Lot herein, for an initial term of twenty (20) years from the date this Declaration is recorded in the Real Property Records of Travis County, Texas, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10) years.
- 10 9 Modification or Repeal During Initial Term. Any of the provisions of this Declaration may be amended or repealed during the initial twenty (20) year term by a written instrument, executed and acknowledged by Declarant, the Owners of not less than 75% of the Lots, and their respective mortgagees, and recorded in the Real Property Records of Travis County, Texas; provided further, that Owners of not less than fifty percent (50%) of the Lots not owned by Declarant must approve such amendment or repeal
- 10 10 Modification or Repeal During Extension Terms Any of the provisions of this Declaration may be amended or repealed during any ten-year extension term by a written instrument executed and acknowledged by Declarant, the Owners of not less than 70% of the Lots, and their respective mortgagees, and recorded in the Real Property Records of Travis County, Texas.
- 10 11 Severability Invalidation of any of the provisions hereof shall in no way affect or impair the validity of any other provision thereof
- 10 12 Notices Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after being deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association
- 10 13 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the terms and provisions set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas

- 10 14 Singular Terms/Captions and Titles. Unless the context requires a contrary construction, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect the text of the paragraphs, sections and Certificate hereof
- 10 15 Joint and Several Obligations. The terms and conditions of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities become a lessee of a Lot or an Owner, shall be binding upon such lessee or new Owner, and such lessee or new Owner shall be jointly and severally liable with his lessor or his predecessor in interest, as the case may be, for any continuing performance, failure of performance or defective performance imposed hereunder
- 10 16 No Dedication. Nothing contained in this Declaration shall be deemed or interpreted to intend a gift or dedication of any portion of the Property to the general public or for any public purpose whatsoever, such intent being hereby expressly disavowed.
- 10 17 Successors. Deeds of conveyance of any Lot may incorporate the terms and conditions of this Declaration by reference, however, whether or not such reference is made in any or all of said deeds, by becoming an Owner of any of the Property, each such Owner, for himself, herself, or itself, his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself, or itself, and such heirs, personal representatives, successors, transferees and assigns, to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof
- 10 18 Assignment of Rights and Obligations of Declarant. Notwithstanding any provision herein to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder. Any such assignment by Declarant shall be effective upon recordation in the Travis County Real Property Records of an instrument executed and acknowledged by Declarant evidencing such assignment
- 10 19 Word Meanings. The words such as "herein", "hereafter", "hereof", "hereunder" and "herein above" refer to this Declaration as a whole and not merely to a section, paragraph or article in which such words appear unless the context requires otherwise. Whenever used herein, the singular shall include the plural, and the masculine gender shall include the feminine and neuter the vice versa unless the context requires otherwise.
- 10 20 Captions and Section Headings. The captions and headings of various Certificate, sections, paragraphs or subparagraphs of this Declaration are for convenience only and are not to be considered as defining or limiting in any way the intent of the provisions hereof
- 10 21 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection and maintenance by Declarant of Structures, Improvements or signs necessary

or convenient to the development, sale, operation or other disposition of the Property within the Subdivision

10 22 Rentals No portion of a Lot other than the entire Lot, together with the Improvements thereon, may be rented or leased, and then only to a Single Family

10 23 Re-Subdivision. No Lot within the Subdivision shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion of less than all of any such Lot, nor any easement or any other interest therein, shall be conveyed or transferred by any Owner. Declarant reserves the right to change Lot lines and re-subdivide the Property at any time, subject to the provisions of Section 2 3 herein. Each Owner hereby appoints Declarant as his or its Lawful attorney-in-fact, with power to execute, acknowledge, file and record, any appropriate documents, for the purpose of re-subdivision of any Lot or portion thereof, in accordance with the terms of this Declaration. The foregoing power (i) is coupled with an interest, (ii) is irrevocable, (iii) shall survive the dissolution of or resignation of Declarant, (iv) may be exercised for each Owner individually or by listing all of the Owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each Owner

10.24 Combining of Lots. An Owner of two or more contiguous Lots may, with the prior written approval of the ACC, combine said Lots into one or more Lots. Such combination shall be at the sole expense of said Owner. After combination, the resulting Lot or Lots shall be treated for all purposes of this Declaration, including the payment of Assessments and voting rights within the Association as the number of Lots as originally configured. By way of example, should an Owner of three contiguous Lots make an amending plat to create two amended Lots, such Owner shall continue to be assessed and shall be entitled to the number of votes as if such Owner still owned three lots.

