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 REAL PROPERTY RECORDS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
PELICAN BAY, SECTION 4

STATE OF TEXAS § KNOW ALL MEN BY THESE PRESENTS:
 COUNTY OF MONTGOMERY §

This Declaration, made on the date hereinafter set forth by PATTEN CORPORATION SOUTHWEST, a Delaware corporation, authorized to do business in the State of Texas, hereinafter referred to as "Developer",

W I T N E S S E T H:

WHEREAS, Developer is the owner of that certain tract of land described as Reserves A and B and a portion of Reserve C, Pelican Bay, Section One, a subdivision in Montgomery County, Texas as per map or plat thereof recorded in Cabinet E, Sheet 119B, Map Records of Montgomery County, Texas, which tract of land has been replatted into that certain subdivision known as "PELICAN BAY, SECTION FOUR", being a subdivision of 13.2294 acres of land situated in the Timothy Cude Survey, A-12, and being a replat of Unrestricted Reserves A and B and a partial replat of Reserve C of Pelican Bay, Section One, according to the plat ("Plat") of said Pelican Bay, Section Four, recorded in the office of the County Clerk of Montgomery County, Texas on the 12th day of March, 1992, after having been approved as provided by law, and being recorded in Cabinet G, Sheet(s) 033B and 034A, of the Map Records of Montgomery County, Texas (hereinafter referred to as the "Property" or the "Subdivision"); and

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in said Subdivision;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon Pelican Bay, Section 4, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof, except that no part of this Declaration or the Restrictions shall be deemed to apply in any manner to the areas identified or platted as Unrestricted Reserves on the Plat or to apply in any manner to any area not included in the boundaries of said Plat. Developer also declares that this Subdivision shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

ARTICLE I

DEFINITIONS

Section 1.01. "Annexable Area" shall mean and refer to any additional property made subject to the jurisdiction of the Association pursuant to the provisions set forth herein, including, without limitation, any property adjacent to or in the proximity of the Property.

Section 1.02 "Association" shall mean and refer to the Pelican Bay on Lake Conroe Property Owners Association, and its successors and assigns.

Section 1.03 "Pelican Bay" shall mean refer to this Subdivision and any other sections of Pelican Bay hereafter made subject to the jurisdiction of the Association.

Section 1.04 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.05 "Builders" shall mean and refer to persons or entities that purchase lots and build speculative or custom homes thereon for third party purchasers.

Section 1.06 "Common Area" shall mean all real property (including the improvements thereto) within the Subdivision owned by the Developer and/or the Association for the common use and enjoyment of the Owners and/or any other real property and improvements, including, but not limited to, private roads and streets, parks, open spaces, lakes, lake road crossings, dams, greenbelt areas and other facilities and areas designated on the Plat within the Common Area to which the Owners may hereafter become entitled to use.

Section 1.07 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot.

Section 1.08 "Developer" shall mean and refer to Patten Corporation Southwest and its successors and assigns.

Section 1.09 "Lake" shall mean and refer to Lake Conroe.

Section 1.10 "Lot" shall mean and refer to any plot of land identified as a lot or homesite on the plat of the subdivision. For purposes of this instrument, "Lot" shall not be deemed to include any portion of any "Reserves" or "Unrestricted Reserves", (defined herein as any Reserves and Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area.

Section 1.11 "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

Section 1.13 "River Authority" shall mean and refer to the San Jacinto River Authority ("SJRA").

Section 1.14 "Utility District" shall mean and refer to the Point Aquarius Municipal Utility District.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 Recorded Subdivision map of the Property. The plat ("Plat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the private roads and streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of the Subdivision recorded or hereafter recorded shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or one behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 Easements. Developer reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Montgomery County, Texas, for the purpose

of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or the Utility District shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and laws or any other property of the Owner on the property covered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Developer to any of the Lots by contract deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, electric lighting, electric power, telegraph or telephone purposes and other easement hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot.

Section 2.04 Utility Easements.

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents.

(b) No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

Section 2.05 Road and Street Easements. The roads and streets in this Subdivision are not dedicated to the public, but shall be conveyed to the Association by the Developer on the Control Transfer Date, as hereinafter defined, and operated as private streets by the Association, with each Owner having an easement for the use and benefit of such Owner of a Lot fronting thereon or adjacent thereto, which easements shall include rights of ingress, egress, and passage over and along said streets in favor of the Developer, the Association, lot owners in all other Sections of Pelican Bay Subdivision, the Owners and their respective legal representatives, successors and assigns, guests, invitees, licensees, designees, and the successors-in-title to each Lot Owner and in favor of the invitees and designees of each

successor-in-title to each Lot Owner, but not in favor of the public.

Subject to the terms and conditions of this Section 2.05, the private roads and streets in this Subdivision, as shown on the Plat, are hereby dedicated as utility easements strictly for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground) cable television, or any other utilities that the Developer sees fit to install (or permit to be installed) in, across and/or under the Property. The dedication of the private roads and streets as utility easements shall not affect the Association's operations of the roads and streets in this Subdivision as private roads and streets, as set forth above in this Section 2.05.

Notwithstanding the Association's operation of the roads and streets in the Subdivision as private streets, Developer hereby grants to law enforcement agencies and officers of Montgomery County and the State of Texas, other governmental law enforcement bodies, fire department officials and fire protection personnel, vehicles and equipment, ambulance, school buses, Montgomery County officials and personnel and other governmental officials and personnel, rights of ingress and egress and passage over and along said private roads and streets of the Subdivision in connection with the performance of their official functions.

Section 2.06 Existing Restrictions. It is expressly agreed and understood that the title conveyed by Developer to all Lots shall be subject to the Declaration of Covenants and Restrictions for Unrestricted Reserve A, Pelican Bay, Section One previously filed for record under Clerk's File No. 8731853 in the Real Property Records of Montgomery County, Texas and the Declaration of Covenants and Restrictions for 1.841 acres out of Unrestricted Reserves C and D, Pelican Bay, Section One, previously filed under Clerk's File No. 8731852, in the Real Property Records of Montgomery County, Texas.

ARTICLE III

USE RESTRICTIONS

Section 3.01 Single Family Residential Construction. No building shall be erected, altered or permitted to remain on any Lot other than one detached single family dwelling used for residential purposes only and not to exceed three (3) stories in height and a private garage (or other covered parking facility), provided, however, that the servant's quarters structure and garage will not exceed the main dwelling in height or number of stories. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes or trailers being placed on said Lots, or the use of said Lots for duplex houses, condominiums, townhouses, garage apartments, or apartment houses; and no Lot shall be used for business, educational, religious or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes.

Section 3.02 Designation of Lot Types.

(a) Waterfront Lots: Lots 1, 2, 3, 4, 5 in Block One and Lots 1 and 2 in Block 2 in the Subdivision shall be defined as Waterfront Lots.

(b) Interior Lots: All other lots in the Subdivision shall be defined as Interior Lots.

Section 3.03 Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may, with the prior written approval of the Architectural Control Committee, consolidate such Lots or portions into one building site, with the

privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the Lot lines as indicated to the Plat. Any such composite building site must have a frontage at the building set-back line of not less than the minimum frontage of all Lots in the same block.

Section 3.04 Minimum Square Footage Within Improvements. The living area of the main residential structure, located on any Lot, exclusive of porches and parking facilities shall be as follows:

(a) **Waterfront Lots:** Minimum living area shall be not less than 1,600 square feet, with at least 1,000 square feet thereof on the first floor of a two-story home.

(b) **Interior Lots:** Minimum living area shall be not less than 1,600 square feet, with at least 1000 square feet on the first floor of a two story home.

Section 3.05 Location of the Improvements upon the Lot. No residential structure, carport or any other improvement shall be located on any Lot nearer to the front, rear, side or streetside Lot building line shown on the Plat or nearer to the property lines than the minimum building set-back lines shown on the Plat. For purposes of this Declaration, air compressors, eaves, steps, and unroofed terraces shall not be considered as part of a residential structure or other improvement. This covenant shall not be construed to permit any portion of a building foundation on a Lot to encroach upon an easement. The main residential structure on any Lot shall face the front of the Lot unless a deviation is approved in writing by the Architectural Control Committee.

Section 3.06 Residential Foundation Requirements. All building foundations shall consist of concrete slabs, unless the Architectural Control Committee approves a different type of foundation when circumstances such as topography of the Lot make it impractical to use a concrete slab for all or any portion of the foundation of the building improvements constructed on the Lot. Minimum finished slab elevation for all structures shall be above the 100 year flood plain elevation, or such other level as may be established by the Commissioner's Court of Montgomery County, Texas, and other applicable governmental authorities.

Section 3.07 Sequence of Building. No housing for garage, servant's quarters, or other service function of the dwelling establishment shall be erected or placed upon any building site until construction of the dwelling property has been started and is actually under way. Any structure begun must be diligently completed within a reasonable length of time, not be exceed one (1) year.