10 25 Alternative Dispute Resolution

10 25 1 In the event a dispute arises under this Declaration, Declarant, the Homeowners Association, the ACC, and all other parties claiming an interest in or arising out of this Declaration (individually a "Party" and collectively, the "Parties"), agree to pursue alternative dispute resolution procedures ("ADR") as set out in this section

10 25 2 Dispute: The Parties agree to recognize that a dispute has arisen when one party provides written notice to all other Parties that a dispute is in existence and the Party giving notice desires to undertake ADR. Only those Parties actually involved in any such dispute need be provided with notice

10 25 3 If not an individual, the Party giving notice of dispute shall also designate one (1) fully authorized representative for ADR and negotiating purposes. Within five (5) days of receipt of the notice of dispute, the Party receiving notice shall, if not an individual, designate one (1) fully authorized representative for ADR and negotiating purpose

10 25 4      ADR Procedures

- 10.25.4.1      Within ten (10) days after notice of dispute is received by the receiving Party, all Parties agree to arrange for and conduct a negotiating session. The negotiating sessions shall include all Parties notified that a dispute exists, or, if a lesser number, the Parties needed to fully resolve the noticed dispute. The authorized representatives of each Party shall attend the negotiating meeting. The Parties may schedule such further and additional negotiating meetings as may be desirable until the dispute is resolved.
- 10.25 4 2      Any time after the first direct negotiating meeting occurs, any Party may request mediation of the dispute. Notice of desire to mediate shall be given in the same manner as the notice of dispute, and the Parties shall agree upon a mediator within ten (10) days after the notice to mediate is given. Thereafter, once the mediator is selected, the rules and regulations promulgated by the mediator shall control the mediation proceeding. Mediation shall occur within thirty (30) days of the giving of notice of intent to mediate, or at such other time as may be agreed upon by the Parties. If the Parties cannot agree upon a mediation date, the mediator shall select a date and the Parties shall be bound thereby.
- 10 25 4 3      In the event the dispute is not resolved within sixty (60) days of receipt of the notice of dispute, then, in that event, any Party may give notice of intent to refer this matter to binding arbitration.
- 10 25 4 4      In the event binding arbitration is invoked, the arbitrator shall have full authority to resolve all remaining disputes, including, without limitation, disputes concerning ACC Rules, Association Rules, Assessments, enforcement of Assessments and liens relating to Assessments, including foreclosure of Assessment liens. In the event said arbitrator shall award foreclosure of Assessment liens, foreclosure shall become part of any judicially enforceable award of the arbitrator.
- 10 25 4 5      In the event binding arbitration is invoked, the Parties may select such arbitrator or arbitrators as they may agree upon. In the event the Parties cannot agree within ten (10) days of the notice of referral to arbitration, then, in that event, all remaining disputes shall be tendered to the American Arbitration Association to be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

10 25 5 The Parties agree to engage in ADR procedures in good faith For purposes of this ADR provision, good faith is defined as the appearance at and participation in each ADR procedure described herein with honesty in fact by each participant

10 25 6 All Parties involved in a dispute involving ADR agree to bear the costs of a mediator on an equal pro rata basis The payment of any arbitration costs shall be allocated by the arbitrator

10 25 7 All ADR procedures undertaken pursuant to this section, except binding arbitration, shall be confidential and privileged in nature, and shall be deemed to be an ADR communication as defined in § 154 073 of the Tex Civ Prac & Rem Code and is not subject to disclosure nor use as evidence for any purpose, including impeachment, in any judicial, administrative, or other proceeding Such ADR communications that are discoverable or admissible outside of the ADR procedure are not excluded from discovery or admission as a result of its use in the ADR procedure

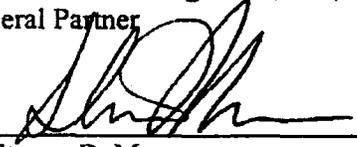
10 25 8 In the event any dispute described in this section is placed in litigation, the court having jurisdiction thereof is hereby advised the Parties intend and prefer to engage in the ADR procedures set forth in this section and the Parties hereby agree and recommend that the matter be referred to the ADR procedures as set forth above upon request of any Party

10 26 Wildlife Management. A majority acreage of the Property is devoted to the management of wildlife consistent with the Wildlife Management Plan ("Wildlife Plan") The term "Wildlife Property" as used herein shall include only that property which has been granted an agricultural appraisal by the Travis County Appraisal District The Wildlife Plan shall be managed and administered by the Marshall's Harbor Homeowners Association, Inc through a permanently designated committee named the Marshall's Harbor Wildlife Co-op Committee ("Co-op") the Co-op shall manage the wildlife property for the benefit of native wildlife species and in accordance with the management practices specified in the Wildlife Plan

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has set its hand and seal  
this 11th day of August, 2000

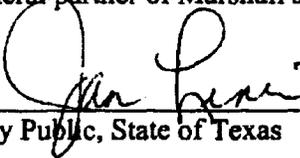
**MARSHALL'S HARBOR, LTD.,**  
A Texas limited partnership

By: Marshall's Point Management, Inc ,  
its General Partner

By   
Steven B Morse  
President

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

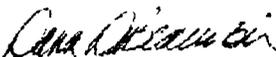
This instrument was acknowledge before me on this 11th day of August, 2000, by Steven B Morse, President of Marshall's Point Management, Inc , a Texas corporation, on behalf of said corporation, in its capacity as general partner of Marshall's Harbor Ltd

  
\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING TO:**  
**Mr. Buckner Hightower**  
**Agent for Declarant**  
**P.O. Box 161733**  
**Austin, Texas 78716**

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**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS

  
08-17-2000 10 31 AM 2000130749  
DAVILAM \$81 00  
DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility carbon or photocopy, discolored paper, etc All blockouts, additions and changes were present at the time the instrument was filed and recorded