Section 3.08 Use of Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the Subdivision.

Section 3.09 Water Supply. Water for this Subdivision will be provided by distribution lines connected with the central water system of the Utility District and no water wells shall be made, bored or drilled, nor any type or kind of private system installed or used except that a private well may be drilled at the owner's option for sprinkler systems or similar non-drinkable use, upon approval of the Architectural Control Committee and any required

governmental authorities. Wells may be drilled by the Association for use in watering commons and filling of ponds in commons.

Section 3.10 Sanitary Sewers. No outside, open or pit type toilets will be permitted in this Subdivision. All dwellings constructed in this Subdivision prior to occupancy must have a sewage disposal system installed to comply with the requirements of the appropriate governing agency and must immediately tie onto the central sewer system of the Utility District.

Section 3.11 Walls and Fences. Walls and fences, if any, must be approved by the Architectural Control Committee and shall be closer to front street property lines than the front of the dwelling located on said lot and no closer than five feet to side street lines. Any erection of any wall, fence or other improvements on any easement is prohibited. Fences and walls will be constructed of ornamental iron, wood or masonry.

Section 3.12 Prohibition of Offensive Activities. Without expanding the permitted use of the Lots, no activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes. No noxious or offensive activity of sort shall be permitted nor shall anything be done to the Subdivision. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision. No exterior speaker, horn, whistle, bell or other sound device, except security and fire devices used exclusively for security and fire purposes, shall be located, used or placed on a Lot. Without limitation, the discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 3.13 Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 3.14 Parking of Vehicles or Equipment. No motor vehicle or non-motorized vehicle (including without limitation, boats, trucks and recreation vehicles), trailers, campers, motorcycles, off-road motor bikes, bicycles, golf carts, go carts, machinery or equipment of any kind may be parked or stored for longer than ten (10) hours or on a semi-permanent or daily basis on any part of a road, street, easement, right-of-way, or Common Area.

Section 3.15 Signs, Advertisements, Billboards. No sign, advertisement, billboard, or advertising structure of any kind may be erected or maintained on any Lot in the Subdivision except for a builder's sign during construction and sales period of improvements, which shall consist of one sign not more than five (5) square feet. Additionally, street signs may be installed within the Subdivision by the Developer or the Association.

The Developer or the Association (and/or any agent designated in writing by Developer or the Association) shall have the right to remove and dispose of any such prohibited sign, advertisement, billboard or advertising structure which is placed on any Lot, and in doing so shall not be subject to any liability for trespass or any other tort in connection therewith or arising from such removal nor in any way be liable for any accounting or other claim by reason of the disposition thereof.

Section 3.16 Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept provided

that they are not kept, bred or maintained for commercial purposes and do not become a nuisance or threat to other Owners.

Section 3.17 Mineral Development. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Provided, however, that this provision shall not prevent the leasing of the Subdivision or any portion thereof, for oil, gas and mineral purposes and the development of same, it being contemplated that the portion or portions of the subdivision may be developed from adjacent lands by directional drilling operations.

Section 3.18 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points ten feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within five feet from the intersection of the street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 3.19 Street or Passage Ways. No street or passageway shall be erected on, over or through any lot or block (except driveways to a house located on such lot or block) except as shown on the map or plat of such subdivision and except for any common driveway that might be constructed by consent of the Owners of Lots 1, 2, 3, 4 and 5 in Block 1 of the Subdivision.

Section 3.20 Cutting Trees in R.O.W. No trees over five inches in diameter will be removed from street right-of-way lying between ditches or curbs, and private property lines except as is absolutely necessary for access by automobile from street lots.

Section 3.21 Drainage. Natural established drainage patterns of streets, lots or roadway ditches will not be impaired by any person or persons. Driveway culverts will be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. The breaking of curbs for drive installations will be accomplished in a good and workmanlike manner and such break will be re-cemented without hinderance to drainage and such work is subject to the inspection and approval of the Architectural Control Committee. No curbs will be broken prior to Architectural Control Committee approval.

Section 3.22 Lot Maintenance. All Lots shall be kept at all times in a neat, attractive, healthful and sanitary condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon cut and shall in no event use any Lot for storage of materials or equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. All yard equipment or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, so as to conceal them from view of neighboring Lots, streets or other property. In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, without liability to the Owner, Contractor or any occupants of the Lot in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Lot, cut, or cause to be cut, such weeds and grass and remove, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to

secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of such Lot for the cost of such work and associated materials, plus a fee of \$1.00 per month for each instance. Payment thereof shall be collected by adding the charges to the Maintenance Charge and shall be payable on the first day of the next calendar month with the regular monthly Maintenance Charge payment.

Section 3.23 Exterior Maintenance of Building. In the event the owner of any building in the subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Association and/or the Developer will give such owner written notice of such conditions. Fifteen (15) days after notice of such condition to owner, and failure of owner to begin and continue at a diligent, reasonable rate of progress to correct such condition, the Association and/or the Developer may enter upon said premises, without liability to Owner, to do or cause to be done any work necessary to correct said situation. The owner thereof shall be billed for cost of necessary repairs, plus ten (10%) percent. All monies so owed the Association will be added to the Maintenance Charge and shall be payable on the first day of the next calendar month with the regular monthly maintenance charge payment.

Section 3.24 Antennae and Aerial Poles. No outside aerial pole, antennae or other device shall project above the highest ridge of the house by more than fifteen (15) feet.

Section 3.26 Waterfront Lots; Construction of Pier, Docks, and Boat Slip.

(a) No pier, dock, boat slip, or other structure shall be constructed on any lot other than Waterfront Lots and, on said Waterfront Lots, shall not be constructed or project beyond the Lot line or into the water of Lake Conroe (whether within or outside of the Lot line), unless prior written approval is given by the Architectural Control Committee ("Committee") and such improvement complies with the specifications set forth the by River Authority. Architectural approval shall be granted or withheld based upon (i) architectural design and character of improvements, (ii) engineering design and specifications of planned structures, and (iii) whether or not proposed improvements conform to the Architectural Control Committee's pre-determined plan for such improvements. No pier, dock or boat slip shall be higher than the existing bulkhead or if there is no bulkhead then the 207.0 NGVD contour line of Lake Conroe.

(b) In addition to being approved by the Committee, all plans for the pier, dock, boat slip, or other structure to be constructed on the Lot which projects beyond the Lot line or into the water of Lake Conroe, (whether within or outside of the Lot line), must satisfy the requirements of and be approved in writing in the form of a permit by the River Authority prior to beginning construction.

(c) A pier, dock, or boat slip may not project more than fifteen feet (15') into the Lake as measured from the existing shoreline or bulkhead. A pier may not be constructed unless and without constructing at the same time a boat slip or other improvements as may be required by the Committee in its plan for such structures. The bulkhead along the Lake shoreline shall not be cut without submitting a plan to the Committee by a Registered Professional Engineer and approved in writing by the Committee. No improvements or modifications of any kind to any approved pier, dock, boat slip, or other improvement constructed by an Owner shall be made unless prior written approval is given by the Committee and all such improvements must confirm to the Committee's pre-determined plan for such improvements.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEESection 4.01 Basic Control

(a) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original constructed, on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality and color of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography and finished grade elevation.

(b) Each application made to the Committee shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Association.

Section 4.02 Architectural Control Committee.

(a) The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the election of the Architectural Control Committee of the Association (sometimes herein referred to as the "Committee"), in which event such authority shall be vested in and exercised by the Committee (as provided in (b) below), hereinafter referred to, except as to plans and specifications and plot plans theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plot plans. The term "Committee", as used in this Declaration, shall mean or refer to the Developer or to the Pelican Bay Architectural Control Committee composed of members of the Association, as applicable.

(b) At such time as seventy-five percent (75%) of all of the Lots in the Subdivision and in all other future sections of Pelican Bay (as platted, from time to time hereafter referred to as the "Control Transfer Date"), the Developer shall cause an instrument transferring control to the Association to be placed of record in the Real Property Records of Montgomery County, Texas (which instrument shall include the Control Transfer Date). Thereupon, the Association shall elect a committee of three (3) members to be known as the Pelican Bay Architectural Control Committee. From and after the Control Transfer Date, each member of the Committee must be an Owner of property in some Section of Pelican Bay Subdivision. Additionally, the Developer shall have the right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Real Property Records of Montgomery County, Texas.

Section 4.03 Effect of Inaction. Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the authority exercising the prerogative of approval or

disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within thirty (30) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

Section 4.04 Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

Section 4.05 Minimum Construction Standards. The Developer or the Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and such Developer or Committee shall not be bound thereby.

Section 4.06 Variance. The Developer or the Committee, as the case may, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Committee, when circumstances such as topography, natural obstructions, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. The Developer and the Committee reserve the right to grant variances as to building setback lines, minimum square footage of the residence and other items. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance effect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

ARTICLE V

PELICAN BAY ON LAKE CONROE PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. Every person or entity who is a record owner of any Lot which is subject to the Maintenance charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, the Directors of

the Association shall also be Members of the Association (as more particularly described in the By-laws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association.

Section 5.02 Non-Profit Corporation. Pelican Bay on lake Conroe Property Owners Association, Inc., a non-profit corporation, has been (or will be) organized and it shall be governed by the Articles of Incorporation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 5.03 Bylaws. The Association has adopted or may adopt whatever Bylaws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

Section 5.03 Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;

(b) the right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Areas;

(c) the right of the Association, in accordance with its Articles and Bylaws (and until 75% of all lots in the Subdivision are sold, subject to the prior written approval of the Developer), to (i) borrow money for the purpose of improving and maintaining the streets and roads within the Subdivision, Lakes Marina, Common Areas and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and (ii) mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;

(d) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid;

(e) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the "Rules and Regulations", as hereinafter defined, which suspension shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of such infraction or violation; and,

(f) the right of the Association, subject, until 75% of all lots in the Subdivision are sold, to the prior written approval of the Developer, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, for such purposes and subject to the provisions of this Declaration.

Section 5.05 Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities of the Member's immediate family living in the Member's residence), his contract purchasers who reside on the Property (collectively, the "Related Users").

ARTICLE VI

MAINTENANCE FUND

Section 6.01 Maintenance Fund Obligation. Each Owner of a lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association a monthly maintenance charge (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

Section 6.02 Basis of the Maintenance Charge

(a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund", which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot (or residential building site) to the Association monthly, in advance, on or before the first day of each calendar month, beginning with the first day of the second full calendar month after the date of purchase of the Lot, or on such other basis (monthly, quarterly or semi-annually) as the Developer or the Board of Directors of the Association may designate in its sole discretion. Provided, however, in the event as Owner obtains consent from the Committee for a Composite Building Site pursuant to Section 3.03 hereof, of one Lot for the Composite Building Site beginning upon the completion of the improvements thereon.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot.

(c) The exact amount of the Maintenance Charge applicable to each Lot will be determined by the Developer or the Board of Directors of the Association during the month preceding the due date of the Maintenance Charge. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provision hereof.

(d) The Maintenance Charge will include a monthly charge for the cost of electric energy to provide street lighting in the subdivision. Such charge will be included in the monthly bill to each lot owner for electric services from Gulf States Utilities Company (or successor company supplying electric service) and shall be in addition to all other charges which such Owner may directly incur for residential electric service. The exact amount of the street lighting charge will be determined (and adjusted from time to time) by Gulf States Utilities Company (or successor company supplying electric service), as outlined under provisions of Gulf States Utilities Rate Schedule RLU, which may be changed without notice.

(e) The Maintenance Charge described in this Article VI and other charges or assessments described in this Declaration shall not, without the consent of the Developer, apply to the Lots owned by the Developer. The Developer, prior to the Control Transfer

Date, and the Association, from and after the Control Transfer Date, reserve the right at all times in their own judgement and discretion, to exempt any Lot ("Exempt Lot"), in the Subdivision from the Maintenance Charge, including, without limitation, Lots owned by Builders, and the exercise of such judgement and discretion when made in good faith shall be binding and conclusive on all persons and interests. If an Exempt Lot is sold to any party, the Maintenance Charge shall be automatically be reinstated as to the Exempt Lot and can only be waived at a later date pursuant to the provisions of the preceding sentence. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, shall have the further right at any time, and from time to time, to adjust or alter said Maintenance Charge from month to month as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 6.03 Utility Standby Charges. In addition to the Maintenance Charge, each Lot shall also be subject to a monthly utility standby charge, in the amount not to exceed \$7.50 per month, payable directly to the Utility District, commencing on the first day of the first calendar month following the month in which a waterline and a sanitary sewer line are extended by the Utility District to a property line of the subject Lot and terminating upon the completion of the construction of a residence on such Lot and the connection of such residence to such waterline and sanitary sewer line and the payment by the Owner of all necessary tap or connection fees. The amount of the utility charge shall be determined by the Utility District and shall be payable monthly, quarterly, semi-annually, as determined by the entity collecting said utility charge. However, the utility charge shall be subject to a prorata rebate in the event that a residence is completed during such year. Payment of the aforesaid utility charge is and shall be secured by the same lien which secures the Maintenance Charge, which lien shall be assigned by the Association to the Utility District. This utility standby charge shall not apply to lots owned by the Developer and all lots and property owned by the Developer are exempted from said utility standby charges. The Utility District shall secure payment of the utility standby charges by a lien against each lot which is hereby reserved in the deed from Developer to the purchaser of each lot in the Subdivision.

Section 6.04 Creation of Lien and Personal Obligation. In order to secure the ~~payment of the Maintenance~~ Charge, and other charges and assessments hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Developer to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to

exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgement for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.04 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice-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 Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

As provided above, the Developer or the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner or a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

Section 6.05 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and

acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

Section 6.06 Liens Subordinate to Mortgages. The liens described in this Article VI and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide, third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such holding acquiring title to a Lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or form the lien thereof. Any other sale or transfer of a Lot shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of the lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI.

Section 6.07 Purpose of the Maintenance Charge. The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision and other portions of the Annexable Area which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described in Article VIII, including the maintenance of the Common Areas and the establishment and maintenance of a reserve fund for maintenance of the Common Area (including, without limitation, the private roads and streets). The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgement of the Association, will tend to maintain the property values in the Subdivision, including, but no limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area as may from time to time be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgement of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 6.08 Exempt Property. The following property subject to this Declaration shall be exempt from the Maintenance

Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas; however, no land or improvements devoted to dwelling use shall be exempt from said Maintenance Charge; and (d) the properties of Developer as provided in Section 6.02 and 6.03.

Section 6.09 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually, information on the Maintenance Fund.

ARTICLE VII

DEVELOPER'S RIGHTS AND RESERVATIONS

Section 7.01 Period of Developer's Rights and Reservations. Developer shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Common Area from the date hereof, until the earlier to occur of (i) the Control Transfer date or (ii) Developer's written notice to the Association of Developer's termination of the rights described in Article VII hereof. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of a Lot by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Developer. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

Section 7.02 Right to Construct Additional Improvements in Common Area. Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional improvements within the Common Area at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in the increase of such Maintenance Charge. Developer shall, upon the Control Transfer Date, convey or transfer such improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in this Declaration.

Section 7.03 Developer's Rights to Use Common Areas in Promotion and Marketing of the Property and Annexable Area. Developer shall have and hereby reserves the right to reasonable use of the Common Area and of services offered by the Association in connection with the promotion and marketing of land within the boundaries of the Property and Annexable Area. Without limiting the generality of the foregoing, Developer may erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as Developer may reasonably deem necessary or proper in connection with the promotion, development and marketing of land within the Property and Annexable Area; may use vehicles and equipment within the Common Area for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Property and Annexable Area, who are not Owners or Members of the Association, to use the Common Area at reasonable times and in reasonable numbers; and may refer to the services offered by the

Association in connection with the development, promotion and marketing of the Property and Annexable Area.

Section 7.04 Developer's Rights to Grant and Create Easements. Developer shall have and hereby reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easement, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision. located in on, under, over and across (i) the Lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements. Developer also reserves the right, without the consent of any other Owner or the Association, to (i) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision to and from F.M. 1097 for the benefit of owners of property, regardless of whether the beneficiary of such easements own property which is hereafter made subject to the jurisdiction of the Association and (ii) permit owners of property within the Annexable Area which is not made subject to the jurisdiction of the Association to use the recreational facilities of the Association and other Common Area, including the Lakes, provided that said owners pay to the Association their proportionate share of the cost of operating and maintaining said recreational facilities and Common Areas.

Section 7.05 Developer's Rights to Convey Additional Common Area to the Association. Developer shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and improvements thereon, if any, to the Association as Common Area at any time and from time to time in accordance with this Declaration, without the consent of any other Owner of the Association.

Section 7.06 Annexation of Annexable Area. Additional residential property and common areas outside of the Subdivision including, without limitation, the Annexable Area, may, at any time and from time to time, be annexed by the Developer into the real property which becomes subject to the jurisdiction and benefit of the Association, without the consent of the Owners or any other party; provided, however, such additional residential property outside of the Annexable Area may be made subject to the jurisdiction of the Association by the Developer. The owners of lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Areas that are or may become subject to the jurisdiction of the Association, provided that such annexed property is impressed with and subject to at least the Maintenance Charge imposed hereby.

ARTICLE VIII

DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 8.01 General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision and any portion of the Annexable Area which becomes subject to the jurisdiction of the Association. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

Section 8.02 Duty to Accept the Property and Facilities Transferred by Developer. The Association shall accept title to any property, including any improvements thereon and personal property transferred to the Association by Developer, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Developer may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Association by Developer shall be within the boundaries of the Property or Annexable Area. Any property or interest in property transferred to the Association by Developer shall, except to the extend otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions annexing such property to the Common Area, and all easements, covenants, conditions, restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by the Developer shall impose upon the Association any obligation to make monetary payments to Developer or any affiliate of Developer including, but not limited to, any purchase price, rent, charge or fee. The property or interest in property transferred to the Association by Developer shall not impose any unreasonable or special burdens of ownership of property, including the management maintenance, replacement and operation thereof.

Section 8.03 Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Areas shall include, but not be limited to the following: establishment, operation and maintenance of a security system for the Subdivision; landscaping, maintenance, repair and replacement of the private roads and streets; maintenance, repair and replacement of the private roads and streets, roadside ditches and culverts, culvert pipes underneath streets, bridges, traffic control improvements (street lights); mowing of street right-of-ways and other portions of the Subdivision; and management, maintenance, repair and upkeep of the marina.

Section 8.04 Other Insurance Bonds. The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 8.05 Duty to Prepare Budgets. The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas.

Section 8.06 Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 8.07 Duty to Provide Annual Review. The Association shall provide for an annual unaudited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

Section 8.08 Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

Section 8.09 Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on the Property and may demolish existing improvements.

Section 8.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, Marina, and the use of any other property, facilities or improvements owned or operated by the Association.

Section 8.11 Power to Enforce Restrictions and Rules and Regulations. The Association (and any Owner with respect only to the remedies described in (ii) or (iii), below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iv) by exclusion, after notice and hearing, of any Member or Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (v) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (vi) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vii) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or such Rules and Regulations by such Member or a Related User; and (viii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorney's fees incurred by the Association with respect to exercising such remedy.

Before the Board may invoke the remedies provided above, it shall give registered notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a

violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 8.12 Power to Grant Easements. In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area. Additionally, the Association, from and after the Control Transfer Date, shall have the power to grant access, utility, drainage, water facility and other similar easements in, on, over and under Lots provided that such easements do not unreasonably interfere with the rights of the Owner of such Lots.

Section 8.13 Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate or transfer any Common Areas or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, which power may be exercised (i) prior to the Control Transfer Date by the Board of Directors and (ii) from and after the Control Transfer Date by the Association, with the approval of not less than two-thirds (2/3rds) of the Members agreeing in writing or by voting at any scheduled meeting of the Members and with the prior written approval of the Developer. The Association may, subject to the limitations of the preceding sentence, convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01 Term. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the ten Owners (including the Developer) of the Lots has been recorded agreeing to amend or change, in whole or in part, this Declaration.

Section 9.02 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Developer) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Declarant) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of

Montgomery County, Texas, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination.

Section 9.03 Amendments by the Developer. The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision.

Section 9.04 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity of unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 9.05 Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that (i) prior to the Control Transfer Date any such merger or consolidation shall be approved (in writing or at a meeting duly called for such purpose) by two-thirds (2/3rds) of the Directors and (ii) from and after the Control Transfer Date any such merger or consolidation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Members of the Association and the Developer.

Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of the other association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association will be subject to the covenants and restrictions established by this declaration within the Subdivision, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration, except

as changed by amendment of this Declaration or by the plan of merger or consolidation. In the event of any inconsistency between the terms and provisions of this Declaration and the terms and provisions of any of the merger or consolidation documents, the terms and provisions of the merger or consolidation documents shall control.

Section 9.06 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 9.07 Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Developer and the Association, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 9.08 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien, or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 9.09 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein", "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto.

Section 9.10 Effect on Annexable Area. The provisions of this Declaration do not impose any restrictions whatsoever or otherwise encumber the Annexable Area, unless and until portions of the Annexable Area are made subject to the jurisdiction of the Association by a separate instrument executed solely by Developer or its successors and assigns and any lienholders, which instrument is recorded in the Real Property Records of Montgomery County, Texas.

Section 9.11 Developer's Rights and Prerogatives. Prior to the Control Transfer Date, the Developer may file a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for the Developer's (i) discontinuance of the exercise of any right or prerogative provided for in this Declaration to be exercised by the Developer or (i) assignment to any third party owning property in the Subdivision or Annexable Area, of one or more of Developer's specific rights and prerogatives provided in this Declaration to be exercised by Developer. The assignee designated by Developer to exercise one or more of Developer's rights or prerogatives hereunder shall be entitled to exercise such right or prerogative until the earlier to occur of the (i) Control Transfer Date or (ii) date that said assignee files a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for said assignee's discontinuance of the exercise of said right or prerogative. From and after the date that the Developer discontinues its exercise of any right or prerogative hereunder and/or assigns its right to exercise one or more of its rights or prerogatives to an assignee, the Developer shall not incur any liability to any Owner, the Association or any other party by reason of the Developer's discontinuance or assignment of the exercise of said right(s) or prerogative(s).

9.12 Electric Utility Service. Prior to beginning any construction on a lot, each lot owner, at his expense, shall be

required to install underground electric service lines from the transformer or source of feed to the meter location on said lot. Further, each lot owner may expect to pay a charge for connection to such electric utility service, and the owner is obligated to contact Gulf States Utilities Company to determine such charge and make arrangements for the installation of said service lines and connection to the electrical distribution system. Owner shall also be responsible for all charges for all utility service furnished to Owner's lot.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand as of this 5th day of FEBRUARY, 1992.

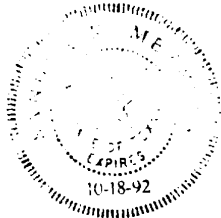
PATTEN CORPORATION SOUTHWEST

By [Signature]
Name Charles D. Patterson
Title Pres.

STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 5th day of FEBRUARY, 1992, by CHARLES D. PATTERSON, PRESIDENT of PATTEN CORPORATION SOUTHWEST, a Delaware corporation, on behalf of said corporation.



[Signature]
Notary Public, State of Texas

777-01-2455

JOINDER OF LIENHOLDER

The undersigned, NORTHWEST BANK, an owner and holder of an existing mortgage and lien upon and against a portion of the real property described in the foregoing Declaration as "Property", as such mortgagee and lienholder, does hereby consent to and join in this Declaration.

This consent and joinder shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the Lots and all appurtenances thereto, subject to the Restrictions hereby agreed to, with however, the express stip- *

Signed by the undersigned officer of Northwest Bank, duly authorized, this 3rd day of February, 1992.

NORTHWEST BANK

By Raymond Ross Jr.
Name: Raymond Ross Jr.
Title: Sr. V. P.

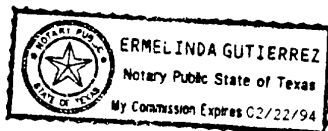
ulation that the mortgage and liens owned and held by the under- *
signed are and shall remain superior to any and all liens or charges
imposed or created by this Declaration or provided for in this
Declaration.

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 3rd day
of February, 1992, by Raymond Ross, Jr.,
Senior Vice President of Northwest Bank, in the capacity therein
stated.

Ermelinda Gutierrez
Notary Public, State of Texas



JOINDER OF LIENHOLDER

The undersigned, FOOTHILL CAPITAL CORPORATION, an owner and holder of an existing mortgage and lien upon and against a portion of the real property described in the foregoing Declaration as "Property", as such mortgagee and lienholder, does hereby consent to and join in this Declaration.

This consent and joinder shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the Lots and all appurtenances thereto, subject to the Restrictions hereby agreed to. Provided further, this consent and joinder shall not be construed or operate to subordinate said mortgage or lien owned and held by the undersigned to the liens set forth in Article VI of this Declaration and shall not authorize or permit Patten Corporation Southwest, as the Developer, to grant or convey any additional easement or common area not contained and set forth on the original Plat filed with Montgomery County, Texas. The liens owned and held by the undersigned are and shall remain superior to any and all liens or charges imposed or created by this Declaration.

Signed by the undersigned officer of Foothill Capital Corporation, duly authorized, this 20th day of FEBRUARY, 1992.

FILED FOR RECORD

92 MAR 12 PM 3:04

Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

FOOTHILL CAPITAL CORPORATION

By *Judy M. Newlun*
Name: JUDY M. NEWLUN
Title: ASST. VICE PRESIDENT

STATE OF CALIFORNIA §

COUNTY OF LOS ANGELES §

This instrument was acknowledged before me on the 20th day of February, 1992, by Judy M. Newlun, Asst. Vice President of Foothill Capital Corporation, in the capacity therein stated.



Bernice Smith
Notary Public, State of California

STATE OF TEXAS)
COUNTY OF MONTGOMERY)
I hereby certify that this instrument was in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the official Public Records of Real Property of Montgomery County, Texas.

c:\patten\footcap.jol

MAR 12 1992

FST

Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS