

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SUNSET COVE SUBDIVISION**

A SUBDIVISION IN GALVESTON COUNTY, TEXAS

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Exhibit “C”: Initial Use Restrictions

Exhibit “D”: By-Laws of Sunset Cove Galveston Home Owners Association, Inc.

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
SUNSET COVE SUBDIVISION
A SUBDIVISION IN GALVESTON COUNTY, TEXAS**

THE STATE OF TEXAS §
COUNTY OF GALVESTON § **KNOW ALL MEN BY THESE PRESENTS:**
§

WHEREAS heretofore on the 7th day of February, 2005, **SUNBIRD DEVELOPMENT, L.P.**, hereinafter referred to as "Declarant", executed and filed for record a Declaration of Covenants, Conditions, and Restrictions of Sunset Cove Subdivision (a subdivision located in Galveston County, Texas according to the Map or Plat thereof recorded in Plat Record 2004B, Map Number 193-195 of the Map Records of Galveston County, Texas) which has been filed for record in the Office of the County Clerk of Galveston, Texas under Clerk's File No 2005008242 (the "Declaration") and;

WHEREAS, at that time, it was the desire of the Declarant to establish a uniform set of Restrictions and Covenants for the development, improvements, and sale of said property and to ensure the preservation of such uniform Restrictions and Covenants for the benefit of both the present and future owners of lots and dwellings in said subdivision; and for the purpose of preserving and enhancing the privacy and quiet enjoyment of dwellings built therein by restricting said property by a general plan or scheme and the uses to which the lots, amenities, and dwellings in said subdivision may be put, and in order to ensure uniformity and to maintain suitable standards for the use and occupancy of the lots and dwellings in Sunset Cove Subdivision as exclusive residential sites for the benefit, use, and enjoyment of each and every owner, purchaser, their heirs and assigns, of lots and dwellings in said subdivision, and

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions provided:

In addition to specific amendment rights granted elsewhere in this Declaration, to the fullest extent permitted by law, until the termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose, subject to the approval requirements set forth in Article XI, if applicable.

Thereafter, and until termination of Development and Sale Period, Declarant may, to the fullest extent of permitted by law, unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots, (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, of VA, to make, purchase, insure, or guarantee mortgage loans on the Lots, (d) to satisfy the requirements of any Governmental Authority; or (e) for any other purpose which does not materially adversely affect title to any Lot, unless the Owner of such Lot consents to such amendment.

NOW, THEREFORE, the Declarant as the holder of 100% of the Class B votes of the Association and in accordance with the above-described section of the Declaration does hereby adopt this Amended and Restated Declaration of Covenants, Conditions, and Restrictions and declare that it shall supersede the Declaration of Conditions, Covenants, and Restrictions filed for record under Clerk's File No 2005008242 in the Office of the County Clerk of Galveston County, Texas

ARTICLE I
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUNSET COVE

A SUBDIVISION IN GALVESTON COUNTY, TEXAS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this ___ day of May, 2006 by Sunbird Development, LP, a Texas Limited Partnership.

Article I Creation of the Community

1.1. Purpose and Intent

Declarant (as defined in Article II), as the original owner of the real property described in Exhibit A and B (or if not the owner, with the owner's consent), intends, by recording of this Declaration, to establish a general plan of development for Sunset Cove, a planned community (the "Community"). This Declaration, together with the other Governing Documents described in Section 1.3, provides for the overall development, administration, maintenance, and preservation of Sunset Cove and provides a flexible and reasonable procedure for its future expansion. An integral part of the development plan is the creation of the Sunset Cove Galveston Home Owners Association, Inc. (the "Association") to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents as defined in Article II.

1.2. Binding Effect

Except as set forth in Section 4.1 hereof, this Declaration governs the property described in Exhibit A and B and any other property submitted to this Declaration in the future pursuant to Article X. This Declaration shall run with the title to such property and shall bind everyone having any right, title or interest in any portion of such property, their heirs, successors, successors-in-title and assigns. Declarant, the Association, any Owner (as defined in Article II), and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. Each Owner shall automatically be a Member (as defined in Article II) of the Association. In addition to the stipulations of the Declaration provided herein, the property, in its entirety, described in Exhibit "A" and any other property submitted to this Declaration in the future shall be subject to the United States Army Corps of Engineers ("USACE") Permit Number 22607-1 ("Permit") and the Permit shall also be considered as part of the restrictions of this Declaration. The requirements of the Permit are for the enhancement of the Community and do not present any unnecessary burden.

Unless otherwise provided by Texas law and the USACE, in which case such law shall control, this Declaration may not be terminated within 20 years from the date it is recorded, without the

consent of all Owners; provided, however, that this Declaration is subject to the right of Declarant and/or Members to amend it as provided in Article XXI. After the initial 20 year period, this Declaration shall automatically be extended for successive 10 year periods in perpetuity unless, within the 12 month period preceding any extension, an instrument signed by the then Owners of at least 100% of the Lots (as defined in Article II) agreeing to terminate this Declaration is recorded. This Section does not authorize termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents

The following table identifies the documents which govern the Community (as they may be amended from time to time, the “Governing Documents”) and describes, in part, the purpose of each. Every Owner and Occupant of a Lot (as such terms are defined in Article II) shall comply with the Governing Documents.

Table 1.1. Governing Documents Defined

Governing Document	Definition
<i>Architctural Controls</i> (Declarant or Association may adopt)	Establishes architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots
<i>Articles of Incorporation</i> (filed with the Secretary of State, initial Articles attached as Exhibit “E”)	Establishes the Association as a nonprofit corporation under Texas law
<i>Board Resolutions and Rules</i> (Board may adopt)	Establishes rules, policies and procedures for internal governance and Association activities, regulates operation and use of Common Area (as defined in Article II)
<i>By-Laws</i> (Board adopts, initial By-Laws attached as Exhibit “D”)	Governs the Association’s internal affairs, such as voting rights, elections, meetings, officers, etc
<i>Declaration</i> (Recorded)	Creates obligations which are binding upon the Association and all present and future Owners and Occupants of, and others with any interest in, property in the Community
<i>Supplemental Declaration</i> (Recorded)	Adds property to the Community and/or may impose additional obligations or restrictions on such property
<i>Use Restrictions</i> (initial set attached as Exhibit “C”)	Governs use of property and activities within the community

In the event of any conflict between the restrictions contained in this Declaration and any ordinances, laws, rules or regulations of the City of Galveston or other governmental authorities having jurisdiction over the Community or the construction of improvements therein, then such ordinances, laws, rules and regulations shall control, except, however, that if the restrictions contained herein are in any respect more restrictive than such ordinances, laws, rules or regulations, then the restrictions contained herein shall control.

Additional covenants, conditions, and restrictions may be imposed on all or any portion of the Community, in which case the more restrictive provisions will be controlling. However, no Person (as defined in Article II) shall record any additional covenants, conditions or restrictions affecting any portion of the Community without Declarant’s written consent, during the

Development and Sale Period (as defined in Article II), or without the Board's (as defined in Article II) written consent thereafter. Any instrument recorded without the necessary consent is void and of no force or effect

If there are conflicts between Texas law, this Declaration (exclusive of the Use Restrictions), the Architectural Controls, the Use Restrictions, the Articles, and Documents is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications or other applications of the provision.

Article II Concepts and Definitions

2.1. Defined Terms.

The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows

“Act”: The Texas Residential Property Owners Protection Act, Title 11, Chapter 209 of the Texas Property Code Annotated, as such act may be amended.

“Affiliate”: Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term “control” means the direct or indirect power or authority to direct or cause the direction of an entity’s management or policies, whether through the ownership of voting securities, by contract, or otherwise

“Approved Builder List”: That list defining which builders are pre-approved to build in the Community. Said list may be amended at any time by the Declarant and may be amended by the Association after the Development and Sale Period.

“Architectural Controls”: The architectural, design, and construction controls and review procedures adopted pursuant to Article V, as they may be amended from time to time.

“Architectural Review Board” or **“ARB”**: The board established in accordance with Article V to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article V.

“Articles”: The Articles of Incorporation of Sunset Cove Galveston Home Owners Association, Inc filed with the Secretary of State for the State of Texas, as they may be amended and/or amended and restated from time to time A copy of the initial Articles is attached to this Declaration as Exhibit “E” and its terms are incorporated herein by reference.

“Assessment”: Assessment shall mean any and all amounts or sums due to the Association pursuant to the provisions of this Declaration, or any Governing Document or dedicatory instrument relating to the Community, levied by the Association for any purpose including, but

not limited to, obtaining funds to pay Association expenses, imposing fines to motivate compliance with the restrictions and rules set forth within the Governing Documents, as well as costs incurred in connection with the transfer of title to Lots within the Community including transfer fees. Assessments shall include Regular Assessments, Special Assessments, Benefited Assessments, Initial Assessments, transfer fees, interest, Legal Costs, fines, use fees, consumption fees, license fees, and royalties.

“Association Expenses”: Association Expenses shall mean and include the actual and established expenses of operating the Association or maintaining and managing the Community including its Common Area. Association Expenses shall include any and all reserve funds established by the Association, including, but not limited to, working capital and catastrophe, found by the Board of Directors to be necessary and appropriate in order to further the purposes and betterment of the Community in accordance with this Declaration and/or the Governing Documents.

“Association”: Sunset Cove Galveston Home Owners Association, Inc., a Texas nonprofit corporation, its successors or assigns, whose membership is composed of all of the owners of Lots within the Community.

“Benefited Assessment”: Assessments charged against a particular Lot or Lots for Association expenses described in Section 9.4.

“Board of Directors” or **“Board”**: The body designated to act on behalf of the Association and responsible for the general governance and administration of the Association, whether such Board of Directors is appointed by Declarant or elected by the Association in accordance with this Declaration or the Bylaws.

“Boathouse”: Any structure designed for the principal purpose of boat storage and usage. For Dry Lots, the property bounds of an individual boathouse housed within a Party Structure shall be defined by vertical planes extending through and dissecting the pilings to either side of an individual boat slip and include that portion of the bulkhead located between said vertical planes as well as the deck and roof (to the inside of said vertical planes) so as to define an individual boathouse for all purposes related to rights, responsibilities and ownership. Parking for boathouses intended for Dry Lot owners shall be considered as part of the Common Area.

“Bulkhead”: Shall mean the bulkhead to be constructed and maintained on each Canal Lot and Dry Lot in accordance with the Permit.

“By-Laws”: The By-Laws of the Association, as they may be amended and/or amended and restated from time to time. A copy of the initial By-Laws is attached to this Declaration as Exhibit “D” and its terms are incorporated herein by reference.

“Canal System”: That portion of the Community comprised of the Flowage Easement and that portion designated as “Canal” in the Permit or as shown on the Plat.

“Canals”: The navigable waterways to be excavated, constructed and maintained within the Canal System.

“Catastrophe Fund”: A fund, as part of the Regular Assessment, dedicated to the repair of any and all improvements generally located in the Common Area that may become damaged as a result of a natural disaster or weather occurrence such as a hurricane or tropical storm

“Channel”: defined as that main channel providing ingress/egress to the Canal System of the subdivision

“Class “B” Control Period”: The time period during which the Class “B” Member may appoint a majority of the Board members. The Class “B” Control Period shall end when any of the following occurs:

- a) When 100% of the Lots proposed under the Development Plan have been issued certificates of occupancy and have been deeded to Class “A” Members;
- b) December 31, 2025; or
- c) Earlier, when, in its discretion, the Class “B” Member so determines.

“Commercial Reserve”: That land area designated on the final plat as appropriate for commercial uses and whose control is that of the Declarant and not that of the Home Owners Association

“Common Area”: All real and personal property, including easements, which the Association owns holds, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners.

“Common Expenses”: The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners which may include a reserve for capital repairs, a reserve for a catastrophic fund, and replacements and administrative charges, as may be authorized pursuant to this Declaration or in any Supplemental Declaration

“Common Maintenance Areas”: The Common Area, together with any other area for which the Association has or assumes maintenance or other responsibilities.

“Community” or **“Sunset Cove”**: The real property described in Exhibit “A”, together with such additional property as is subjected to this Declaration in accordance with Article X.

“Community Name”: Sunset Cove and/or such other name or names as Declarant shall designate for all or any portion of the Community.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing from time to time throughout the Community, or the minimum standards established pursuant to the Governing Documents, Architectural Controls, Use Restrictions,

and/or Board resolutions, whichever establishes the highest standard. The Community-Wide Standard may contain objective elements and subjective elements.

“Conservation Easement”: A restriction landowners voluntarily place on specified uses of their property to protect natural, productive or cultural features. A minimum of 30.94 acres of the project will be dedicated as a protected area with a third party conservator as custodian of the parcel, per USACE Permit #22607(01) These areas include intertidal saltwater wetlands, freshwater ponds, and coastal plains, providing a valuable eco-zone area to maintain productivity of existing wetlands.

“Cost Sharing Agreement”: Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Community, for the allocation of expenses that benefit both the Association (or its Members) and the owner or operator for such property.

“County”: Galveston County, Texas.

“Declarant”: Sunbird Development, LP, a Texas Limited Partnership, or any successor or assign as developer of all or any portion of the Community that is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes. On all matters, Declarant may act through any of its Affiliates. Any person who at any time holds the rights of Declarant hereunder and subsequently transfers or assigns the rights of Declarant to another Person shall be known as a **“predecessor Declarant”** and, unless otherwise agreed in writing, shall be entitled to the rights of a predecessor Declarant established in this Declaration. Whether or not specifically stated, a predecessor Declarant shall be afforded the same protection with respect to matters arising from actions taken during its tenure as Declarant as the predecessor Declarant would have if it were still Declarant.

“Declaration”: Declaration shall mean this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Sunset Cove, a Subdivision in Galveston County, Texas as such document may hereinafter be amended

“Development Plan”: The general land use plan for the Community as approved by the City of Galveston, as they may be amended from time to time, which includes all of the property described in Exhibit “A”. Declarant is not obligated to submit property to this Declaration that is not shown on the Development Plan. Reference should be made to Article XI of this Declaration to the respective rights and obligations of Owners and Declarant with respect to the use and development of the Community.

“Development and Sale Period”: The period of time during which (a) Declarant and/or any Declarant Affiliate owns and *intends* to sell any of the property described in Exhibit “A” to this Declaration; (b) Declarant holds a right to unilaterally expand the Community pursuant to Section 10.1

“Dry Lot”: Those Lots within the Community lacking direct canal access.

“Flowage Easement”: The 30’ foot flowage easement upon, over and across each Canal Lot, as shown on the Plat.

“Galveston County Municipal Utility District No. 30 (“Galveston MUD 30”): Galveston MUD 30 encompasses the entire subdivision and is responsible for the construction of all water and sewer utilities within the subdivision, as well as all service and repair to the aforementioned utilities, by way of a debt issuance to be repaid by individual Lot Owners (in the form of assessed taxes) and the City of Galveston through a dedication of some revenues collected by ad valorem taxes. Once Galveston MUD 30’s debt is retired, the utility improvements are deeded to the City of Galveston and Galveston MUD 30 is dissolved

“Governmental Authority”: Any federal, state, county, City of Galveston, municipal or other governmental or quasi-governmental department, entity, authority, agency or instrumentality having or asserting jurisdiction over the Community or a portion thereof

“HUD”: U.S. Department of Housing and Urban Development

“Legal Costs”: The costs which a Person entitled to reimbursement for “Legal Costs” under any provision of the Governing Documents incurs in pursuing legal action (regardless of whether suit is filed or whether arbitration or court action is taken) to enforce the Governing Documents, including, but not limited to, reasonable attorneys’ and paralegals’ fees, expert witness fees, filing fees, process fees, and court costs at all tribunal levels.

“Lien Notice”: Shall mean the written notice given by the Board of Directors pursuant to Section 9.7 hereof, such notice setting forth details regarding an assessment unpaid by Owner. The filing of the Lien Notice shall not be a prerequisite to the Association pursuing any or all of its legal remedies to collect an outstanding assessment or enforce any provision contained within this Declaration and/or the Governing Documents.

“Lot”: A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and which is improved, or intended by Declarant to be improved, with a dwelling. The term shall refer to the land, if any, which is part of the Lot as well as any improvements on the Lot. The boundaries of each Lot shall be shown on a Plat.

A parcel of land shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat. Any portion not subdivided shall continue to be a single Lot.

“Management Company Services”: that document prescribing appropriate management company services that the Association may elect to contract for. The document may be amended by the Declarant or by the Association after the Development and Sale Period.

“Member”: A Person subject to membership in the Association, as described in Section 7.2. There initially are two membership classes—Class “A” and Class “B”

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot and held by an institutional lender. The term “Mortgagee” shall refer to a beneficiary or holder of a Mortgage. The term “Institutional Lender” shall include any bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, a credit union, real estate or realty investment trust, any agency of the Federal government, the Federal Investment Mortgage Association, the Federal Home Loan Mortgage Corporation, or similar governmental or quasi-governmental agencies.

“Nature’s Concepts, Inc.”: A Texas corporation that is the General Partner for Sunbird Development, L.P. Ross J. Novelli, Jr. is the President of Nature’s Concepts, Inc.

“Occupant”: Any tenant of a Lot and the Owner’s and/or a tenant’s household members, guests, invitees, agents, and contractors who lawfully or unlawfully occupy or enter a Lot. All actions or omissions of any Occupant shall be deemed the actions or omissions of the Owner of such Lot.

“Open Space Reserve”: That area, generally located in the northern portion of the subdivision and consisting of 30.94 acres as described on the final plat of the subdivision that is deed restricted per the agreement with the USACE for the development of this subdivision. The Open Space Reserve shall be considered as part of the Conservation Easements described herein.

“Owner”: The record title holder to any Lot which is a part of the Community, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (e.g., a Mortgage). If a Lot is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Party Wall”: The bulkhead at the location of each boundary line between each lot and/or reserve. The Party Wall shall also define the bulkhead at the location of each boundary line between each individual boathouse housed in a Party Structure, as defined by the aforementioned vertical planes.

“Permit”: The Department of the Army Permit No. 22607-1 dated December 3, 2004, issued by the U.S. Army Corps of Engineers to Sunbird Development, LP, a copy of which is attached hereto as Exhibit “G”, incorporated herein by reference and made a part hereof for all purposes.

“Person”: A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

“Plat”: Any recorded plat for all or any portion of the Community. As to a particular portion of the Community, the applicable Plat shall be deemed to be the Plat (and/or Plat amendment, revision or similar instrument, as applicable) to which such portion of the Community is subject or which otherwise affects such portion of the Community at the time this applicable determination is to be made.

“Regular Assessment”: Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 9.1(a).

“Reserve”: All areas designated as Open Space Reserves and Landscape Reserves on the Plat and shall be considered as located within the Common Maintenance Areas and Wetlands and periodically referred to as “natural areas”.

“Short-Term Rentals”: A rental term of less than 12 months for any property. This type of rental term is forbidden

“Special Assessment”: Assessments levied against Lots in accordance with Section 9.3 to cover unbudgeted expenses or expenses in excess of those budgeted.

“Street”: Street shall refer to any street, drive, boulevard, road, alley, lane, avenue, or thoroughfare as shown on the Plat of the Community

“Sunbird Development, L.P.”: A Texas limited partnership which is the developer of Sunset Cove Subdivision

“Sunset Cove Realty”: A for-profit entity established to provide real estate sales listing servicing for the Sunset Cove subdivision.

“Supplemental Declaration”: A recorded instrument which subjects additional property to this Declaration and/or imposes additional and/or modified restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 8.1 that establishes specific minimum standards for the maintenance, operation and use of any Common Area as part of the Community-Wide Standard or imposes additional restrictions on a portion of the Community which may be enforced by the Association.

“TAMUG”: An abbreviation for Texas A&M University at Galveston which is a part of the Texas A&M University System

“TAMUS”: An abbreviation for the Texas A&M University System.

“United States Corps of Engineers (USACE)”: The military/government body which maintains jurisdiction over wetland areas in the U.S., including those wetland areas present in Sunset Cove, for the assurance of environmental protection. The construction, maintenance and protection of the subdivision, where it impacts wetlands areas, is governed by the specifications of the USACE Permit #22607-1.

“Use Restrictions”: The initial use restrictions, governing activities on the Lots and the Common Areas set forth in this Declaration as well as Exhibit “C”, as they may be changed in accordance with Article III or Article XXI or otherwise, as amended from time to time

“VA”: U.S. Department of Veteran Affairs

“Waterway”: Any body of water located in the Community, particularly and to include Canals.

“Wet Lot”: Any lot located immediately adjacent to a Canal

“Wetland”: Any area within the Community identified or designated as habitat for wetland species of plants and/or animals by the City of Galveston, the County, the United States Army Corps of Engineers, or by any Governmental Authority.

2.2. Interpretation of Certain References.

- a) **Recording.** All references in the Governing Documents to a “**recorded**” legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the public records of the County, or such other place designated as the official location for filing documents affecting title to real estate in the County in order to make them a matter of public record.
- b) **Consent or Approval.** All references in the Governing Documents to a “**consent**” or “**approval**” shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.
- c) **Discretion and Determinations.** All references in the Governing Documents to “**discretion**” or to the right to “**determine**” any matter shall refer to the sole and absolute power, right and/or discretion to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

Article III Occupancy of Lots

3.1. General

In addition to the initial Use Restrictions set forth in Exhibit “C” which may be modified as provided herein, the Lots shall be subject to the following. The restrictions set forth in this Section may be amended only in accordance with Article XXI and other applicable provisions of this Declaration.

- a) **Residential and Related Uses.** Lots shall be used primarily for residential and related purposes (including, without limitation, use as a home office). No business shall be conducted in, on, or from any Lot. However, an Owner or Occupant using the dwelling on a Lot primarily for residential purposes may also conduct business activities on such Lot, if the business activity, as determined by Board’s discretion:
 - i) is not apparent or detectable by sight, sound or smell from outside the Lot;
 - ii) complies with applicable zoning and other legal requirements and other requirements of this Declaration,
 - iii) not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees; and
 - iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the use and

enjoyment of other Lots by the Owner thereof or the security or safety of others within the Community

v) Does not entail a short-term rental.

“Business” shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family or the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is required.

No Lot shall be rezoned to any classification allowing commercial, institutional, or other non-residential use without the express written consent of the Association and Declarant, which either may withhold in its discretion. Notwithstanding anything in this Article to the contrary, Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the party pursuing the unapproved rezoning, in addition to and not in limitation of Declarant’s or the Association’s other rights and remedies

This Section shall not apply to restrict the activities of Declarant, any Declarant Affiliate, nor shall it restrict the activities of Persons Declarant approves with respect to the development, construction, and sale of property in the Community. This Section shall not apply to Association activities related to the provision of services or to operating and maintaining the Community, including, without limitation, the Community’s recreational and other amenities.

Leasing of a Lot by the Owner thereof for residential occupancy shall not be considered a “business” within the meaning of this subsection

b) **Leasing.** For purposes of this Declaration, “leasing” is the regular, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, without limitation, a fee, service, or gratuity. The improvements on the Lot may be leased only in its entirety and only leased for a term or period to be no shorter than one year

All leases shall be in writing and shall include an acknowledgment by the tenant that the tenant and all Occupants of the leased Lot are bound by and obligated to comply with the Governing Documents by the tenant and all Occupants of the leased Lot.

Prior to the commencement of the lease term, the Owner or the Owner’s designee shall notify the Board or the Association’s managing agent of the lease and provide such information as the Board and/or the Association’s managing agent may reasonably require, which may include, but shall not be limited to, the name, address, and telephone number of the Lot’s Owner and of the tenant; and the date the tenant’s occupancy commences and ends. Declarant may, from time to time during the Development and Sale Period, adopt and modify reasonable rules regulating leasing and subleasing consistent with this subsection (b). Such rules shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners

and Occupants. The provisions of this subsection (b) and any rules adopted as aforesaid may be overruled, canceled, or modified by the Members only at a regular or special Association meeting by Members holding 67% of the total Class "A" votes in the Association and the Declarant, during the Development and Sale Period. Unless adopted by Declarant pursuant to the foregoing, leases shall not be subject to any minimum lease terms

No owner may assign or otherwise transfer the Owner's obligations under this Declaration to any tenant or other Occupant. The Association shall have the right to enforce the covenants, conditions, and restrictions set forth in this Declaration against the Owner, the tenant, or any Occupant of the Lot, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between Owner and such Owner's tenant, including, without limitation, those requiring prior notice or imposing other conditions on the rights of the Association.

The Association shall be deemed a third party beneficiary of all leases of Lots, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the tenant or the owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

Notwithstanding any condition of any lease to the contrary, each Owner, by acceptance of the deed to a Lot, hereby covenants and agrees with the Association and all other Owners of Lots in the Community, including, but not limited to, Declarant, that the Owner shall be responsible for any violation of the Governing Documents resulting from the acts or omissions of Occupants of the leased Lot to the same extent that Owner would be liable for such violation if it had resulted from the acts or omissions of the Occupants of the leased Lot to the same extent that Owner would be liable for such violation if it had resulted from the acts or omissions of the Owner. The Owner's obligations hereunder shall be deemed a guaranty of performance by such Owner's tenant and the Occupants of the leased Lot, and the Association shall have the right to take any action or seek any remedy for a tenant's or an Occupant's failure or refusal to comply with the Governing Documents directly from or against the Owner without first taking such action or obtaining such remedy from or against the tenant or Occupant. Declarant makes no representations as to whether any legal requirements apply to the renting of a Lot. Owners should perform their own investigations in such regard.

- c) **Signs.** No sign of any kind shall be erected by or on behalf of an Owner or Occupant without the prior written consent of the ARB, except: (1) signs required to comply with or obtain the benefit of applicable laws (e.g., beware of dog signs), and (2) not more than one sign indicating that the Lot is receiving security services. All approved or permitted signs shall be professionally prepared, shall be the kinds normally displayed in residential neighborhoods with homes of comparable type, quality, and price range to those in the Community and shall be of a size deemed reasonable by the ARB in its sole discretion.

Unless in compliance with this Section, no signs shall be posted or erected by any Owner or Occupant within any portion of the community, including the Common Area, any Lot, or any structure or dwelling located on the common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the ARB's sole discretion) In addition, no signs shall be posted or erected by any Owner, or within, adjacent to or visible from any body of water, unless in compliance with this Section.

Declarant and the ARB reserve the right to prohibit all other signs and to restrict the size, content, lighting, color, lettering, design and placement of any approved or permitted signs. In addition, the Architectural Controls may implement a standard sign program, which may vary according to, among other factors, location within the Community, product type or intended use. This provision shall not apply to entry, directional, or any other signs installed by Declarant, any Declarant Affiliate or the owner or the Association.

- d) **Occupants Bound.** Every Owner shall cause the Occupants of such Owner's Lot to comply with the Governing Documents and shall be responsible for all violations of the Governing Documents and any damage they cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are personally responsible for complying and may be sanctioned for any violation
- e) **Subdivisions and Replatting of a Lot.** Lots may not be subdivided or their boundary lines changed except with Declarant's or the Board's prior written approval. Declarant may subdivide, change the boundary lines of, and replat any Lot it owns without Board approval In addition, during the Development and Sale Period, Declarant or any Declarant Affiliate may convert Lots it owns into Common Area.
- f) **Lodging; Timeshares.** No Lot may be used as a rooming house, hostel, hotel, or for timesharing. The term "timesharing" shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess all or any portion of a Lot rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of 30 consecutive calendar days or less.

3.2. Rules and Regulations.

In addition to the Use Restrictions set forth in Exhibit "C", the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Community regarding the use of Common Areas. Such rules shall be distributed to all owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a majority of the total Class "A" votes in the Association. Any adoption, modification, addition, deletion, or cancellation of rules shall be subject to Declarant's prior written approval during the Development and Sale Period.

3.3. Owner's Acknowledgement and Notice to Purchasers.

Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of such Owner's Lot is limited and affected by the terms of the Governing Documents, including Use Restrictions and Board rules, which may change from time to time. Copies of the current Use Restrictions and Board rules may be obtained from the Association as provided in the By-Laws.

Article IV Property Subject to this Declaration

4.1. Description.

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration consists of all of the Property, according to the Subdivision Plat (or any subsequently recorded plat thereof), except for that land defined as Commercial Reserve and Lot 1, Block K and Landscape Reserve 1 Real property is sometimes hereinafter referred to as the "Existing Property". This Declaration and the Restrictions contained herein shall not apply to any property which is to be owned by TAMUS located in any portion of the Sunset Cove Subdivision or any other future subdivision which may be annexed hereto pursuant to Section 4.4 of the Declaration

4.2. Mineral Exception.

There is hereby excepted from the Property and Declarant will hereafter except from all its sales and conveyances of the Property, or any part thereof, including the Lots and Common Properties, all oil, gas, and other minerals, in, on, and under the Properties; but each such reservation shall be subject to the provision and requirements of Article XIII of this Declaration.

4.3. Treasures or Artifacts.

Developer reserves the remaining one-half (1/2) interest in all treasures and artifacts found on any lot within the Subdivision A one-half (1/2) interest has previously been reserved by a prior land owner.

4.4. Additions to Existing Property.

Additional lands may become subject to the scheme of this Declaration in the following manner:

Additions by Declarant. The Declarant, and its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of development ("Additional Property") in its sole discretion. Any additions of Additional Property authorized under this Declaration shall be made by filing of record in the Official Records of Galveston County, Texas, an amendment to this Declaration with respect to the Additional Property which shall extend the scheme of the Covenants of this Declaration to the Additional Property. Any such amendment to this Declaration must impose an annual maintenance charge assessment on the Additional Property, on a uniform, per lot basis,

substantially equivalent to the maintenance charge and assessment imposed by this Declaration, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the Additional Property

4.5. Mergers.

Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the other association as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the Covenants established by this Declaration or any amendment thereto.

Article V Architecture and Landscaping

5.1. General.

Except for work done by or on behalf of Declarant or any Declarant Affiliate, no structure or thing shall be placed, erected, or installed upon any Lot, and no improvements of any kind or other work (including, without limitation, staking, clearing, excavation, grading and other site work, exterior alterations or additions, permanent lighting, or planting or removal of landscaping) shall take place within the Community, except in compliance with this Article and the Architectural Controls

The following shall set a minimum level of restrictions, in addition to those described in Exhibit "H", the Architectural Controls:

- a) All residential units shall be single-family, detached structures.
- b) No residential unit shall contain less than 1,600 square feet of living area.
- c) Every structure, building or addition thereto shall be affixed to the ground in a permanent manner
- d) All elevated structures shall be built on pilings
- e) All pilings shall be sunk to a minimum depth of 10'
- f) No round pilings shall be permitted, unless the pilings are concrete
- g) All houses and other structures must be kept in good repair, and painted or stained when necessary to preserve the attractiveness thereof.
- h) All walls attached to structural or vertical pilings below the main living area must be break away in nature
- i) Toilet facilities for all houses shall be installed inside each house
- j) FEMA (Federal Emergency Management Act) guidelines require the bottom of the lowest structural member to be 17' above sea level. In addition, the Community requires 21' above sea level or a "plus 4'" elevation requirement

- k) Building setbacks are shown on the plat. No construction including overhangs, fences or air conditioning sites and conformity to both the specific and general intent of the restrictions
- l) All driveways and building slabs must be made of reinforced concrete
- m) The location and design of all skylights and solar collectors are subject to approval. Collectors must be of flat profile and conform to the slope of the roof. All stack vents and attic ventilators preferably shall be located on the rear slopes of roofs. All exposed metal roof accessories (such as stack vents, floor flashing, attic ventilators, metal chimney caps, skylight curbs, solar collector frames, etc.) should match the color of the roofing material.
- n) No house, building or structure shall be more than two (2) stories of living area in height. Open decking or observation towers, will be permitted above the second level provided it is not excessive in height, or greater than one hundred fifty (150) square feet of enclosed tower space Any open decking will be no more than forty percent (40%) of the square feet of the deck below, up to two hundred (200) square feet.
- o) A structure may be disapproved by the ARB because of excessive height. No exterior aerial antenna, satellite dish, flagpole or other structure of any kind (except chimney) will project above the uppermost roof line of any structure on any lot.
- p) All exterior lighting fixtures whether attached to the dwelling or remote, are subject to ARB approval as to location, style, size, color and level and direction of illumination
- q) All exterior material and color selections must be approved by the ARB. The architectural style of the dwelling, in most cases, will dictate the proper range of materials and colors. Materials and colors which are appropriate to one architectural style may be inappropriate to another.
- r) Landscaping of vegetation native to Galveston or resistant to gulf conditions is greatly encouraged. Minimum landscape requirements are two (2) palm trees, a minimum of ten (10) feet, per lot installed prior to occupancy and one (1) oak tree.
- s) Design of trash and mechanical equipment enclosures must be shown with the design plans and approved by the ARB. Where possible, they should be placed beside adjacent lot receptacles. All HVAC equipment must be screened from view
- t) Decks above grade which connect to boat houses shall not be wider than twelve (12) feet. Special enclosure considerations will be made for corner lots with limited water access.
- u) Fences for front yards may not be higher than four (4) feet and may not be placed in front of the front building line Open type fences are preferred, chain link is not allowed.

Any owner may remodel, paint, or redecorate the interior of any structure on such Owner's Lot without approval hereunder. However, modifications to the interior of screened porches, patios, and any other portions of a Lot or structure visible from outside a structure are subject to approval under this Article.

Improvements shall be constructed only by qualified Persons acceptable to the ARB as set forth in Section 5.3(d). Owners shall be responsible for obtaining all permits and approvals from the City of Galveston, County and other Governmental Authorities and ensuring compliance with said permits/approvals including, without limitation, storm water management requirements. Except as may be set forth in a purchase and sales agreement executed by Declarant or its Affiliate, neither Declarant nor any Declarant Affiliate have made any representations ensuring or guaranteeing the availability of such permits or approvals. This Article does not apply to the

Association's activities during the Class "B" Control Period, nor to Declarant's, or its affiliates' activities, during the Development and Sale Period.

5.2. Architectural Review.

- a) **Architectural Review Board.** The ARB shall consist of one or more persons and shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Members of the ARB need not be Members of the Association or representatives of Members, and may include architects, landscape architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the ARB may establish. Of said list of professionals, one professional licensed architect shall be required to serve on the ARB. Until five years after termination of the Development and Sale Period, unless Declarant earlier terminates its rights in a recorded instrument, Declarant retains the right to appoint all Members, including the Declarant itself, of the ARB who shall serve at Declarant's discretion. In reviewing and acting upon any request for approval, ARB members appointed by Declarant act solely in Declarant's interest and owe no duty to any other Person. There shall be no surrender of this right prior to the specified time except in a written instrument in recordable form executed by Declarant. Upon the expiration, termination or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

Declarant or the ARB may, from time to time, delegate or assign all or any portion of its rights under this Article to any other Person or committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) the right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) the right to veto any decision which the delegator determines, in the delegator's discretion, to be inappropriate or inadvisable for any reason. The jurisdiction of any other entities shall be limited to such matters as may be specifically delegated.

Unless and until such time as Declarant or the ARB delegates any of its reserved rights to the Association or Declarant's rights under this Article terminate, the Association shall have no power over matters governed by this Article IV

- b) **Fees; Assistance.** The ARB may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include, without limitation, the reasonable costs incurred in having any application reviewed by architects, landscape architects, engineers, or other professionals the ARB employs or with whom it contracts. The Board may include the compensation of such Persons in the Association's annual operating budget. In addition, the ARB may establish additional forms and penalty deposits in connection with rules, regulations, and fines implemented in connection with activities relating to new construction including an up front penalty deposit which is automatically forfeited by an Owner upon a violation of any rule or requirement established for new construction activities.

5.3. Guidelines and Procedures.

- a) **Architectural Controls.** Declarant may prepare and make available the initial Architectural Controls, which may contain general provisions applicable to all of the Community as well as specific provisions that may vary according to, among other factors, location within the Community and/or intended use. The Architectural Controls are intended to provide guidance to Owners regarding matters of particular concern to the ARB. The ARB and/or the Association reserve the right to enforce any and all elements of the Architectural Controls. The Architectural Controls are not the exclusive basis for the ARB's decisions, and compliance with the Architectural Controls does not guarantee an application's approval.

If the same exist, Declarant shall have sole and absolute and full authority to amend the Architectural Controls, from time to time, during the Development and Sale Period. Declarant's right to amend shall continue even if its reviewing authority is delegated to the ARB and/or the Association, unless Declarant also delegates the power to amend to the ARB and/or the Association. Upon termination or delegation to the ARB of Declarant's right to amend, the Board may amend the Architectural Controls, subject to Declarant's veto right under Section 5.2(a) (if still applicable).

If the same exist, amendments to the Architectural Controls shall be prospective only. They shall not require modifications to or removal of structures, improvements, and other things previously approved once the approved construction or modification has begun. However, any new work or improvements must comply with the Architectural Controls as amended.

- b) **Procedures.** Unless the Architectural Controls provide otherwise, no construction activities or other activities described in Section 5.1 may begin until a request is submitted to and approved in writing by the ARB. The request must be in writing and be accompanied by plans and specifications and other information the ARB and/or the Architectural Controls require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction or other activity as the ARB deems relevant. Procedures for all secondary structures, such as, but not limited to boathouses (whether to be attached or detached) and piers shall follow, where applicable, the same procedures as described in this section.

In reviewing each submission, the ARB may consider any factors it deems relevant, including, without limitation, harmony of the proposed design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The ARB shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The ARB shall make a determination on each application within 30 days after receipt of a completed application and all other information the ARB requires. If additional information is required, the 30 day processing period will commence upon receipt by the ARB of the additional information. Any expenses or costs which the ARB incurs in processing the application shall be paid by the applicant. The ARB may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until 30 days after the final, required submission stage. The ARB may: (i) approve the application, with or without conditions; (ii) approve a portion of the application, with or without conditions, and disapprove other portions, or (iii) disapprove the application. The ARB shall notify the applicant in writing of a final determination on any application. In the case of disapproval, the ARB may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

After the initial 45-day period has elapsed, if the Owner has not received notice of the ARB's determination, the Owner may make a second written request for approval of the plans previously submitted which shall be marked "**Second Request**". If the ARB fails to respond within fourteen (14) business days from receipt of the Second Request, approval shall be deemed given. However, no approval (or improvement governed by such approval), whether expressly granted or deemed granted, shall be inconsistent with the Architectural Controls, the Declaration, or other Governing Documents unless a written variance has been granted pursuant to Section 5.5.

Notwithstanding anything to the contrary in this Declaration or the By-Laws, owners shall send any such "**Second Request**" via the U.S. Postal Service, certified mail, return receipt requested, or by commercial overnight carrier that obtains a signed receipt upon delivery. A Second Request shall be deemed made, and the fourteen (14) business day time period shall commence running, on the date of the ARB's actual receipt of the Second Request, as evidenced by its signature on the return receipt provided by the U S Postal Service or in the records of the overnight carrier, as applicable.

As any part of any approval, the ARB may require that construction landscaping and other approved activities in accordance with approved plans commence and be completed within a specified time period. If such actions do not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities within the scope of this Article. Once commenced, such activities must be diligently pursued to completion. All elements of the approved activities and/or plans shall be completed within the time period specified in the Architectural Controls unless the ARB, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless written approval to modify any application have been obtained.

Declarant or the ARB, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution

- c) **Delinquent Assessments and Other Charges.** Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all Lots and/or properties owned by the Applicant/Owner are in compliance with any use restriction, rule or guideline established by this Declaration and Governing Documents and any and all. Assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval. Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in the Governing Documents.
- d) **Architect, Builder and General Contractor Approval.** In order to ensure that appropriate standards of construction are maintained throughout the Community, all architects, builders and general contractors must be approved by the ARB prior to engaging in any construction activities within the Community. A list of already-approved builders may be found in the Approved Builder List. This list may be amended at any time during the Development and Sales Period by the Declarant and by the ARB only after the Development and Sales Period has closed. The ARB and/or the Association may implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of any plans may be withheld until such time as the Owner's architect, builder or contractor has been approved by the ARB. Approval of an architect, builder or general contractor may be conditioned upon an agreement with the ARB to maintain certain insurance coverages required by the ARB, pay construction deposits to ensure completion of a project without damage to the Community, and pay fees determined by the ARB, from time to time. Both the criteria and the application form are subject to change in the sole discretion of the ARB. Any approved builder shall be required to enter into the "Feature Builder Program Participation Agreement". Approval of architects, builders and contractors may not be construed as a recommendation of a specific architect, builder or contractor by the ARB or Declarant or any Declarant Affiliate, nor a guarantee or endorsement of the work of the architect, builder or contractor. Owner's selection of an architect, builder or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the ARB, Declarant, and Declarant Affiliate, and/or any predecessor Declarant.

5.4. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Controls, may vary accordingly. In addition, each Owner acknowledges that it may not always be feasible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. However, the ARB may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the ARB's right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances.

The Declarant and its Affiliates, the ARB and/or the Association may authorize variances from compliance with the Architectural Controls and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require or permit. A variance may only be granted, however, when unique circumstances dictate and no variance shall: (a) be effective unless in writing, (b) be contrary to the restrictions set forth or incorporated into this Declaration, or (c) prevent the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain the approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance. A variance requires Declarant's written consent during the Development and Sale Period. All variances allowed shall be consistent with the general plan for the improvement and development of the Community.

5.6. Release of Liability.

This article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations at the sole discretion of the ARB. The ARB is not responsible for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value of, or size, or similar design, or aesthetically pleasing or otherwise acceptable to other Owners. The Community is located overwhelmingly in the "VE" type flood zone (17 foot flood elevation) as established by the Federal Emergency Management Agency. All Lots may be affected by flooding due to the occurrence of tropical storms and hurricanes, therefore, these conditions may necessitate the use of special construction techniques to build on or use Lots. Owners are encouraged to seek professional advice and assistance prior to the design and commencement of construction on any Lot, including, without limitation, testing of soils.

Each Owner releases Declarant, Declarant's Affiliates, any predecessor Declarant, the Association, its officers, the Board, the ARB, the Association's managing agent, any committee, or any member of any of the foregoing for the approval of, disapproval of, or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work related to approved work, any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any owner or their contractor or their subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction or activities on or

modifications to any Lot. In all such matters or claims related there from, the Association shall defend, indemnify and hold harmless Declarant, Declarant's Affiliates, any predecessor Declarant, the Board, the ARB, the members of each, and the Association officers as provided in the Articles.

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the ARB, nor the distribution and review of the plans by the ARB, shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB shall hold the Declarant, Declarant's Affiliates, any predecessor Declarant, the Association, its officers, the Board and the ARB, harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

5.7. Enforcement.

Any construction, alteration, improvement, or other work done in violation of this Article or the Architectural Controls is subject to enforcement action pursuant to Section 8.4, which actions may be taken by the Association, Declarant, or the ARB. Any act of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed to be an act done by or on behalf of such Owner.

Article VI Maintenance and Repair

6.1. Maintenance of Lots.

- a) Each Owner shall maintain their Lot and the improvements thereon in a manner consistent with the standards of use, conduct, appearance and maintenance generally prevailing in the Subdivision from time to time and as may be more specifically determined by this Declaration and other Governing Documents, including as determined from time to time by duly adopted Architectural Controls and Rules and Regulations (the Community-Wide Standard). Without limitation of the foregoing, residences, must be periodically painted and/or resided; roofs, gutters, trim, brick, windows, and doors of residences must be properly maintained; grass, flower beds, trees and all other vegetation must be mowed, edged, weeded, trimmed, pruned, irrigated, and otherwise maintained in accordance with the seasons; unsightly grease, oil or other stains must be removed from driveways and walkways, permitted Regulated Modifications such as swing sets, swimming pools, or other recreational equipment or devices must be properly maintained in appearance and in such manner as to avoid any unsightly, unsafe or unhealthy condition; and all Lot fencing must be properly maintained, including maintenance as to appearance and as to repair or replacement of damaged or broken pickets or other components.
- b) No noxious or offensive trade or activity may be carried on upon any Lot nor anything be done thereon which may be or become an annoyance or nuisance to any Owner, to any residents of the Community or to any Person using any property adjacent to the Lot. No

spirituous, vinous, malt, medicated bitters, alcohol, drugs or other intoxicants may be sold or offered for sale on any part of any Lot or any other place within the Community. No Lot or any part thereof may be used for any illegal purposes

- c) No hogs, horses, livestock or poultry of any kind may be raised, bred, or kept on any Lot. If consistent with its use as a residence, dogs, cats or other usual household pets may be kept on a Lot. All such household pets must be kept on a leash or otherwise maintained under the control of their owner when not maintained in a secure and enclosed yard area, and otherwise leashed and maintained in accordance with applicable ordinances of the City of Galveston. The Board may adopt Rules and Regulations otherwise defining or limiting animals to be included in or excluded from the meaning of "usual household pets" or otherwise regulating such pets, and including authority to prohibit any type of animal or pet which in general or in particular instances is determined to present a threat to health or safety. Refer to Exhibit "C" Section 2.12 (d) of these restrictions for detailed restrictions pertaining to animals in the Community.
- d) It is the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No Lot may be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye. No hobbies or activities which will cause disorderly, unsightly, or unkempt conditions, including without limitation the assembly or disassembly of or repair work on motor vehicles or other mechanical devices, may be performed with the Subdivision. Butane tanks, or similar fuel containers, must be kept and maintained in a safe manner and must be shielded from public view. No substance, thing, or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. There may not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the residents of the Community.
- e) No trash, rubbish, garbage, manure, debris or offensive material of any kind may be kept or allowed to remain on any Lot, nor may any Lot be used or maintained as a dumping ground for such materials. No incinerator may be maintained on any portion of the Subdivision. All trash and similar matter to be disposed of must be placed in a paper or plastic bags tied or otherwise tightly secured. All trash and similar matter must be stored or placed in an area adequately screened by planting or fencing from public view or view from other Lots or Community Properties, or within a garage, except when placed for regular pickup as herein provided. Equipment used for the temporary storage and/or disposal of such material prior to removal must be kept in a clean and sanitary condition, and must comply with all applicable federal, state, county, municipal or other governmental laws, ordinances and regulations. All such prohibited matter must be removed from each Lot at regular intervals if not removed or removable by a regular garbage and sanitation service. During any hours when such refuse containers on a Lot are outdoors for pick up by any trash collecting company, all such prohibited matter shall

be placed in sanitary refuse containers with tight-fitting lids which shall be maintained in a clean and attractive condition and, if so required by the Association, in containers of a uniform type. No trash containers shall be placed outside on any Lot earlier than 6 00 a.m. on the day of pick up. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of improvements thereon.

- f) The Owner of any Lot upon which an improvement has not been constructed or place must maintain such Lot in a neat, sanitary and attractive condition, including without limitation, periodic removal of trash and debris therefrom and mowing of grass and other vegetation thereon as necessary to prevent growth to more than eight inches in height.
- g) Owners of unoccupied residences shall remain liable for full observance and performance of all provisions of this Declaration and other Governing Documents, including without limitation (i) proper maintenance of the Lot and all improvements thereon, and (ii) securing of the unoccupied residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use.
- h) All utility services intended to be provided to each single family residence as originally constructed, including without limitation water, sewage, electric and gas services, must be maintained by the Owner at all times when a residence is occupied.
- i) **Vehicles.**
 - (i) No vehicle designed primarily for commercial use, no boat or other watercraft, mobile home, recreational vehicle, camper, trailer, boat rigging, tractor, truck larger than a one ton pickup, bus, no unused vehicle, no inoperable vehicle of any kind (including any vehicle requiring same which does not have both a current and valid license plate and current and valid state inspection sticker), and no unsightly vehicle as determined in the sole good faith opinion of the Board, shall be parked or kept at anytime within the Community, or on any driveway or upon any Lot, unless such vehicle is stored completely within an enclosed garage or completely out of public view.
 - (ii) No Person shall be permitted to perform work on any vehicle within the Subdivision, or on any street in front or along the side or back of any Lot or on any driveway or any other part of a Lot, at any time other than temporary emergency repairs or other work required in order to promptly remove an inoperable or disabled vehicle from the Community or to and within a garage
 - (iii) No vehicle of any kind shall be parked, stored or otherwise permitted to remain overnight upon any street in the Community or upon any Common Area. Vehicles otherwise permitted outside a garage may be parked or stored simultaneously upon the driveway of each Lot, provided that no part of any vehicle so parked obstructs any sidewalk or extends in to the street. Slanted or diagonal parking upon any driveway is prohibited. No Owner or resident is permitted to park or store any vehicle on the Lot of another Owner or resident. The foregoing does not apply to occasional and temporary parking by a guest in the street in front of the residence of

the Owner or resident the guest is visiting, subject however to all Rules and Regulations the Board may adopt regarding same

- (iv) As used in this Section, an activity is conclusively deemed not to be "temporary" if it exceeds twenty-four hours in duration. Any vehicle is conclusively presumed to be "unused" or "inoperable" if the vehicle has not been operated outside the Community for seven or more consecutive days or the vehicle has not been operated outside the Community more than twice in any fourteen day period. The provisions hereof shall not prejudice the right of the Board to otherwise establish a violation. This Section does not apply to any vehicle completely stored within a garage. The Board may grant reasonable exceptions to this Section upon receipt of written request from an Owner or their tenant or through its duly adopted Rules and Regulations, and the Board may otherwise reasonable regulate all matters concerning vehicular traffic, and parking or storage of any work on any vehicles
- j) The Association at all times has the right (but not the obligation), upon notice and opportunity to be heard, to perform all maintenance, to abate or cure any condition, nuisance, annoyance, or to take all other actions deemed necessary as a result of any violation of this Article, and to assess all costs thereof (including attorney's fees) to the Owner responsible for same as a Benefited Assessment secured by the lien established in this Declaration. Such right includes, without limitation, the towing of vehicles, performing necessary maintenance and repair, removal of prohibited trash or other matter or material, cure of any unsightly, unsafe or unhealthy condition, removal of any unauthorized pet or any permitted pet deemed in the sole opinion of the Board to be an annoyance or nuisance, and securing of unoccupied residences with notice to the owner if locks are changed. The Association, and its officers, directors, agents and employees, and all Persons acting upon the directive of any of the foregoing, have a continuing right to access, enter and perform all activities upon each Lot and all improvements thereon to the fullest extent reasonably necessary to accomplishment of any of the foregoing without liability for trespass or otherwise. In the event of an emergency the right of access and entry will be immediate, but notice and opportunity to be heard must be given as soon as practical thereafter. The opinion of the Board or any officer or authorized agent of the Association that a violation has occurred, that an emergency exists and as to all actions taken in response thereto is final and conclusive so long as made in good faith. All rights of the Association under this Section are cumulative and non-exclusive
- k) It shall be the duty, responsibility and the obligation of each Owner at his own cost and expense to care for, maintain and repair the exterior and interior of his residence house and improvements on his Lot and the fixtures, appliances, equipment and other appurtenances thereto to his residence house and situated on his Lot. The Association shall have no duty or obligation to any Owner in this regard.
- l) The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Area and any facilities owned by the Association, except that it shall be the obligation of each Owner, and not the obligation of the Association, to pay for the cost of repair and maintenance of private driveways, sidewalks, and fence or fences which are located upon his Lot.

- m) Declarant or a builder may have constructed or installed drainage swales, drainage lines, catch basins, and/or other equipment on a Lot for the purpose of managing and/or containing the flow of surface water, if any, found upon such Lot or draining from adjacent property, from time to time. Except to the extent that such responsibility is assigned to or assumed by the City of Galveston or the Association pursuant to this Declaration or any Supplemental Declaration, each Owner shall be responsible for the maintenance, operation, and repair of such drainage swales, drainage lines, catch basins, and other equipment on such Owner's Lot. Maintenance, operation, and repair shall mean and include, without limitation, the exercise of practices, such as mowing, removal of debris and erosion repair, which allow the drainage swales, drainage lines, catch basins, and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities. Filling, excavation, construction of fences, or otherwise obstructing the surface water flow in or into the drainage swales, drainage lines, catch basins, and other equipment is prohibited. No alteration of a drainage swales, drainage lines, catch basins, and other equipment shall be authorized and any damage to any drainage swales, drainage lines, catch basins, and other equipment, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swales, drainage lines, catch basins, and other equipment returned to its former condition as soon as possible by the Owner(s) of the Lot upon which the drainage swales, drainage lines, catch basins, and other equipment is located. No Owner may interfere with the water flow from or to adjacent property through streams, drainage swales, drainage lines, catch basins, and other equipment located on a Lot.
- n) Each Owner, if and when using fertilizer for the protection and enhancement of grass and landscaping on their Lot(s), must use a fish emulsion type spray fertilizer to minimize non-source pollution-a danger of nitrogen-based fertilizers commonly associated with contributing to fish-killing algae blooms. As such, nitrogen-based fertilizers are specifically not allowed in the subdivision. Furthermore, rotary fertilizer spreaders are also not allowed and native mulch is encouraged.

6.2. Insurance on Lots; Casualty Losses.

Each Owner shall maintain property insurance providing fire and extended coverage at full replacement cost, less a reasonable deductible, on all insurable improvements located on such Owner's Lot, to the extent such responsibility is not assigned to or assumed by the Association pursuant to this Declaration or any applicable Supplemental Declaration. In addition, every Owner shall be obligated to obtain and maintain at all times insurance covering consequential damages to any other Lot or the Common Area due to occurrences originating within the Owner's Lot caused by the negligence of the Owner, the failure of the Owner to maintain the Lot, and any other casualty within the Lot which causes damage to the Lots or the Common Area, to the extent such coverage is not provided by policies maintained by the Association or to the extent insurable losses may result in the Owner's liability for payment of deductibles under the Association's policies. For Dry Lot Owners, the off-site and assigned boathouse shall be included in said property insurance coverage. In such instance where damage is sustained to one or more shared boathouses, costs associated with repair or replacement shall be shared equally.

amongst affected Owners where the property bounds of each boathouse shall be taken into consideration and the financial responsibility of each Owner for complete repair and/or replacement of affected boathouse (s) determined by the Board of Directors

Each Owner shall provide a certificate evidencing such insurance to the Association within 10 days of any written request from the Board of Directors. In addition, if the Board so requests, each Owner shall file with the Association a copy of the individual policy or policies covering such Owner's Lot. Each Owner shall promptly notify the Board in writing in the event such policy on such Owner's Lot is canceled. In the event that an Owner fails to obtain any insurance which the Owner is required to obtain hereunder, or permits such insurance to lapse, the Association may, but shall not be obligated to, obtain such insurance on behalf of the Owner and assess the costs thereof to the Owner and the Owner's Lot as a Benefited Assessment.

Nothing shall be done in or kept in or on any Lot that will increase the rate of insurance on the Community or any other Lot over that applicable to residential Lots, or result in uninsurability of the Community, or any part thereof, or the cancellation, suspension, modification or reduction of insurance in or on or covering the Community or any part thereof. If, by reason of the occupancy of any Lot, by an Owner in contravention of the provisions of the Declaration or Governing Documents, the rate of insurance on all or a portion of the Community shall be increased, such Owner shall immediately cease any such use and shall be personally liable to the Association for the increase caused thereby.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article V. Alternatively, and with the approval of the ARB in accordance with Article V, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat, attractive landscaped condition consistent with the Community-Wide standard.

Article VII The Association and its Members

7.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Common Areas. The Association also has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and applicable law. The Board shall be responsible for management of the Association and may contract with a property manager for such purposes. The Board is appointed or elected as provided in the By-Laws. Membership in the Association is appurtenant to and may not be severed from the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation, or By-Laws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot.

The Association shall act through a Board of Directors, which shall manage the affairs of the Association. The initial Directors of the Association will be selected by Declarant and will be

considered the Board of Directors as that term is defined within this Declaration. Each Director on the appointed Board shall serve for a term of one (1) year from date of appointment, and thereafter, until his successor is duly appointed and qualified. The Declarant shall retain the unilateral right to appoint all Directors until such time as the Declarant no longer owns any portion of the Existing Property. From and after the time when the Declarant no longer owns any portion of the Existing Property, the Declarant's appointed Board shall serve until an election can be conducted to elect a new Board pursuant to the Bylaws. Any Director vacancy, from whatever cause, occurring in the appointed Board shall be filled by appointment made by the Declarant and the person appointed to fill such vacancy shall serve for the remainder of the term. The Directors shall have the power to select one or more advisory directors from the residents of the Community to serve for such periods of time as the appointed Board or, later, the elected Board of Directors shall deem appropriate for the purpose of providing advice and counsel to the Board of Directors, provided that such advisory directors shall have no right to act on behalf of the Association. An officer, director, or committee member of the Board of Directors shall not be liable to the Association or any Owner for any action or omission occurring in such person's capacity as an officer, director, or committee member so long as such action or omission is made or taken in good faith or pursuant to the business judgment rule.

7.2. Purpose.

The purpose of the Association in general is to provide for and promote the health, safety, and welfare of the members, to collect the Assessment, to enforce the Restrictions set forth herein and in the Governing Documents, to administer the Community's funds, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Area and such other purposes as are stated in the Articles of Incorporation and By-Laws consistent with the provisions of this Declaration and all amendments thereto. The Association shall have all rights, powers and duties of an "Association" as that term is used in the Texas Property Code.

Furthermore, the Association shall be responsible, as the third party conservator, for the maintenance of the Conservation Easement, as required per stipulations of the USACE Permit 22607(01). The land encompassed by the Conservation Easement is defined, for purposes of that land responsible for maintenance by the Association, and shown on the final recorded plat for Sunset Cove, a subdivision out of and a part of East ½ of Section 12, half and Jones Survey, as: Open Space Reserve 1 (being .65 acres), Open Space Reserve Center (being 3.36 acres), Open Space Reserve East (being 5.63 acres) and Open Space Reserve West (being 20.64 acres).

Additionally, the Association shall be responsible for the maintenance of the nature trail in the Conservation Easement, as required per stipulations of the USACE Permit #22607-01. Responsibilities for the Conservation Easement maintenance are shared with the Galveston Bay Foundation, as the third party conservator.

The actual Conservation Easement is a recorded easement and available for review at the Galveston County Clerk's office.

7.3. 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 his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. 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 that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" members are all Owners except the Class "B" member. The sole Class "B" Member shall be Declarant. The Class "B" membership shall terminate simultaneously with the termination of the Class "B" Control Period.

There shall be only one Class "A" membership per Lot. If a Lot is owned by more than one Person, each co-Owner shares the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Section 7.3(a) and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner that is not an individual (e.g., a corporation) may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any additional property made subject to this Declaration pursuant to Article X, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

The Commercial Reserve and Lot 1, Block K, where the Sunset Cove Realty sales office shall be located, are not part of the subdivision and shall not be considered as part of the Home Owners Association nor shall the Owners of said properties be subject to the rights and responsibilities of the Home Owners Association.

7.4. Voting.

- a) **Class "A"**. The Class "A" Members have one equal vote for each Lot owned, except that there is only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.8.

In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

- b) **Class "B"**. The Class "B" Member shall have three equal votes for each Lot it owns and may appoint a majority of the Board members during the Class "B" Control Period, as specified in the By-Laws, and may exercise the additional rights specified throughout the Governing Documents. Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Lot it owns.

7.5. Disputes.

In addition to the other powers conferred by law or hereunder, the Board of Directors is hereby empowered to create procedures for resolving disputes between Owners and the Board of Directors or the Association, including appointment of committees to consider and recommend resolution of or to resolve any such dispute.

7.6. Dispute Resolution.

Except as set forth in Article XV, Section 15.2, no lawsuit between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation. Owners, Members; Board of Directors; officers of the Association; the Association; the Declarant; or the managing agent (if any).

In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator may either be an attorney-mediator skilled in community association law, a Professional Community Association Manager ("P.C.A.M.") as certified by the Community Associations Institute, or a Certified Property Manager ("C.P.M.") as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Subdivision, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. The Board of Directors may maintain a list of potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before mediation may be scheduled.

The provisions of this Declaration dealing with Alternative Dispute Resolution shall not apply to the collection of Assessments, enforcement of the Declaration, and/or Rules and Regulations by the Association.

Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

Article VIII Association Powers and Responsibilities

8.1. Acceptance and Control of Common Areas.

- a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as landlord or tenant) and operate tangible and intangible personal property and real property. The Association shall not dispose of real property, without written consent of 100% of all members. However, in the event of condemnation by a governmental authority, the Association may dispose of real property for this purpose only
- b) Declarant or its designees may, from time to time, transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any real property (and any improvements which may be located thereon) included within the property described in Exhibit "A" or "B"
- c) The Association is responsible for management, operation and control of the Common Area, subject to the Governing Documents and any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association or Third Party Conservator. Furthermore, the Association shall be responsible for the maintenance of the Nature Trail in the Conservation Easement as required per stipulations of the USACE Permit 22607-01
- d) Declarant may establish specific minimum standards for the maintenance, operation and use of any Common Area in the Governing Documents and/or in the deed or other instrument transferring the property to the Association. Such standards shall become part of the Community-Wide Standard. These standards may contain general provisions applicable to all of the Common Area, as well as specific provisions which vary from one portion of the Common Area to another depending upon the nature of any improvements located thereon, intended use, location, and unique characteristics. Declarant will designate the Open Space Reserve West, Open Space Reserve East, Open Space Reserve Center (as described in the final plat) to be reserved as open space forever.
- e) Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Area, but is not obligated to do so and may elect to leave portions of the Common Area in their natural unimproved state. Declarant shall not be required to dredge or remove silt from any waterway, ditch, pond or other body of water that may be conveyed to the Association. Areas described as "Ditch" on the Plat shall be

the sole maintenance responsibility of Galveston County Municipal Utility District No. 30 (the "District"). Declarant shall have the absolute right and power to determine what improvements or facilities, if any, will be located on the Common Area during the Development and Sale Period. Any facility improvements for the Common Area shall be constructed after the full completion of all infrastructures for the subdivision unless otherwise decided by Declarant

- f) Declarant hereby reserves the right, at all times after conveyance of the Common Area to the Association, to exercise all rights and easements reserved hereby, including, but not limited to, the right to grant easements over the Common Area pursuant to Articles XII and XIII, and to enter the Common Area, without prior notice, and to inspect the condition thereof and the improvements and facilities thereon, if any. If Declarant determines, in its sole judgment, that the Association has failed to maintain any portion of the Common Area in a manner consistent with the Community-Wide Standard, it may so notify the Association, in writing, and the Association shall promptly perform the required maintenance or repairs. Failure of the Association to maintain the Common Area in a manner consistent with the Community-Wide Standard shall relieve Declarant and any predecessor Declarant of any liability to the Association or to any Member for any condition of the Common Area. Declarant shall have the right to make a record of its inspections by any means available, including, but not limited to, photographing and/or videotaping the Common Area, and shall have the right to perform tests or examinations to determine the condition of the Common Area. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the common Area owned by the Association, and the Association shall not be relieved of its obligation to maintain the Common Area because of the election of Declarant or any predecessor Declarant to inspect or not to inspect or report to the Association the condition of the Common Area.

8.2. Maintenance of Common Maintenance Areas.

The Association shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to (a) the Common Area, including landscaping, irrigation, lighting, structures, trails and bridges, recreational facilities, community mailbox areas, signage, any outdoor pavilion or facilities, any entry feature or structures, and other improvements located on the Common Area as well as any entry features, private streets, common driveways, or boat ramp; (b) landscaping within public rights-of-way within or abutting the Community, or Wetlands if not the obligation of owners; (c) such portions of Lots as are specifically identified as the Association's responsibility under Section 6.1 or any Supplemental Declaration; (d) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association, and (e) all ponds, ditches (including circulation ditches), culverts, canals, the main channel (whereas dredging for silt removal may be required for proper boat ingress/egress) traversing through the wetlands and throughout Snake Island Cove, and/or Wetlands located within the Community, other than those portions located on a Lot and to be maintained by the Owner of such Lot in accordance with Section 6.1 including, without limitation, associated improvements and equipment, any other wetland (whether located in Common Area or a Lot),

but not including any such areas, improvements, or equipment maintained by the City of Galveston, County, a community development district, Galveston MUD 30 or any other Governmental Authority.

The Association may maintain other property that it does not own, including, without limitation, maintenance as necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own.

The Association shall maintain the facilities and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as the Board may determine in its discretion, to perform required maintenance, repairs, or replacement, unless members representing at least 75% of the Class "A" votes agree in writing to discontinue such operation (which may include closing and/or demolishing such facilities or equipment). No vote by the Association shall alleviate that responsibility of the Association for the maintenance of the Conservation Easement, an easement in perpetuity, as defined by USACE Permit 22607(01). Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval during the Development and Sale Period. If the Association fails to properly perform its maintenance responsibilities hereunder and/or to comply with the Community-Wide Standard, Declarant may, following 10 days' notice, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (a) such property so dedicated to any Governmental Authority, provided however, that in connection with such assumption, assignment or dedication, the Association may reserve the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Unless otherwise provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair, and replacement of the Common Maintenance Areas shall be a Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration, or other recorded covenants or agreements.

Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Common Maintenance Areas, Declarant shall have no such obligation, regardless of any inferences which may be drawn from promotional or other materials.

8.3. Community Access.

The Community shall maintain a limited/controlled access entry and shall not open any free access roads or paths into the Community unless mandated by State, County, or Municipal Laws.

Rules and regulations regarding access and entry may be promulgated by the Board of Directors, and each Owner, by their purchase of a Lot, agrees to abide by same.

The Association may maintain a guard house and limited access gate system at the Community's main access road. The Board of Directors shall have the right to relocate the gates or guardhouse at any time. The remainder of the Community may be surrounded by a perimeter wall or fence which, if erected, shall be maintained by the Association.

The guardhouse, access gates, and guards shall be paid for by the Association out of Assessment revenue. Gate access cards, remotes, or other automatic gate devices shall be paid for by each Lot owner at a rate determined by the Board of Directors.

The Association may require all Owners and their family members, tenants, and other permanent residents to maintain identification stickers on each of their vehicles.

Each Owner shall provide the Association with their residential and emergency telephone numbers, as well as cellular telephone numbers, email addresses and permanent residential addresses for correspondence.

THE GUARD AND ACCESS CONTROL GATES AND WALLS, IF PROVIDED, ARE PROVIDED AS A COURTESY ONLY AND THEIR EXISTENCE SHALL NOT BE CONSTRUED AS ANY PROMISE, WARANTEE, GUARANTEE OR REPRESENTATION OF ANY TYPE OR NATURE OF THE SECURITY OF THE SUBDIVISION OR THAT SUCH SERVICE WILL PREVENT, DETER OR OTHERWISE STOP ANY CRIME, VANDALISM, UNAUTHORIZED ACCESS OR OTHER UNWANTED CIRCUMSTANCE OR EVENT.

BY ACCEPTING TITLE TO THEIR LOT, EACH OWNER FOR HIMSELF, HIS FAMILY, GUESTS, INVITEES, TENANTS, SUCCESSORS, AND ASSIGNS HEREBY RELEASES THE ASSOCIATION, THE ASSOCIATION'S BOARD OF DIRECTORS, ALL LIABILITY AND ANY AND ALL CLAIMS OF WHOTSOEVER NATURE, HOWSOEVER OCCURRING, KNOWN OR UNKNOWN, FORSEEABLE OR UNFORESEEABLE, NEGLIGENCE, GROSS NEGLIGENCE, OR INTENTIONAL CONDUCT, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR DAMAGE, INJURY OR LOSS TO PERSONS OR PROPERTY, RESULTING FROM CRIMINAL ACTIVITY, VANDALISM, UNAUTHORIZED ACCESS OR ANY OTHER EVENT. GUARDS OR ACCESS CONTROL GATES ARE DESIGNED TO DETER, IT BEING AGREED THAT THE ASSOCIATION AND ITS VENDORS CANNOT PREVENT SUCH OCCURRENCES AND THAT EACH LOT OWNER, THEIR FAMILY, GUESTS, INVITEES, AND TENANTS SHALL BE RESPONSIBLE FOR THEIR OWN SAFETY AND THE SAFETY OF THEIR PROPERTY AND HAS THE OPTION OF OBTAINING THIRD PARTY INSURANCE FOR SAME.

8.4. Insurance.

The Association shall keep all improvements, facilities, and fixtures located within the Common Areas insured against loss or damage by fire or other casualty for such limits as the Association deems proper and advisable. The Association may also obtain insurance against such other hazards and casualties as deemed desirable by the Association.

- a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect any or all of the following types of insurance, as deemed necessary or advisable in the Board's business judgment and as may be reasonably available: (i) blanket property insurance covering all insurable improvements within the Common Areas to the extent that the Association has responsibility for repair or reconstruction in the event of a casualty, or assumes such responsibility pursuant to Section 6.2, regardless of ownership with full replacement value coverage, (ii) commercial general liability insurance on the Common Maintenance Areas insuring against liability for bodily injury, death, and property damage arising from the activities of the Association or with regards to Common Maintenance Areas, including, without limitation, if obtainable, a cross liability endorsement insuring each Member and Declarant against liability to each other Member and the Association and vice versa; (iii) directors and officers liability coverage; (iv) commercial crime insurance, including fidelity insurance, covering all Persons responsible for handling Association funds in an amount equal to three months of Regular Assessments, plus all reserve funds; (v) to the extent all insurable improvements to Common Maintenance Areas are within the designated special hazard flood area, flood insurance in an amount equal to the lesser of 80% of the actual cash value of all insurable improvements (subject to the maximum available under the federal flood program) within the Common Maintenance Areas or the maximum amount of coverage available under the National Flood Insurance Program; (vi) Director/Officer liability insurance insuring the Board of Directors and officers of the Association against any claims, losses, liabilities, damages or causes of action arising out of or in conjunction with or resulting from an act or omission in their representatives capacity, and (vii) such additional insurance as the board, in its business judgment, determines advisable. The Association shall also have the authority to obtain such worker's compensation insurance as may be necessary to comply with applicable laws. All such policies shall list Declarant as an additional insured during the Development and Sale Period. Notwithstanding the foregoing, Declarant may obtain insurance for multiple communities which it is developing and/or other projects under a blanket policy instead of obtaining a separate policy for the Association, and charge a reasonable portion of the cost of the cost thereof to the Association.

Unless provided for in a Supplemental Declaration, premiums for Common Maintenance Area insurance shall be a Common Expense.

- b) **Policy Requirements.** The Association shall arrange for periodic reviews of the sufficiency of its insurance coverage by one or more qualified Persons. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association may contain provisions, or be accompanied by endorsements, for agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction. All insurance policies shall contain standard mortgagee clauses, if applicable.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 8.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage, subject to the provisions of Section 8.4. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

- c) **Waiver of Subrogation.** As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Members, Declarant, any predecessor Declarant, and directors, trustees, officers, shareholders, attorneys, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said Persons, but only to the extent that insurance proceeds are received in compensation for such loss.
- d) **Restoring Damaged Improvements.** In the event of any loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust all insurance claims. The Board shall obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements of the Common Area shall be repaired or reconstructed unless Members representing at least 80% of the total Class "A" votes in the Association, and Declarant during the Development and Sales Period, decide, within 90 days after the loss, not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 90-day period, then the period may be extended until 90 days after such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed (unless required by FNMA, HUD or VA).

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and runs and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard

The Association shall deposit any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, in a capital improvements account for the benefit of the Members. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

8.5. Enforcement

- a) The Association, acting through the Board, may impose sanctions for violation of the Governing Documents, subject to the notice and hearing procedures set forth in the Declaration and Governing Documents, as applicable. Such sanctions may include, without limitation:
- i. Imposing monetary fines, up to the maximum, if any, permitted by applicable laws, which may accrue from the date of notice and which shall constitute a lien upon the violator's Lot;
 - ii. Suspending the vote attributable to the violating Owner's Lot if permitted and then in accordance with applicable law;
 - iii. Suspending the right of the violator and any Occupant of the violator's Lot to use any recreational facilities within the Common Maintenance Area;
 - iv. Suspending any services which the Association provides to an Owner or the Owner's Lot if the Owner is delinquent in paying any Assessment or other charge owed to the Association including, but not limited to, Regular Assessments, Special Assessments, Benefited Assessments, Initial Assessments, transfer fees, fines, consumption fees, license fees, royalties, interest, late fees, and Legal Costs, for longer than 30 days (or such longer period as is permitted by HUD or VA if either such agency is insuring or guaranteeing the Mortgage on any Lot or has granted project approvals for such Mortgages);
 - v. Recording notices in the County land records describing any violation of the Governing Documents, and/or
 - vi. Without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article V, the Architectural Controls, and/or any other Governing Document from continuing or performing any further activities in the Community.
- b) In addition, but without limitation of the Association's other rights and remedies, the Association, acting through the Board or its designee, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration and the Governing Documents including taking the following action to enforce the Governing Documents without, to the extent permitted by applicable law, the necessity of compliance with the notice and hearing procedures set forth in the By-Laws:
- i. Requiring an Owner, at its own expense, to perform maintenance on such Owner's Lot, to complete or cure any construction or modification approved pursuant to Article V, or to remove any structure, item or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition,

- ii. Entering the property pursuant to the easement granted in Section 12.6 and exercising self-help to remove or cure a violating condition, or to complete any construction or modification approved pursuant to Article V which was begun and not completed within the required time period, upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after the Board's mailing of written notice to do so, and any such entry shall not be deemed a trespass;
 - iii. Exercising self-help in any situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);
 - iv. Levying Benefited Assessments pursuant to Section 9.4 to cover costs which the Association incurs to bring a Lot into compliance with the Governing Documents, including Legal Costs allowed by the Act, or costs incurred as a consequence of the conduct of an Owner or Occupant of a Lot; and/or
 - v. Bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XV, if applicable.
- c) **Fines.** The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner enforceable and collectable in the manner established in Section 9.7 of this Declaration and to suspend an Owner's right to vote or any person's right to use the Common Area, for violation of any duty imposed under the Declaration, the By-Laws, or any rules and regulations duly adopted hereunder. In the event that any occupant, guest or invitee of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant, guest, or invitee; provided, however, if the fine is not paid by the occupant, guest or invitee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:
- 1. Notice. Prior to imposition of a fine hereunder, the Board or its delegate shall serve the alleged violator with written notice, sent by certified mail, describing (a) the nature of the alleged violation, (b) the proposed fine to be imposed, (c) a period of not less than thirty (30) days within which the alleged violator may present a written request to the Board of Directors for a hearing and (d) a statement that the proposed fine shall be imposed as contained in the notice unless a challenge is begun within thirty (30) days of the notice. If a timely challenge is not made, the fine stated in the notice shall be imposed
 - ii. Hearing. If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held in an executive session of the Board of Directors of the Association affording the alleged violator a reasonable opportunity to be heard. Proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the fine, if any, imposed. The

Board of Directors may, but shall not be obligated to, suspend any proposed fine if the violation is cured within the thirty (30) day period. Such suspension shall not constitute a waiver of the right to fine future violations of the same or other provisions and rules by any Owner, occupant, guest or invitee

11. **Appeal** Following a hearing before the Board of Directors, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

- d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents whether brought by the Association, Declarant, or Owner, the prevailing party shall be entitled to recover all Legal Costs incurred in any action, as permitted by the Act.
- e) The Association's decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:
 1. The Association's position is not strong enough to justify taking any or further action; or
 - ii. The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
 - iii. Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
 - iv. It is not in the Association's best interests, considering, among other things, hardship, expense, or other reasonable criteria, to pursue enforcement action

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under the same or other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule

- f) The Association, by contract or other agreement, may enforce applicable governmental regulations and permit a Governmental Authority to enforce ordinances, rules, statutes, or laws within the Community for the benefit of the Association and its Members.
- g) Declarant shall be entitled to exercise all of the rights and powers granted to the Association under Sections 8.4(a), 8.4(b), 8.4(c), and 8.4(d) and shall be entitled to recover all costs that it incurs in so doing from the responsible Owner.
- h) Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted as provided in the Governing Documents by Declarant, its successors and assigns, the Association, its successors or assigns, or any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner or

Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self-help to cure any violations that remain uncured after any required notice is given.

8.6. Implied Rights; Board Authority; Chapter 204 of the Texas Property Code

The Association may exercise any right or privilege given to it expressly or by reasonable implication from the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation on behalf of or in the name of the Association or the Members. In exercising the Association's rights and powers, making decisions on the Association's behalf, including, without limitation, deciding whether to file a lawsuit under any circumstances, and conducting the Association's affairs, Board members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

Incorporated into this Declaration are all rights and power afforded to property owner associations through Chapter 204 of the Texas Property code including, but not limited to, the twenty-one (21) powers set forth in Section 204.010 of the Texas Property Code.

8.7. Provision of Services to Lots.

The provision of utility services, to include water, sewer and drainage service, is provided by the Galveston County Municipal Utility District No. 30 (the "District"). Galveston MUD 30 encompasses the entire subdivision and is responsible for the construction of all water, sewer and drainage utilities within the subdivision, as well as all service and repair to the aforementioned utilities once they are installed, by way of a debt issuance to be repaid by individual Lot Owners (in the form of assessed taxes) and the City of Galveston through a dedication of revenues collected by ad valorem taxes. Once Galveston MUD 30's debt is retired, the utility improvements are deeded to the City of Galveston and Galveston MUD 30 is dissolved. Both the water and sewer service are anticipated to be operated through a central system.

Each Owner shall have his separate electric, gas (if and when available) and water meter and shall directly pay at his own cost and expense for all electricity, gas (if and when available), water, sanitary sewer service, telephone service, cable television and other utilities used or consumed by him on his Lot. Each Owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations or requirements of any governmental agency or authority with respect to the occupancy and use of its Lot and with the provisions hereof, and the By-Laws.

Each Owner shall directly render for taxation his own Lot and improvements thereon, and shall at his own expense and cost directly pay all taxes levied or assessed against or upon his Lot and his improvements and property thereon.

The Association may provide services for all or any of the Members and their Lots, and may enter into contracts or agreements with other entities, including, without limitation, Declarant and/or Declarant's Affiliates, to provide such services and/or facilities. The Board may charge use or service fees for any such services or facilities, or may include the costs in the Association's budget as a Common Expense and assess it as part of the Regular Assessment, if provided to, or determined by the Board to be a benefit to, all Lots. The Association may also arrange for the costs of such services and/or facilities. By way of example, such services or facilities might include landscape maintenance, pest control service, cable or satellite television service, telephone, internet access, security patrols and monitoring, caretaker, transportation, fire protection, trash collection and recycling, and other services or facilities and pro-rating of electrical service to Dry Lot Owner's off-site boathouses.

Nothing in this Section shall be construed as a representation by Declarant, any Declarant Affiliate or the Association as to what, if any, services, utilities or facilities shall be provided. In addition, subject to the contract terms, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services, utilities, or facilities provided to Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services, utilities, or facilities.

8.8. Relationships with Other Properties.

The Association may enter into Cost Sharing Agreements with the owners and/or operators of any neighboring properties or any properties within the Community to share expenses for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance of Common Maintenance Areas. Such agreements may establish rules and regulations regarding the use of any shared or mutually beneficial property or services. If the Association is obligated to make payments under a Cost Sharing Agreement, such payments shall be deemed to be Common Expenses of the Association unless set forth otherwise in the Cost Sharing Agreement.

8.9. Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public or private utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not

limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

8.10. Responsibilities Under Governmental Permits.

Declarant shall have the absolute and unconditional right in its sole discretion to assign, delegate, or otherwise transfer to the Association any of its continuing obligations and/or responsibilities under governmental permits and approvals with respect to the surface water and storm water management system under the permits issued by the Texas Commission on Environmental Quality and the City of Galveston. Furthermore, the Association shall be responsible for all conditions of the USACE Permit 22607(01), as defined in the Mitigation Plan of that permit and as listed and referred to in Exhibit "D" *By-Laws of the Sunset Cove Galveston Home Owners Association, Inc.*, Article VI. Section 6.1 The Association shall accept and assume such obligations and responsibilities without condition or consideration. Such assignment, delegation, or transfer and assumption shall be effective without the consent of, or any further action by the Association, but upon Declarant's request, the Association shall promptly execute any documents which Declarant requests to evidence the assignment, delegation, or transfer and assumption of such obligations and/or responsibilities. The Association shall comply in all respects with the terms of, and shall not undertake any activity inconsistent with, such permits and approvals. The Association shall indemnify, defend and hold Declarant harmless from any claims or losses arising out of the violation or failure to comply with any permit(s), or out of the operation, maintenance or use of any improvement or facility authorized by the permit(s), provided such claim or loss first occurs after the effective date of the assignment, delegation, transfer (or tender of the assignment, delegation, or transfer, if wrongfully refused by an Association).

8.11. Waterways; Water Level and Use.

With respect to any and all bodies of water now existing or which may hereafter be contained within the Community, only Declarant (and after termination period of the Class "B" Control Period, the Association) shall have the right to pump or otherwise remove any water from such bodies of water for the purposes of irrigation, drainage or other use or to place any matter or object in such bodies of water. The removal of any obstruction from the Canal System is enforceable through fines set by the Association. For maintenance of the Channel, dredging activities may be required to maintain channel depth and width, as defined in the construction drawing, "Section-Sloped Channel", located in the USACE Permit 22607(01).

The Association is burdened with maintaining the Canal System in a navigable manner, all natural and man-made debris to be removed, including removal of that debris and any other obstruction to ensure intended circulation of culverts providing necessary circulation to the Canal System and aid to navigation set (signage and buoys) and strict enforcement of a "no wake zone" inside the entire Canal System. Furthermore, the Association shall maintain the Canal System in a neat, orderly and attractive appearance, and shall maintain the water quality within the Canals sufficient to meet all applicable federal, state and local water quality criteria, including that defined in USACE Permit #22607(01) and the Texas Commission on Environmental Quality (TCEQ).

Boathouses must be located within a boathouse building envelope, as determined by the extension of the side yard setback lines (from the main lot) into the canal and confined by the 30' flowage easement, running parallel to the rear lot line

Subject to the provisions of this Declaration, and applicable to law, the Association shall have the right and, to the extent required by or any applicable governmental permit or ordinance, the obligation, to control the growth and eradication of plants, fowl, reptiles, animals, fish, fungi and other growth in, on and around such bodies of water.

8.12. Environmental Information Packet and Education Program

An environmental education packet, approved by the USACE, shall be provided to the Board by the Declarant or its affiliates. In this packet, a statement is provided that must be signed by each homebuilder and lot owner. The Association, after the Development and Sale Period, is responsible for maintaining copies of these statements for inspection by the USACE.

Furthermore, per stipulations of the USACE Permit #22607(01), the Association shall also be required to distribute (to all members on a yearly basis) and administer an Education Program to highlight the use of nature friendly fish emulsions for fertilizer, as it pertains to the use of Seashore Paspalum Grass further discussed in Exhibit C Initial Use Restrictions of this Declaration. Furthermore, the program shall promote the planting of native beneficial use trees/plants utilizing the common greenhouse to propagate these species. The program can take any form the Association deems useful. The Declarant and the Association wish to thank the USACE for their continued guidance in this informational packet.

8.13. Management Companies and Management Agreements.

The Association shall engage a professional managing agent or agents and do so at all times after termination of the Class "B" Control Period. Any management company retained by the Association after termination of the Class "B" Control Period shall provide the services outlined in the Management Company Services document and shall perform such additional duties and services as the Board shall authorize and as are otherwise within the scope of the Board's authority. The management company may be Declarant or any Declarant Affiliate or self management by the Board of Directors. After termination of the Development and Sale Period, this provision may be amended only if approved by (a) the unanimous consent of the Board and (b) Class "A" Members representing 80% of the votes present in person or by proxy at a duly called meeting of the Owners at which a quorum is present.

Article IX Association Finances

9.1. Budgeting and Allocating Expenses.

- a) **Calculation of Regular Assessments.** Before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses which it expects to incur for the coming year, including any contributions to be made to reserves pursuant to

Section 9.2 for periodic major maintenance, repair and replacement of items that the Association maintains as a Common Expense. The budget shall separately reflect the anticipated sources and estimated amounts of funds to cover the Common Expenses, including any surplus or deficit to be applied from prior years, assessment income, any fees charged for use of recreational amenities, and any other non-assessment income.

The Association is authorized to levy Regular Assessments to fund the Common Expenses against all Lots subject to assessment under Section 9.5, in the proportions described in Section 9.5. In determining the Regular Assessment rate, the Board may consider any assessment income expected to be generated from any property anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 9.6(b)) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board will make available for review a summary of the proposed budget and notice of the Regular Assessment to be levied pursuant to such budget to each Owner at least 30 days prior to the effective date of the budget. The budget and assessment shall automatically take effect on such date unless disapproved at a meeting by Members representing 75% of the total Class "A" votes and by Declarant during the Class "B" Control Period. There shall be no obligation to call a meeting of the Members for the purpose of considering the budget except upon petition of the Members as provided for special meetings in Section 2.5 of the By-Laws. Any such petition must be presented to the Board within 30 days of the completion of the budget.

If any proposed budget is disapproved, or if the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Regular Assessment from time to time during the year, subject to the notice requirements set forth above and applicable law.

A special Catastrophe Fund, as part of the Regular Assessment, in the amount of \$250 (\$750 total Regular Assessment is now established) is designated for the dune area, private concrete streets and bulkhead. Each Owner of a Lot bordering a Waterway shall have the primary responsibility to maintain, repair, replace or renew the bulkhead or shoreline of such Waterway Lot and to comply with all bulkhead and Waterway standards established by the Declarant or the Association. The Association, its agents, employees, representatives or assigns shall have, and are hereby granted, an easement

upon, in, or over, the Bulkhead Easement for the purpose of access to and from inspecting, maintaining, repairing, restoring, rebuilding, replacing, securing, preserving or improving any bulkhead, shoreline or other boundary between a Waterway and the property adjoining it, including, without limitation, the performance of any such services upon any pilings, cables or other structures incident thereto. If the Owner shall fail to perform Owner's Bulkhead Maintenance Obligation, the Association may give written notice to the Owner specifying the manner in which the Owner has failed to so perform. If such failure has not been corrected within ten (10) business days after such notice, or if such work, if it cannot be completed within such ten (10) business day period, has not been commenced within such period and thereafter diligently prosecuted to completion, the Association may cause its agents, employees or contractors to enter upon the parcel and perform such work. The Association by reason of its performing such work shall not be liable or responsible to the Owner for any losses or damages thereby sustained by the Owner or anyone claiming by or under the Owner, including without limitation any damage or destruction of a deck constructed on a bulkhead, except for gross negligence or wanton acts. The cost of such work shall be assessed as a Benefited Assessment against and paid by the Owner within thirty (30) days of the date the Association renders a statement therefore, which statement shall specify the details of the work performed by the Association and the costs thereof. The payment of such statement shall be secured by the lien retained in Article IX hereof

- b) **Calculation of Regular Assessments during the Class "B" Period.** During the Class "B" Period, the Declarant shall set the Regular Assessment in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00). The Board of Directors may decrease or increase the amount of the Regular Assessment provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing or decreasing the annual maintenance charge assessment shall become effective prior to the expiration of the Development and Sales Period, and the Owner of each Lot shall, within thirty (30) days from such effective date, pay to the Association or be credited by the Association for the proportionate part of such increase or decrease for the balance of the year in which such resolution is adopted; provided, however, that no resolution of the Board of Directors which fixes the amount of the regular annual maintenance charge or assessment at less than eighty-five percent (85%) of the amount assessed in the preceding calendar year, or in excess of one hundred fifteen percent (115%) of the amount assessed in the preceding calendar year, shall become effective unless and until such resolution is ratified by the written assent of a quorum of members present and voting in person or by proxy at a special meeting of the membership of the Association called for this purpose. The written assent or the vote of the Member must be given prior to the effective date of the resolution of the Board of Directors. No increase or decrease in the annual maintenance charge or assessment shall take effect retroactively. The Quorum required for such ratification shall be as follows: At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast twenty percent (20%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any such subsequent meeting shall be one-half (1/2) the required quorum at the preceding meeting,

provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

If any resolution of the Board of Directors which requires ratification by the assent of the Members of the Association as above provided shall fail to receive such assent, then the amount of the regular annual maintenance charge or assessment last in effect shall continue in effect until duly changed in accordance with the above provisions.

Declarant shall not be charged any maintenance fee with respect to any unimproved lot owned by Declarant; however, Declarant shall be responsible for all maintenance and mowing of such lots until they are sold to third parties. For those Lots not closed after one year from the date of the completion of construction for Sunset Cove, the Declarant shall pay a one-time fee of \$250 per remaining unclosed Lot. As such, the Declarant shall not be responsible for any Regular Assessments normally owed on any unsold Lots after said one year period with the exception of any Lots designated by the Declarant for its own use.

9.2. Budgeting for Reserves.

The Board shall prepare and periodically review separate reserve budgets for the Common Maintenance Area which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of capital items under each budget. The Board shall include in the Common Expense budget adopted pursuant to Section 9.1(a), as appropriate, a capital contribution to fund reserves in an amount which the Board, in the exercise of its business judgment, deems sufficient to meet the projected needs under each budget with respect to both amount and timing by annual contributions over the budget period.

Reserve funds (i.e. Catastrophe Fund) may be held in a separate account or accounts from the operating and other funds of the Association.

The reserve funds held in each account may be expended only for major maintenance, repair, or replacement of those assets covered by the reserve budget pursuant to which they were collected, principally intended for those expenses incurred as a result of a natural disaster or weather occurrence. Subject to such limitation, the Board may adopt resolutions regarding the expenditure of any reserve funds including, without limitation, policies designating the nature of assets for which reserve funds may be expended. Neither the Association membership nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent during the Development and Sale Period.

9.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a

majority of the Board, and the affirmative vote or written consent of Declarant, during the Development and Sale Period. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.4. Benefited Assessments.

The Association may levy Benefited Assessments against one or more particular Lots as follows:

- a) to cover the costs, including, without limitation, overhead and administrative costs, of providing services to a Lot pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 8.7 or Section 9.11) or pursuant to a Supplemental Declaration. Benefited Assessments for special services may be levied in advance of the provision of the service; and
- b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, including, without limitation, Legal Costs, subject to Section 9.5, as applicable. Required expenses associated with the proper repair of boathouses (including those owned by Dry Lot owners) and bulkhead shall be considered as legitimate costs here.

In addition, fines levied by the Association pursuant to Section 9.5 shall constitute Benefited Assessments.

9.5. Assessment Rate; Commencement of Assessments; Time of Payment.

The obligation to pay assessments commences as to each Lot on the date that the Lot is conveyed to a person other than Declarant or any Declarant Affiliate or the first day of the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. Notwithstanding the foregoing, in no event shall the obligation to pay Regular Assessments commence prior to January 1, 2005. Regular and Special Assessments for Common Expenses shall be allocated equally among all Lots subject to assessment. The first annual Regular Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot. Furthermore, the Declarant has elected not to levy any maintenance fee prior to the start of construction for improvements to the Common Area or August 1, 2005, whichever is earliest. At title company closing of all lots in 2005, a pro-rated bill for the calendar year will be collected at the closing of a new lot purchase.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners who have failed to pay, on a timely basis, two or more payments, in any 12 month period, of any nature, due under the Governing Documents. If the Board so elects, assessments may be paid in quarterly or monthly installments. Unless the Board otherwise provides, the entire Regular Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other

charges levied on such Owner's Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

9.6. Obligation for Assessments.

- a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot, covenants and agrees to pay all Assessments levied in accordance with the Governing Documents for each Lot owned. All Assessments, including Regular Assessments, Special Assessments, Benefited Assessments, Initial Assessments, transfer fees, fines, use fees, consumption fees, license fees, royalties and other charges imposed upon an Owner by the Association by and through this Declaration and the Governing Documents, together with interest (at a rate of 18% per annum or the maximum rate permitted by law, whichever is less), late charges as determined by Board resolution, and Legal Costs, shall be the personal obligation of each Owner and same shall be secured by a charge and a continuing lien upon each Lot, together with all improvements thereon until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance but no member shall be personally liable for payment of any Assessment made or becoming due after his ownership ceases.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Regular Assessments, if any, on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempted from liability for assessments by non-use of Common Maintenance Area, abandonment of such Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant of each Owner. No reduction or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Following a written request, the Association shall furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

- b) **Declarant's Right to Loan or Advance Funds.** Declarant may (but is not obligated to) loan, advance or otherwise make payments to the Association to assist the Association in meeting its financial obligations, in addition to Declarant's obligation to pay assessments or fund the deficit under Section 9.5 or 9.6(b). Notwithstanding anything to the contrary contained in this Article, if Declarant loans, advances or otherwise pays assessments (in

excess of its obligations under Sections 9.5 or 9.6(b)) then any such sums shall be repaid to Declarant prior to the termination of the Class "B" Period.

9.7. Lien for Assessments.

The Association may record a lien against any Lot to secure payment of Assessments that remain unpaid for a period of 30 days or longer after becoming due. For purposes of this Section, Assessments shall include Regular Assessments, Special Assessments, Benefited Assessments, Initial Assessments, transfer fees, fines, use fees, consumption fees, transfer fees, royalties and other charges imposed upon an Owner by the Association by and through this Declaration and the Governing Documents, together with interest, late charges and Legal Costs. Such lien shall be superior to all other liens, except (a) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (b) other liens or encumbrances which by law would be superior. The Association's lien may be enforced by suit, judgment, and/or judicial or nonjudicial foreclosure in a like manner as a Mortgage on real estate under power of sale under Title 5, Chapter 51 of the Texas Property Code Annotated.

Any foreclosures of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing Assessments which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing Assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay Assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

In order to secure payment of the Assessments levied hereunder and other sums due hereunder including Regular Assessments, Special Assessments, Benefited Assessments, Initial Assessments, transfer fees, fines, use fees, consumption fees, license fees, royalties and other charges imposed upon an Owner by the Association, together with interest, late charges, and Legal Costs, an assessment lien and superior title shall be and is hereby reserved in and to each Lot and assigned to the Association, without recourse, which lien shall be enforceable as hereunder set forth by the Declarant, the Association, and the Board of Directors on behalf of the Association.

Each Owner, by acceptance of a deed to its Lot, grants a power of sale to the Association to sell such property upon default in payment of any amount owed, and hereby expressly recognizes the existence of such lien as being prior to its ownership of such Lot. Each Owner, by acceptance of a deed to its Lot hereby vests in the Board of Directors, the appointed Board or its agents 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 aforementioned lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code (as same may be amended or revised from time to time hereafter).

In addition to and in connection therewith, by acceptance of the deed to its Lot, each Owner expressly GRANTS, BARGAINS, SELLS AND CONVEYS in the President of the Association from time to time serving as trustee (and to any substitute or successor trustee as hereafter provided for) such Owner's Lot and all rights appurtenant thereto, for the purpose of securing the said Assessments, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time

It is the intent of this Subsection to comply with the Texas Property Code regarding non-judicial sales by power of sales provisions.

Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same. THE PROVISIONS OF CHAPTER 209 OF THE PROPERTY CODE OF THE STATE OF TEXAS, as amended from time to time, shall be complied with by the Association.

The collection of such Assessments and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, costs and Legal Costs, shall be chargeable to and be a personal obligation of such defaulting Owner. Notice of the lien referred to above may, but shall not be required to, be given by the recordation in the Official Public Records of Real Property of Galveston County, Texas of an affidavit, duly executed, sworn to and acknowledged by an officer of the Association or its duly authorized employee or agent, setting forth the amount owed, the name of the Owner (or Owners) of such Lot, according to the books and records of the Association, the legal description of such Lot, or in such other manner as may be specified by the Texas Property Code.

Failure by the Board of Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee (or pursuant to a deed in lieu of foreclosure to a first Mortgagee) extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure or the deed in lieu of foreclosure. The purchaser of such foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. Such unpaid assessments shall be a Common Expense collectible from Owners of all Lots subject to assessment under Section 9 5, including, without limitation, such purchaser, its successors and assigns

Notwithstanding the above, while the Association owns a Lot. (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it, and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association

9.8 Exempt Property.

The following property shall be exempt from payment of Regular Assessments and Special Assessments:

- a) All Common Area, including Open Space Reserves,
- b) Any property dedicated to and accepted by any Governmental Authority or public utility;
- c) Lot 1, Block K and that area described on the final plat as Commercial Reserve.

9.9 Initial Assessment.

The Association hereby establishes an initial assessment (the “**Initial Assessment**”) applicable to each Lot in the amount of \$312.00. The Initial Assessment shall become due and payable upon the closing of the purchase and sale of the first conveyance of the Lot from Declarant or any Declarant Affiliate (this is further described in Section 9.5) Such Initial Assessment may be used to fund the Association’s initial start up costs and other operating expenses or to help fund reserves in 2005, in the Board’s discretion.

No further Initial Assessment shall be due for any subsequent transfer of ownership of any Lot from one Class “A” Member to a successor Class “A” Member; provided however, that a transfer fee in the amount of \$100.00 may be assessed pursuant to Section 9 10.

9.10. Transfer Fee.

Including the sale of any Lot from or to Declarant or any Declarant Affiliate but including all other sales of Lots, a transfer fee of \$100.00 shall be collected at the closing of a transfer of a Lot from the purchaser of each Lot. The transfer fee shall be paid to the Association and shall be secured by the lien established in Section 9.7. This amount shall be collected and disbursed to the Association at the closing of the purchase and sale of each Lot. Such funds may be used by the Association to defray costs of providing initial copies of deed restrictions, all related architectural forms and other pertinent documents. In the event of non-payment of such transfer fee, the amount due shall bear interest and shall be collectible as an Assessment as set forth in this Declaration including, but not limited to, foreclosure of the lien securing same. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sale price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence

Notwithstanding the foregoing, the transfer fee shall not be due and payable for the following transactions (collectively the “**Excluded Transactions**”):

- a) the sale of any Lot, or portion thereof, by Declarant,
- b) the transfer of a Lot, or portion thereof, to the spouse of an Owner or to direct lineal descendant of the Owner;
- c) the transfer of a Lot, or portion thereof, to a trust whose beneficiaries are solely the spouse and direct linear descendants of the Owner,
- d) the transfer of a Lot, or portion thereof, to an entity in which the Owner owns, directly or indirectly, not less than 51% of the ownership interests in such entity;
- e) the transfer of a Lot, or portion thereof, to an entity that owns, directly or indirectly, not less than 51% of the ownership interests in Owner;
- f) a Mortgagee acquiring title to a Lot, or portion thereof, pursuant to a foreclosure action;
- g) a Mortgagee acquiring title to a Lot, or portion thereof, pursuant to a conveyance in lieu of foreclosure,
- h) any transfer which the Declarant, in its sole discretion, waives in writing the transfer fee.

Except for the Excluded Transactions permitted under subparagraph (a) above (for which no notice shall be required), the transferring Owner shall give the Association at least thirty (30) days’ prior written notice of any transfer which is an Excluded Transaction with sufficient documentation to establish that the transfer is an Excluded Transaction

It is hereby acknowledged that, in the event of a transfer of a Lot, or portion thereof, is deemed in that particular instance to be an “Excluded Transaction,” the subsequent transfer of that Lot, or portion thereof, shall again be subject to the transfer fee unless such subsequent transfer independently qualifies as a separate Excluded Transaction in accordance with this Section.

9.11. Use and Consumption Fees; Licenses and Royalties.

The Board may charge use and consumption fees to any Person using Association services or facilities such as the rental of Common Area facilities for events and associated services such as “set up and clean up”, security, etc. The amount and method of determining such fees shall be determined by the Board. Any such fees charged to Owners shall be considered a Benefited Assessment against the Lots of such Owners under Section 9.4(a) and shall be secured by the lien established in Section 9.7 of this Declaration.

As set forth in Section 11.7, the Association may enter into license agreements with Declarant or other parties to permit the Association’s use of trade names or service marks (e.g , use of the name “Sunset Cove”). To the extent permitted by such license agreements, the Board may enter into sub-license agreements, under negotiated terms, which permit others within the Community to use such trade names and/or service marks. The Association may charge fees and collect royalties in connection with such sub-license agreements; provided, Declarant and any Declarant Affiliate shall retain the absolute right to use such trade names and service marks without payment of any license fees. Any such fees and royalties shall be considered a Benefited Assessment under Section 9 4(a) and shall be secured by the lien established in Section 9 7 of this Declaration

Article X Expansion of the Community

10.1. Annexation by Declarant

Declarant may, from time to time, subject to this Declaration, annex any portion of a roughly 58-acre tract of land located immediately west of the subdivision and described in Exhibit "B" of this Declaration by recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant. Additional lots, at a maximum of 25 lots and in a manner that is conducive to the original spirit of Sunset Cove, may be annexed to the Sunset Cove subdivision in the future by the Developer

Declarant's right to annex property to this Section expires when all property described in Exhibit "B" has been subject to this Declaration. Until then, Declarant may transfer or assign this right, in whole or in part, to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B". Any such transfer shall be memorialized in a recorded instrument executed by Declarant

Nothing in this Declaration shall require Declarant or any successor or assign to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

Declarant intends to develop the Community in accordance with the Development Plan. Owners of Lots hereby agree to hold harmless the Declarant and the Association (as defined herein), and their successors and assigns, and release them from any liability for the placement, construction, design, operation, maintenance and replacement of any improvement. Owners further grant an easement to the Declarant and the Association for any incidental notice, lighting, odors, parking and/or traffic which may occur in the normal operation of any improvement and/or use which may be placed upon said adjacent property. Owners further grant an easement to the Declarant and the Association for access to said adjacent property. Owners hereby acknowledge that Declarant has made no representations, warranties, agreements, statements, or expressions of opinion, oral or written, nor has Owner received from any person or entity whatsoever, including, without limitation, Declarant, any real estate agent or broker, property manager, tenant, governmental official, or seller, its fiduciaries, agents, attorneys, principals, or personal representatives any representations, warranties, agreements, statements, or expressions of opinion, oral or written, as to any future use of said adjacent property upon which any Owner has relied to base the decision to purchase a Lot. Owners further acknowledge that Declarant has no definitive plan(s) as to any expected use of said adjacent property, and Owners are purchasing a Lot with the understanding that said adjacent property may be sold or used in any number of ways, including without limitation, a use that is not presently contemplated by Declarant on the date this Declaration is recorded in the Real Property Records of Galveston County, Texas.

10.2. Annexation by the Association

With the consent of the owner thereof, following the termination of the Sales and Development Period, the Association may annex real property other than the Existing Property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of the Members representing a majority of the votes present at a meeting duly called for such purpose and of the Declarant, so long as the Declarant owns property subject to this Declaration or which may become subject hereto in accordance with this Declaration.

Annexation shall be accomplished by filing of record in the public records of Galveston County, Texas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the Bylaws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 10.2 and to ascertain the presence of a quorum at such meeting.

The Owners of land in annexed property shall be entitled to use the Common Area in the same manner and to the same extent of the Owners of the property subject to the jurisdiction of the Association prior to the annexation. Annexed property shall be impressed with and subject to Assessments imposed hereby on a uniform basis consistent with provisions of this Declaration

10.3. Additional Covenants and Easements

By Supplemental Declaration, Declarant may impose additional covenants, restrictions and easements on portions of the Community, including, without limitation, covenants obligating the Association to maintain and insure specific property and authorizing the Association to recover its costs through Benefited Assessments. If someone, other than Declarant owns the property, then such owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property (and its maximum 25 lot annexation) in order to reflect the different character and intended use of such property.

10.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording. Unless otherwise specified in the Supplemental Declaration, the Lots subject to this Declaration by such Supplemental Declaration shall have equal voting rights in the Association and equal pro rata liability for Regular Assessments with all other Lots.

Article XI Additional Rights Reserved to Declarant

11.1. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, Declarant, its Affiliates, and their assigns and builders authorized by Declarant may construct, maintain, and operate upon

portions of the Common Area and property they own, such facilities, activities, and things as, Declarant, in its discretion, may deem to be required, convenient, or incidental to the construction, sale or rental of Lots in the Community and in any other Community developed by Declarant. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, temporary or permanent sales and/or development offices, property management offices, holding or sponsoring special events, and exterior lighting features or displays. Owners may be excluded from use of all or any portion of such facilities in Declarant's sole discretion. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, and their assigns, and authorized builders may park vehicles in areas other than garages or driveways, including, without limitation, on streets

11.2. Rental Restrictions

Rental of any Lot or property within the community is limited to a minimum one-year rental term and approval by the Association (no boathouses may be rented).

11.3. Right to Develop.

Declarant, and its Affiliates, and their respective employees, agents, and designees, shall have a right of access and use, and an easement over, upon, and under, all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and the Exhibit "A" property as Declarant deems appropriate in Declarant's discretion.

Notwithstanding anything contained in any written letter, document or materials, or oral statement received by any Owner, each Owner acknowledges and agrees that the present plans and themes for the Community's development may change and that such Owner has not relied on any representation, warranty, or assurance by any Person (a) that any Lots, or other property or facilities, will be added, modified, or eliminated within the Community; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to the current or future: (a) design, construction, completion, development, use, benefits, or value of property within the Community; (b) number, types, sizes, prices, or designs of any residential or non-residential structures or improvements built or to be built in any part of the Community; or (c) use or development of any property adjacent to or within the vicinity of the Community.

11.4. Right to Approve Changes in the Community Standards.

No amendment to or modification of any Use restrictions, rules, or the Architectural Controls during the Development and Sale Period shall be effective without prior notice to and the written approval of Declarant.

11.5. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may, except to the extent restricted by applicable law, be transferred, in whole or in part, from time to time, to other Persons. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one-time or limited basis, any Declarant right without transferring the entire right. In such case, a recorded instrument is not required.

11.6. Community Systems and Services.

Declarant reserves for itself, its successors and assignees, and grants to the Association (after the termination of the Development and Sale Period or at such earlier time as Declarant elects in writing) the exclusive and perpetual right to provide and operate, or to permit others to provide and operate, within the Community, such telecommunication systems (including, without limitation, cable television, community intranet, internet, and other systems for receiving, distributing, and transmitting electronic data, signals, and audio or visual communications), security systems and services, utilities, trash collection, and other systems and services, including, without limitation, conduits, wires, amplifiers, towers, antennae, and other apparatus and equipment for the operation or provision thereof (collectively the "**Community Systems and Services**") as Declarant, in its discretion, deems appropriate. Such rights shall include, without limitation, the right to select and contract with companies licensed, if applicable, to provide such services in the vicinity of the Community, and to charge individual users a fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant Governmental Authority, if applicable. Declarant may receive, and shall be entitled to retain, any rebate, credit, fee, or incentive relating to the installation, operation, or provision of any Community Systems and Services.

During the Development and Sale Period, Declarant may require that the Association enter into agreements for the provision of Community Systems and Services to all Lots as a Common Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Benefited Assessment. Centerpoint Energy, or its affiliates will install all electric transmission lines underground, only on-ground junction boxes and overhead transformers are pole-mounted. Overhead transmission lines may exist on east and west boundaries of Sunset Cove, as needed by electric utility contractor.

11.7. Right to Use Names; License Agreements.

The Community Name, "Sunset Cove Galveston," the name "Sunbird Development, L P", "Nature's Concepts, Inc.," and all similar or derivative names, along with all logos associated therewith, are the proprietary trade names, company names and service marks of the Declarant or its Affiliates. No Person shall use such trade names, service marks or logos for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, or in any logo or depiction or in any other fashion or manner without the prior written consent of the Person who owns such mark in each instance.

The mark or trademark owner may condition such use of the mark by the Association or any Owner upon the signing of one or more license agreement(s) which are intended to protect the trade names and service marks from unauthorized use by others. Such license agreement(s) shall be non-exclusive, non-transferable, in form and substance acceptable to the owner of the mark.

11.8. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate, from time to time, the right to inspect, monitor, test, redesign, modify and correct any structure, improvement, or condition which may exist on any portion of the Community, including Lots, and a nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages. The Person exercising this easement shall promptly repair, and pay for, any resulting damage. The provisions of this paragraph do not impose any obligation on Declarant or any other Person to perform any such inspection, monitoring, testing, redesigning, modification, or correction.

11.9. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

11.10. Compliance With Agreement with TAMUS.

The Declarant will further provide the pier or elevated walkway necessary to connect the gift and exchange tract over the marsh/nature preserve areas from the building/pavilion site to the nearest upland portion of the Open Space Reserve as agreed upon by TAMUS. The Declarant will, for itself and for the Association, which it will establish, cause any boat launching facility provided in the subdivision to be available to TAMUG for launching boats which TAMUG may own and utilize in its research operations. The Declarant will secure these obligations by providing a letter of credit in the amount of \$250,000.00 in favor of TAMUS. TAMUG's use of the boat launching facility shall be conducted during the normal operating hours of such boat launching facility and will be in compliance with any applicable rules promulgated by the Declarant or the Association. The Declarant and the Association retains the right to have all individuals utilizing the boat launch facility hold the Declarant and the Association harmless from all claims for accident, injury, or death arising from use of the boat launching facility prior to, and as a condition of, use of such boat launching facility.

The Declarant will further cause the Association, which is responsible for the maintenance of the natural areas, shown on the recorded final plat as Open Space Reserves and Landscape Reserves,

to maintain the TAMUG Sunset Cove elevated walkway and the natural areas during its period of control of the Association. After the period of Declarant's control the Association shall continue to be responsible to maintain such elevated walkway and the natural areas.

The Declarant will grant access easements by execution of the instrument attached as Exhibit "F" to TAMUS providing access to that portion of TAMUS' remaining property east of the main channel with South Sunset Bay Drive. Such access will be provided along the northeasterly line of Lot 8, Block H of the Sunset Cove subdivision. In addition, an unimproved parking site will be provided for those accessing this area on the unimproved parcel located north of Lot 1, Block J of the Sunset Cove subdivision. In addition the Access Easement will connect the Gift and Exchange Property with FM 3005. TAMUG's use of the Sunset Cove Open Space Reserve for ingress/egress to State property shall, to the extent allowed under the Constitution and the laws of the State of Texas, be within the rules and regulations set forth by the Association.

11.11. Termination of Rights.

Rights granted Declarant under this Article (other than the rights granted in Sections 11.6 and 11.7) shall terminate upon the earlier of (a) the period specified in the particular Section, if any; or (b) 25 years from the date this Declaration is recorded. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. Notwithstanding the above, Declarant reserves for itself and its Affiliates a perpetual, non-exclusive easement of access to and use of the Common Areas in connection with the marketing and sale of other properties in order to show the Community as an example of Declarant's projects. This Article shall not be amended without Declarant's prior written consent.

11.12. Declarant's Restriction Upon Sale of Residence Lots.

During the first five (5) years after the sale of the first Lot by Declarant, the Declarant hereby reserves the right to restrict the sale of a Lot by an Owner, such that said Lot offered by an Owner shall not be offered for sale at a price below the current purchase price established by Declarant for Lots owned by Declarant.

a) Right of First Refusal.

1. Notice of Lot Owner. Any Lot Owner who receives a bona fide offer for the purchase of his Lot during the first five (5) years after the sale of the first Lot by Declarant at a price below the current purchase price established by Declarant for Lots owned by Declarant (hereinafter called "Outside Offer") which he intends to accept, shall give written notice to the Declarant of such offer and of such intention, the name and address of the proposed grantee and such other information as the Declarant may reasonably require.
11. Offer to Declarant. The Owner shall thereupon offer to sell such Lot to the Declarant or its designee, corporate or otherwise, on behalf of the Owners of all other Lots in the Property, on the same terms and conditions as contained in such outside offer; however, if the terms and conditions provide for a mortgage at the

time of transfer, the Declarant may, at its option, pay for the Lot in cash. The time for closing by the Declarant may be extended up to fifteen (15) days beyond the election of the Declarant to so purchase the Lot.

11. Representation by Owner. The giving of such notice shall constitute a warranty and representation by the Owner who has received such offer, to the Declarant on behalf of the other Owners, that such Owner believes the outside offer to be bona fide in all respects and that he intends to accept it.
14. Election by Declarant. Within fifteen (15) days after the receipt of such notice, the Declarant may elect, by notice to such Owner, to purchase such Lot or to cause the same to be purchased by its designee, on the same terms and conditions as contained in the outside offer

b) Failure to Accept Offer. In the event the Declarant shall fail to accept such offer within the above-described fifteen (15) day period, as foreshadowed, the offering Lot Owner shall be free to contract to sell such Lot to the outside offeror, on the terms and conditions set forth in the notice of such outside offer. Declarant's right of first refusal extends to each and every offer to purchase a Lot and/or Lots which is bona fide and memorialized in a written contract. Each bona fide written offer to purchase a Lot and/or Lots, whether same arises between parties to an earlier failed or terminated outside offer, is a counter offer, or is the result of an amended or supplemental outside offer, shall be subject to Declarant's right of first refusal

c) Violation. Any purported sale of any Lot in violation of this provision shall be voidable within five (5) years from date of recording the document evidencing such sale at the election of the Declarant, and the Declarant may take such other action against the parties to such transaction as permitted by law.

Article XII Easements

12.1. Easements in Common Area.

Subject to the provisions below, every Owner shall have a right to use and an easement of enjoyment in and to the Common Areas as applicable, which shall be appurtenant to and shall pass with the title to the Lot owned by such Owner. Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- a) The Governing Documents and any other applicable covenants;
- b) Any restrictions or limitations contained in any deed conveying the property to the Association;
- c) The Board's right to
 1. adopt rules regulating Common Area use, including, without limitation, rules limiting the number of guests who may use the Common Area, and charge use fees for such use,

- ii. suspend the right of an Owner and the Occupants of such Owner's Lot to use any Common Maintenance Area amenity (a) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents,
 - iii. dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration, except the Open Space Reserves and any action that may violate or compromise the previous agreement between the Declarant and TAMUG;
 - iv. rent any portion of the Common Area on an exclusive or non-exclusive short-term basis to any Person; and
 - v. mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred
- d) The rights of Declarant to conduct activities and establish facilities as provided in Section 11 2.

Any Owner may extend such Owner's right to use the Common Area to the Occupant of such Owner's Lot, subject to reasonable Board regulation. An Owner who leases such Owner's Lot in accordance with this Declaration shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term and shall not have any right to utilize the Common Area during such term, except as necessary to access the Lot. If use of a portion of the Lot is retained by the Owner, in compliance with Article III, then both the Owner and such Owner's tenants may use the Common Area, subject to any reasonable Board regulation.

Each Owner has a perpetual, non-exclusive ingress and egress easement to their Lot over the Common Area roadways

12.2. Easements of Encroachment.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area. Such easement shall permit encroachment only by a structure, improvement or fixture which has been constructed by Declarant or approved in accordance with Article V of this Declaration and which is constructed on another's property without the actual intention of encroaching on such property. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

12.3. Easements for Utilities, Etc.

- a) **Installation and Maintenance.** Declarant reserves for itself, its duly authorized agents, successors and assigns, during the Development and Sales Period, and grants to the Association, and Galveston MUD 30 for all items listed below except item (iii), subject to Declarant's rights under Section 11 6, perpetual, non-exclusive easements throughout the

Community (but not through a structure) to: (i) install utilities and infrastructure to serve the Community, including, without limitation, water, sewer, telephone, electric, gas, irrigation, cable and other systems for sending and receiving data and/or other electronic signals, drainage structures, facilities and systems, and security and similar systems and other Community Systems and Services; (ii) install walkways, pathways and trails, curb cuts, driveways and paved areas, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose (or for the installation of landscaping or utilities) on a Plat; (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; (iv) access and read utility meters; and (v) for any other purpose in Declarant's discretion. The right, license, or easement granted to a utility supplier shall include the non-exclusive right to ingress and egress over any streets for access and maintenance of its equipment and facilities

Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

- b) **Landscaping in Utility Easements.** The surface of any Easement for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, on any Easement, no landscaping shall be greater than six (6) feet in height or be allowed to grow greater than six (6) feet in height. Furthermore, no landscaping treatments shall interfere with the construction, installation, repair of any utility service. In such case where a utility Easement functions dually as a drainage Easement, landscape treatments shall not significantly impair drainage, as determined by the ARB. Neither the Declarant nor any supplier of any utility or service shall be liable to any Owner or the Association for any damage done by them or either of 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
- c) **Drainage Ditch Easements.** For those areas described as "Ditch" on the Plat, an easement shall exist over entire said area(s), granting the Association the right of ingress and egress in, over and throughout said easement for the purpose of laying, constructing, operating, maintaining and removing said drainage ditches and such other operations necessary or incidental thereto.
- d) **Specific Easements.** Declarant hereby reserves for itself, its duly authorized agents, successors and assigns, and grants to the Association, subject to Declarant's rights under Section 11 6, a perpetual, non-exclusive fifteen (15) foot easement for utilities, drainage and access for such purposes as bulkhead service and repair along and between the side yard boundaries of each Lot, regardless of whether such easements are shown on a recorded plat of the Lot Declarant also reserves for itself the non-exclusive right and power to record such specific easements anywhere in the Community (except through a structure) as may be necessary or appropriate, in Declarant's discretion, to assist in the construction, development and operation of the Community, including but not limited to any Lot, and such easements may be granted, transferred or assigned to Declarant,

Declarant's Affiliates, Owners, utility providers, and other third parties as deemed necessary or appropriate by Declarant.

- e) **Aerial Easements.** The Declarant has dedicated certain easements in the platting of the Subdivision to allow for the installation of electrical service and other utilities to Sunset Cove, based on the information provided by the utility companies at the time of plat filing. Centerpoint Energy has recently advised the Declarant that certain Aerial Easements will be required for the installation of electrical service. The property owners will be provided the final easements deemed necessary and required by Centerpoint Energy to provide electrical service to the subdivision and shall comply with the easements required so that electrical service can be provided to the Subdivision.

12.4. Easement for Entry.

Declarant grants to the Association an easement and the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons. Such easement and right may be exercised by the Association through its officers, directors, committee members, employees, contractors, managers and agents in their capacities as such, and by all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

12.5. Easements for Maintenance and Enforcement

- a) Declarant grants to the Association easements over the community, including each Lot but excluding the interior of any dwelling, as necessary for the Association to (a) perform its maintenance responsibilities under the Governing Documents; and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.
- b) Declarant grants to the Association an easement and right to enter a Lot, excluding the interior of any dwelling, to abate a Governing Document violation and/or remove any structure, thing or condition which violates the Governing Documents, using such measures as may be reasonably necessary. Any costs incurred, including Legal Costs, may be assessed against the Lot Owner as a Benefited Assessment.
- c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 8.5(b) (11).

12.6 Easement for Walking Trail Access.

Declarant hereby grants to the Owners and Occupants a perpetual, non-exclusive easement for enjoyment, use and access over and across any areas designated as “nature trails,” “cross-walks,” or “paths” on any Plat of the Community. Additionally said designated areas shall enjoy and assume a 15’ easement, running the width of the rear yards, for the following lots: Block C, Lots 4-15; Block J, Lots 1-15; Block H, Lot 8. Use of such recreational trails, cross-walks or paths shall be governed by reasonable rules and regulations promulgated by the Association.

12.7. Easement for Maintenance of Bodies of Water and Flooding

Declarant reserves for itself, Galveston MUD 30, the Association and their successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and Wetlands located within the Common Maintenance Area and the Community to (a) install, operate, maintain, repair, and replace pumps and other equipment to supply irrigation water to the Common Maintenance Areas; (b) construct, maintain, repair, and replace structures and equipment used for retaining, detaining, and otherwise controlling water, and (c) maintain such areas in a manner consistent with the Community-Wide Standard and applicable legal requirements. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, Galveston MUD 30, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Maintenance Area and Lots (but not inside a dwelling or other structure) adjacent to or within 30 feet of bodies of water and Wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Community, (b) alter in any manner and generally maintain the bodies of water and Wetlands within the Common Maintenance Areas; and (c) maintain and landscape the slopes, bulkheads, and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in, and repair any damage resulting from, their intentional exercise of the easements. Nothing herein shall be construed to make Declarant, the Association, or any other Person liable for damage resulting from flooding due to natural occurrences or for other occurrences not reasonably foreseeable or under the control of Declarant or such other Person.

12.8. Easements for Cross-Drainage.

All portions of the Community shall be burdened with easements, including and without limitation the Flowage Easements described on Plat, for drainage of storm water runoff from other portions of the Community, provided, however, that no Person other than Declarant shall alter the drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and Declarant during the Development and Sale Period.

12.9. Rights to Storm Water Runoff, Effluent, and Water Reclamation.

Declarant reserves for itself and its designees, including Galveston MUD 30, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include, without limitation, the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent.

12.10. Easement for Maintenance of Surface Water and Storm Water Management System.

Galveston MUD 30 shall have a perpetual, non-exclusive easement over all portions of the surface water and storm water management system for access to operate, maintain, repair, or replace the system. By this easement, Declarant and the Association shall have the right to enter upon any portion of any Lot which is a part of or adjacent to the surface water and storm water management system, at a reasonable time and in a reasonable manner, to operate, maintain, repair, or replace the system as the City of Galveston, County or any Governmental Authority requires or permits. Additionally, Declarant and the Association shall have a perpetual, non-exclusive easement for drainage over the entire surface water and storm water management system, including, without limitation, buffer areas or swales, without the Association's prior written approval, and, during the Development and Sale Period, Declarant's prior written consent.

12.11. Easement for Irrigation Equipment

For administration of the master irrigation system to service the Common Area, Declarant and the Association shall have a perpetual, non-exclusive easement over, under and through all Common Areas, except any area upon which buildings have been erected by Declarant or otherwise in accordance with Article V, for the purpose of installing, maintaining, repairing, replacing and operating all irrigation equipment, systems and lines serving all or any portion of the Common Areas. The foregoing easement shall not impose any obligation on the Association and/or Declarant to install any such improvements.

12.12. Easement for Special Events.

Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

12.13. Private Streets

- a) All streets in the Community, as noted on the Plat, shall be owned and maintained by the Association as part of the Common Area and shall not be dedicated to the City of Galveston or to public use by recordation of such Plat. Use of such private streets shall be subject to and in accordance with any rights and easements shown on the Plats and such reasonable Use Restrictions and rules as the Association may adopt from time to time consistent with this Declaration, the Plat, and any law, ordinance, or regulation governing the Community
- b) Declarant hereby reserves unto itself, its agents, employees, successors, and assigns an easement over the private streets for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Community and for performing any other work within the Community (including Lots) which Declarant deems reasonably necessary, in its discretion, or which Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any governmental agency having jurisdiction over the Community. With regard to construction on any of the Lots by the Owners thereof, the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any such Lots shall have access to such Lots over the private streets subject to such rules as the Association may adopt, provided, however, that during the Development and Sales Period, Declarant shall have the right to prohibit the use of the private streets by such Persons and to designate alternate access easements for such Persons.
- c) Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the private streets for Owners, law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses, for U.S. Postal Service delivery vehicles and personnel, for vehicles, equipment, and personnel providing garbage collection service to the Community, and for commercial delivery vehicles providing goods and services to the Community, provided that such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities.

12.14. General Development Easements.

Declarant reserves for itself, its successors or assigns, a blanket easement throughout the entire Community, to allow it to take whatever action it determines is necessary or beneficial to the construction, development or operation of the Community This blanket easement is to allow Declarant to construct all of its improvements in the Community, whether on Common Area or on Lots, in the manner it deems necessary. This means that Declarant has access and use of any Lot or Common Area as is necessary to construct any improvement within the Community. It also is reserved for the purpose of allowing Declarant, if it deems necessary, to repair, relocate, construct, or maintain any of the improvements installed in the Community Notwithstanding the foregoing, in no event shall Declarant store construction materials or equipment on a Lot, which has been conveyed to an Owner other than Declarant, unless such materials and equipment are required for construction on the Lot.

12.15. Interference.

All work associated with the exercise of the easements described in this Article XII shall be performed in such a manner as to minimize, to the extent reasonably practicable, interference with the use and enjoyment of the property burdened by the easement, and as to any Lot, the area outside of any building setback boundaries. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably practicable, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant. Nothing contained herein shall obligate Declarant or the Association to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this easement

12.16. Liability for Use of Easements.

No Owner shall have a claim or cause of action against Declarant, any Declarant Affiliate, the Association, their successors or assigns, including without limitation the owners or operators of any Private Amenities, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Community, except as in cases of willful or wanton misconduct.

12.17. Release and Termination of Easements.

Declarant reserves unto itself the right, in its discretion, upon the request of any Person holding, or intending to hold, an interest in the Community, or at any other time, (a) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Article, or (b) to define the limits of any such easements. This Article may not be amended without Declarant's consent, and the easements and other rights created in this Article shall survive termination of this Declaration

Article XIII Conservation Easements, Natural Conditions, and Wetlands

13.1. Establishment of Conservation Easements.

The provisions of Title 8, Chapter 183, Texas Natural Resources Code Annotated establish the right of a Governmental Authority or charitable organization to accept easements for the preservation of the natural habitat (such easements shall be referred to herein as the "**Conservation Easements**"). Said Conservation Easements shall encompass the 30 acres of Open Space Reserves, as described on the recorded final plat. The Conservation Easement shall be under the care and responsibility of the Home Owners Association

13.2. Natural Conditions.

- a) The Community may contain a number of manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes and other reptiles, alligators, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and Occupant of any Lot, and every Person entering the Community (I) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community.
- b) The natural areas or Conservation Easements, as defined on Plat as Open Space Reserve and Landscape Reserve, described in subsection (a) above may also contain creeks, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. The Association shall have the right to impose rules and regulations governing the use of the natural areas. Owner or Occupant of a Lot shall enter upon, or permit their guests or any other person acting on their behalf to enter upon, but not disturb any natural areas in any way without the Association's or Declarant's prior written approval or in accordance with the Association's rules and regulations. Any Owner who violates the foregoing restrictive covenants shall be responsible for the cost of restoring the affected natural area to the satisfaction of the Association, Declarant, and any Governmental Authority having jurisdiction thereof, and the Association shall have the right to prohibit the offending party from further use or enjoyment of the natural areas after prior notice and hearing before the Board.
- c) Declarant, acting in its discretion, retains the right, but not the obligation, to engage in wildlife and fishery management plans, coastal management plans, mitigation plans, and practices within the Community to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and not limitation, this includes the right to manage and control any populations of wildlife through a variety of techniques. Declarant may, in its discretion, commission environmental studies and reports relating to the Community and the wildlife habitats located thereon, and may elect to follow or disregard any recommendations resulting from such studies. Declarant may assign these management rights to the Association in which event the expenses of such activities shall be funded by Regular Assessments.
- d) **BECAUSE THESE AREAS ARE TO BE RETAINED IN THEIR NATURAL STATE PER USACE PERMIT 22607-1, SUCH AREAS SHOULD BE CONSIDERED HAZARDOUS FOR RECREATIONAL ACTIVITIES, OTHER THAN BIRD WATCHING, HIKING, FISHING AND OTHER PASSIVE, ZERO-IMPACT ACTIVITIES.**

NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY OF THEIR AFFILIATES, HAS ANY OBLIGATION TO PROVIDE SECURITY OR SUPERVISION FOR ANY PERSON USING A NATURAL AREA, AND ALL PERSONS USING A NATURAL AREA DO SO AT THEIR OWN RISK.

OWNERS SHOULD NOT ALLOW CHILDREN OR PETS TO ENTER ANY NATURAL AREA WITHOUT ADULT SUPERVISION.

NEITHER THE ASSOCIATION NOR DECLARANT, DECLARANT'S AFFILIATES NOR ANY PREDECESSOR DECLARANT, SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CONDITION OF A NATURAL AREA OR ANY INJURY OR DEATH OCCURRING THEREON.

IF ANY NATURAL AREA, OR THE TREES OR VEGETATION THEREON, ARE DAMAGED OR DESTROYED BY FIRE, WINDSTORM, FLOOD, DISEASE, OR OTHER NATURAL OR MANMADE EVENT, NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY DECLARANT AFFILIATE, SHALL HAVE ANY OBLIGATION TO REPAIR OR RESTORE THE DAMAGE OR DESTRUCTION, OR TO REMOVE ANY DEAD OR DAMAGED TREES OR OTHER VEGETATION.

Article XIV Party Walls and Other Shared Structures

14.1. General Rules of Law to Apply.

Each wall, fence, driveway, bulkhead or similar structure built as a part of the original construction on the Lots that serves any two adjoining Lots shall constitute a party structure. A party structure shall also include adjoined, multi-unit boathouse structures used for the purpose of boat storage and use by Dry Lot Owners and Occupants. For the purposes of this Article, any fence that serves to enclose only one Lot or which is otherwise installed as the option of the Owner of a Lot shall not be deemed a party structure. To the extent not consistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with any applicable provisions of Article XV

14.2. Maintenance, Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the Owners sharing the party structure shall share equally in the cost of necessary or appropriate party structure repairs and maintenance, provided, however, that painting and other aesthetic modifications visible only to one side of the structure shall be the responsibility of the Lot Owner with such visibility. Said party structure(s) shall include, but not limited to, Boathouses owned and assigned to Dry Lot owners.

If a party structure is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner sharing the structure may restore it and be entitled to contribution for the restoration cost in equal proportions from other sharing owners. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for

negligent or willful acts or omissions. The Owner of each Lot is granted an easement over the adjacent Lot as necessary to make repairs and restore the Lot

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Article XV Dispute Resolution

15.1. Agreement to Encourage Resolution of Disputes Without Litigation.

It is the intent of the Association and Declarant to encourage the amicable resolution of disputes involving the Community and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, no lawsuit between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners, Members; Board of Directors, officers of the Association; the Association; or the managing agent (if any)

In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator may either be an attorney-mediator skilled in community association law, a Professional Community Association Manager ("P.C.A.M.") as certified by the Community Associations Institute, or a Certified Property Manager ("C.P.M.") as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Subdivision, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. The Board of Directors may maintain a list of no less than five (5) potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before mediation may be scheduled.

The provisions of this Declaration dealing with Alternative Dispute Resolution shall not apply to the collection of Assessments, enforcement of the declaration, and/or Rules and Regulations by the Association.

Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

15.2. Initiation of Litigation by Association

To the fullest extent permitted by law, after the Class "B" Control Period, the Association shall not initiate any judicial or administrative proceeding, that is reasonably expected to cost \$25,000.00 or more in legal fees to prosecute to completion, unless first approved by the Board upon the specific recommendation of the Dispute Resolution Committee (if created as provided in the By-Laws), or a majority of the Class "A" votes in the Association. The Dispute Resolution Committee's recommendation must be in writing and must be accompanied by a feasibility analysis including an explanation of the issues, a budget for legal and related expenses, the amount in controversy, the expectation of success, and a copy of bids from a minimum of three qualified law firms.

Article XVI Mortgage Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

- a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 30 days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within 30 days,
- c) Any lapse, cancellation, or material modification of any Association insurance policy;
- d) Any proposed action which would require the consent of a specified percentage of Eligible Holders, or
- e) If HUD is insuring or VA is guaranteeing the Mortgage on any Lot, material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7, as it may be amended or superseded

Otherwise, no consent from Eligible Holders shall be necessary to enable the Association to accomplish any of its operational duties and responsibilities or to exercise any of its rights

16.2. Special FHLMC Provision.

To the extent required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Class "A" Members representing at least 67% of the total Association vote consent, the Association shall not:

- a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot;
- c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);
- d) Fail to maintain insurance, as required by the Declaration, or
- e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

16.3. Other Provisions for First Lien Holders.

To the extent not inconsistent with applicable law and in addition to the provisions in this Declaration

- a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated

- b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

16.4. Amendments to Documents for Article XVI Mortgagee Provisions.

The following provisions do not apply to (x) amendments to the Governing Documents or termination of the Association, if the same result is solely on account of destruction, damage, or condemnation pursuant to Section 16 3(a) and (b), or (y) to the annexation of land in accordance with Article X, otherwise

- a) The consent of at least 67% of the Class “A” votes, and the consent of Declarant, during the Class “B” Control Period, and the approval of the Eligible Holders of first Mortgages on Lots to which at least 67% of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.
- b) If and to the extent FHA, HUD or VA is insuring or guaranteeing any Mortgage on any Lot, the consent of at least 67% of the Class “A” votes, and the consent of Declarant, during the Class “B” Control Period, shall be required to amend any material provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:
 - 1. Voting;
 - ii. Assessments, assessment liens, or subordination of such liens;
 - iii. Reserves for maintenance, repair, and replacement of the Common Maintenance Area,
 - iv. Insurance or fidelity bonds,
 - v. Rights to use the Common Maintenance Area;
 - vi. Responsibility for maintenance and repair of the Community,
 - vii. Expansion or contraction of Community or the addition, annexation, or withdrawal of property to or from the jurisdiction of the Association,
 - viii. Boundaries of a Lot,
 - ix. Leasing of Lots,
 - x. Imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
 - xi. Establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
 - xii. Any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots

16.5. Construction of Article XVI.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or applicable law for any of the acts set out in this Article.

16.6. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.7. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgagee encumbering the Owner's Lot

16.8. Failure of Mortgagee to Respond.

Any Mortgagee (and for purposes of this paragraph "Mortgagee" shall include FHA, VA, HUD, FNMA, FHLMC, or other similar Governmental Authority who receives a written request from the Board to respond to or consent to any action, shall be conclusively deemed to have irrevocably approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested; or overnight delivery by a nationally recognized courier that provides tracking and receipt services, or personal delivery.

Article XVII Disclosures and Waivers

17.1. No Liability for Third Party Acts.

Owners and Occupants of Lots are responsible for their own personal safety and for their property in the Community. The Association may, but is not obligated to, maintain or support certain activities within the Community which are intended to promote or enhance safety or security within the Community.

No representation or warranty is made that any systems or measures, including, without limitation, fire protection, burglar alarm, or other security monitoring systems, (or gate or other mechanism or system for limiting access to the Community, if any), cannot be compromised or circumvented, nor that any such systems or measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing the Occupants of its Lot that the Association, the Board, its officers and its committees, Declarant, any Declarant Affiliate, and any predecessor Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties. Each Owner on behalf of itself and the occupants of its Lot agrees to release and discharge the Association, the Board, its officers and its committees, Declarant, any Declarant Affiliate, and any predecessor Declarant from and against any and all losses, damages (compensatory, consequential, punitive,

or otherwise), injuries, or deaths and expenses of whatever nature or kind, including, without limitation, Legal Costs arising by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

17.2. View Corridor Protection.

The Association attempts to guarantee, through the enforcement and protection of the restrictions provided in this Declaration, that any view over and across the Lots and residential dwellings shall be preserved without impairment. Neither Declarant, any Declarant Affiliate, nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping in the Common Areas for the protection of previously existing views, nor shall it be responsible for view impairment associated with the normal facility improvements to the Common Areas. The Association, Declarant and Declarant's Affiliates have the right to (with respect to the Common Area) relocate, prune, thin, or add trees and other landscaping improvements from time to time subject to applicable law. Furthermore, and from time to time, the Association, Declarant and Declarant's Affiliates have the right to (with respect to the Common Area) alter, remove or add (to) any facility improvement or change the physical appearance of the Common Area in any manner it sees fit. With respect to the Common Area, any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

17.3. Notices and Disclaimers as to Community Systems and Services.

In recognition of the fact that interruptions in satellite and/or cable television and other Community Systems and Services will occur from time to time, neither Declarant, any predecessor Declarant nor any of Declarant's successors or assigns (or their Affiliates) shall in any manner be liable for, and no Community System and Service user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems and Services, regardless of whether or not such interruption is caused by reasons within the service provider's control. Declarant shall be entitled to retain any rebate, discount, or other compensation received from the provider of any Community Systems and Services in connection with the installation or operation of such system.

17.4. Construction Activities.

All Owners and Occupants are hereby placed on notice that Declarant, any Declarant Affiliate, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, as well as other Owners shall continue, from time to time, to conduct construction activities within and/or adjacent to the Community. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and/or by using any portion of a Lot or the Community generally, Owners and Occupants acknowledge, stipulate, and agree: (a) that such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Lot or any other portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) to release and

discharge Declarant, any Declarant Affiliate, any predecessor Declarant, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, from and against any and all losses, claims, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths and expenses of whatever nature or kind, including without limitation Legal Costs, arising from or relating to any breach of this covenant; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing, and (e) this acknowledgment and agreement is a material inducement to Declarant and its Affiliates to sell, convey, lease, and/or allow the use of Lots within the Community.

17.5. Water Management.

Each Owner acknowledges and agrees that some or all of the water features, if any, or Wetlands in or adjacent to the Community may be designed as water management areas and are not designed solely as aesthetic features. Due to fluctuations in water elevations within the immediate area and as a result of natural events such as hurricanes or tropical storms, water levels will rise and fall. Each Owner further acknowledges and agrees that neither the Association nor Declarant has, and neither is obligated to exert, control over such elevations. Therefore, each Owner agrees to, and does by purchase of a Lot, release and discharge Declarant, any Declarant Affiliate, any predecessor Declarant and the Association from and against any and all losses, claims, damages (compensatory, consequential, punitive or otherwise), injuries or deaths, and expenses of whatever nature or kind, including, and without limitation, Legal Costs related to or arising out of any claim relating to such fluctuations in water elevations. Owners shall not alter (including any alteration to the grading or elevation of Lot(s)), modify, expand, fill or other adversely affect any water features, Wetlands or waterways, including the canals and supporting structures (ex. Bulkheads), located within or in the vicinity of the Community without the prior written approval of Declarant and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters. Furthermore, to the extent needed for construction, a 6+” height for slabs over the natural elevation of a Lot(s) shall be allowed, subject to ARB approval.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE WATERWAYS. ANY INDIVIDUAL USING THE WATERWAYS SHALL DO SO AT HIS/HER OWN RISK AND HEREBY HOLDS DECLARANT, ANY PREDECESSOR DECLARANT, ANY DECLARANT AFFILIATE AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF TITLE TO A LOT, ACKNOWLEDGES THAT THE WATERWAYS ARE DEEP AND DANGEROUS. NEITHER DECLARANT, ANY PREDECESSOR DECLARANT, ANY DECLARANT AFFILIATE, THE ASSOCIATION NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONSTRUCTORS OR SUBCONTRACTORS (COLLECTIVELY, THE “LISTED PARTIES”) SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY

WATERWAY WITHIN THE COMMUNITY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL AUTHORITY AND USACE PERMIT #22607-1. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY AND ALL LOSSES, CLAIMS, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE, OR OTHERWISE), INJURIES, OR DEATHS AND EXPENSES OF WHATEVER NATURE OR KIND, INCLUDING WITHOUT LIMITATION, LEGAL COSTS, OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY. ALL PERSONS USING SAME DO SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF THE COMMUNITY SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY HABITATE OR ENTER INTO WATER BODIES WITHIN OR NEARBY THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

17.6. Utility Lines.

Each Owner, on behalf of such Owner and the Occupants of such Owner's Lot, acknowledges that neither the Association, the Board, Declarant, any predecessor Declarant, nor any Declarant Affiliate shall in any way be considered insurers or guarantors of health within the Community and neither the Association, the Board, Declarant, any Declarant Affiliate nor any predecessor Declarant shall be held liable for any and all losses, claims, damages (compensatory, consequential, punitive or otherwise), injuries or deaths, or expenses of whatever nature or kind, including, without limitation, Legal Costs caused by or related to the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Community. Each Owner and Occupant assumes all such risks arising from the presence of utility lines, utility sub-stations or other utility facilities and further acknowledges that neither the Association, Declarant, any Declarant Affiliate nor any predecessor Declarant have made any representations or warranties, nor has any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

17.7 Trails.

Declarant reserves for itself, its successors and assigns, and the Association, the right, but not the obligation, to designate certain areas within the Community, including the Common Areas, to be used as pedestrian pathways and trails ("trail system"). Use of the trail system shall be subject to the reasonable rules and regulations of the Association and may be restricted from use by any motorized vehicle, bicycles or horses. Any individual using the trail system shall do so at his/her own risk. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Lot, that the Community may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots adjacent to such trail

system resulting from the use of the trail system by Declarant, any Declarant Affiliate, the Association, its Members, Occupants of Lots and their respective invitees.

17.8. Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant and any predecessor Declarant (including, without limitation, their respective Affiliates, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind of nature (including, without limitation, Legal Costs), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Maintenance Areas and the collection of assessments.

Article XVIII Changes in Ownership of Lots

Any Owner, other than Declarant or any Declarant Affiliate, desiring to sell or otherwise transfer title to such Owner's Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Notwithstanding the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including, without limitations, assessment obligations, until the date upon which the Board receives such notice, after which the original Owner shall be released from the obligation to pay assessments levied after the date such notice is received

Article XIX Changes in Common Area

19.1. Condemnation.

The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area. Whenever any part of the Common Area is taken by or conveyed under threat of condemnation to any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The award made for such taking shall be payable to the Association.

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, Members entitled to cast at least 75% of the total Class "A" votes and Declarant, during the Development and Sale Period, shall otherwise agree. Any such construction shall be in accordance with plans the Board approves. The provisions of Section 8.3 regarding funds for the repair of damage or destruction shall apply

If the taking does not involve any Common Area improvements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete,

then such award or net funds may be used by the Association for such purposes as the Board shall determine.

19.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees

19.3. Transfer or Dedication of Common Area.

The Association may convey, dedicate, or otherwise transfer portions of the Common Area to the City of Galveston, County or to any other Governmental Authority during the Development and Sale Period with the consent of Declarant After the termination of the Class "B" Control Period, such conveyance, dedication or transfer shall also require the consent of Members representing at least two-thirds of the Class "A" votes in the Association.

Article XX Sales of Houses and Lots

20.1. Sunset Cove Realty

Sunset Cove Realty shall be responsible for the administration of all house and lot sales within the subdivision. Sunset Cove Realty shall be located in an on-site building, located at Lot 1, Block K. Approval by Sunset Cove Realty or the HOA must be obtained for brokers or prospective buyers wishing to enter the property without a member escort. Sunset Cove Realty will escort all prospective buyers on to the property

Article XXI Amendment of Declaration

21.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, to the fullest extent permitted by law, until the termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose, subject to the approval requirements set forth in Article XV, if applicable.

Thereafter, and until termination of Development and Sale Period, Declarant may, to the fullest extent of permitted by law, unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA, to make, purchase, insure, or guarantee mortgage loans on the Lots, (d) to satisfy the requirements of any Governmental Authority, or (e) for any other purpose which does not materially adversely affect title to any Lot, unless the Owner of such Lot consents to such amendment.

21.2. By the Board of Directors.

In accordance with Title 11, Chapter 205, § 205.004 of the Texas Property Code Annotated, the Board may amend this Declaration if such amendment is for the limited purpose of complying with HUD or VA requirements for insuring or guaranteeing mortgage loans on the Lots. An amendment adopted under this Section of the Declaration must (a) indicate that the amendment is adopted under authority of Title 11, Chapter 205, § 205.004 of the Texas Property Code Annotated by specifically referencing that section; (b) be executed by a majority of the Board; and (c) be filed in the Galveston County real property records

21.3. By the Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the Association's Class "A" votes. In addition, during the Development and Sale Period, Declarant's written consent is required for any amendment. The approval requirements set forth in Article XV also shall be met, if applicable

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

21.4. Fair Housing Amendments Act.

The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, et. seq., (hereinafter referred to as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents and the FHAA, the FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the Board of Directors, without the consent of the Members or of Declarant, shall have the unilateral right to amend this Declaration solely for the purpose of, and only to the extent necessary for, bringing this Declaration into compliance with the FHAA. Furthermore, notwithstanding Section 12.2 hereof, the Board shall have the unilateral right to assign portions of the Common Area to one or more Lots to one or more Owner(s) or Occupant(s) should such action be required in order to make a reasonable accommodation under the FHAA.

21.5. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third

party will affect the validity of such amendment, if required by applicable laws, permits and/or approvals. No action to challenge the validity of an amendment may be brought more than one year after the amendment is recorded.

Any amendment shall become effective upon the earliest of (a) actual notice; or (b) recording, provided, however, that a later effective date may be specified in any amendment. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration

21.6. Exhibits.

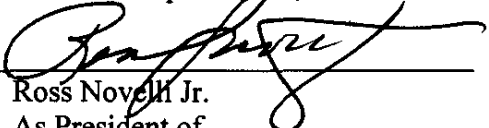
Exhibits “A. *Land Submitted to Galveston County*”, “B. *Additional Land Subject to Annexation Within the Community*”, “C. *Initial Use Restrictions*”, “D. *By-Laws of the Sunset Cove Galveston Home Owners Association, Inc.*”, “E. *Articles of Incorporation, Sunset Cove Galveston Home Owners Association, Inc* ”, “F. *Instrument to Grant Access Easements*”, “G. *United States Army Corps of Engineers, Permut #22607-1*”, “H. *Architectural Controls*” are attached to this Declaration and are incorporated herein by reference for all purposes.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on the day and year written below

DECLARANT:

Sunbird Development, LP, a Texas Limited Partnership and developer of Sunset Cove.


By: Sunbird Development LP, a Texas Limited Partnership

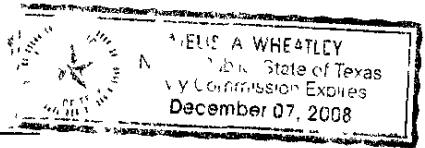
By: 
Ross Novelli Jr.
As President of
Nature's Concepts, the
General Partner for
Sunbird Development, L.P.

STATE OF TEXAS

COUNTY OF GALVESTON

This instrument was acknowledged before me on the 17th day of May, 2006, by Ross Novelli Jr., President of Nature's Concepts, Inc., as General Partner of Sunbird Development, LP, a Texas Limited Partnership and Declarant of Sunset Cove


Notary Public, State of Texas



Commission Expiration Date: _____

(NOTARY SEAL)

Exhibit "A"

Land Submitted to Galveston County

All land for Sunset Cove may be found and is described on that certain plat known as Sunset Cove subdivision and recorded in Plat Record 2004B, Map Numbers 193-195 in the Galveston County Map Records, Office of the County Clerk of Galveston County, Texas

Exhibit "B"

Additional Land Subject to Annexation into the Community

Up to 51.90 acres of unimproved land (contiguous with and to the west of Sunset Cove) and located in the City of Galveston, County of Galveston, Texas, is owned by Ross Novelli, Jr. and shall be subject to annexation into the Community and become subject to the Declaration through a Supplemental Declaration as described in Article X, entitled "Expansion of the Community", found in the Declaration.

Said unimproved land has been platted and the plat has been recorded with the County of Galveston and is described as The Estates at Sunset Cove as described on that plat recorded under Clerk's File No. 2006022345 in the Office of the County Clerk of Galveston County, Texas. The plat for this parcel is available for review at the County or upon request of the Developer.

Exhibit "C"

Initial Use Restrictions

The following restrictions are covenants running with the land and shall apply to all of the Community until such time as they are amended, modified, repealed, or limited pursuant to procedures of the Declaration

1. General

The properties submitted to this Declaration shall be used only for residential, recreational, and related purposes consistent with this Declaration and any Supplemental Declaration. Such purposes may include, without limitation, an information center and/or a sales office for Declarant and/or any real estate broker retained by Declarant to assist in the sale of property described in Exhibit "A" or "B", offices for any property manager retained by the Association, business offices for Declarant and the Association, model homes, and parking facilities for such uses.

2. Use Restrictions

2.1 Combining and Replatting Lots, Number of Dwellings and Driveway.

No more than one (1) dwelling shall be built on any one (1) Lot. The following Lots may be combined to replat any two (2) Lots into one (1) Lot Lots 5-8, Lots 44-47, Block B; Lots 2-5, Block D, Lots 4-7, Block E; Lots 5-8, Block F; Lots 2-5, Block H. Additionally, Declarant, during the Development and Sale Period, may consider and approve the combining of any two given adjacent lots at any location within the subdivision for the purpose of constructing one residential unit. Each Lot and dwelling must be served by a private driveway. No more than two (2) Lots shall be combined for one (1) dwelling for any of the above listed Lots Where two (2) Lots are combined and replatted to form one (1) Lot, an average of the previously established setback lines shall be applied to the newly formed Lot No view corridor impairment shall be created by the relocation of a home site under this action unless otherwise authorized, through written authorization to the Association, by the affected Lot Owner(s)

2.2 Swimming Pools.

No lots shall locate swimming pools in the side yard All lots are allowed to have swimming pools within the rear yard and within established setback lines, subject to review and approval by the Sunset Cove Galveston Homeowner's Association, Inc. and Sunbird Development, L.P. Regarding the installation of pools, any proposed construction of this nature and subsequent submission of plans for review must be accompanied by a liability release naming Sunbird Development, L.P., Nature's Concepts, Inc. and the Sunset Cove Galveston HOA, Inc. as being held harmless.

Any damage to the filter cloth, located behind the bulkhead panel, or any damage to the steel tie-back rod and panel as a result of a swimming pool or other improvement, is the obligation of the property owner. Great care should be exercised in the selection of any

contractor by the homeowner to ensure quality construction in any structure to be built in Sunset Cove, avoiding personal liability due to contractor negligence.

Any homeowner installing a swimming pool on their Lot must indemnify their adjacent neighbors, Nature's Concepts, Inc., Sunbird Development, L.P. and the Sunset Cove Galveston Homeowner's Association, Inc. from any and all damage that may be caused as a result of the pool installation especially as concerns bulkhead leakage or damage to the bulkhead infrastructure, water run off or other such conditions that may arise from the installation of the swimming pool.

2.3 Canal Water Circulation.

No structure or improvement of any type, and no grading or other alteration of the terrain shall be permitted on the drainage easements adjacent to Lot 24 or Lot 25 of Block B, Lot 65 of Block B, Lot 33 or Lot 34 of Block B, Lot 57 or Lot 58 of Block B, or Lot 1 of Block G (all of which abut a drainage easement in the Community), or Canals adjacent thereto, that would impede the water circulation in the Canals and the culverts linking the Canals, which culverts will be located within the drainage easements adjacent to such Lots as shown on the Plat. Additionally, flow easements are established between all lots (fronting the Canal System) and is defined to either side by side yard setback lines of adjacent wet lots.

2.4 Canal System Use Restrictions

The Canal System shall be used solely and exclusively for the construction, operation and maintenance of navigable waterways to provide ingress and egress to and from West Galveston Bay for all properties comprising the Community, as shown on the plat.

2.5 Bulkhead.

As part of the construction of the Canals, Declarant shall cause a Bulkhead to be constructed on the Canal Frontage Property and lots 6,7,8 of Block H, in accordance with the Permit. Such Bulkhead shall be an appurtenance to each Lot on which it is located and shall run with the title to such Lot.

Each Owner of Canal Frontage Property shall maintain the Bulkhead on such Owner's property in accordance with the original design and construction, so as to assure structural integrity and appearance, sufficient to:

- a) Prevent erosion of the Owner's property; and
- b) Provide support for the adjoining Bulkhead located on the adjacent property in accordance with the provisions of Section 17 below

2.6 Party Wall Agreement.

Declarant, for itself, its successors and assigns, and all succeeding Owners of Canal Frontage Property, hereby declares, covenants and agrees that, after construction of the Bulkhead in accordance with the Permit, such Bulkhead at the location of each boundary line between each Lot

and/or Reserve comprising the Canal Frontage Property shall constitute a Party Wall which shall be owned, used and maintained by each Canal Frontage Property Owner subject to the following:

- a) As to each Party Wall located on a boundary line of his property, each Canal Frontage Property Owner shall hold, enjoy and be entitled to, and shall be subject to all of the duties and obligations of, the rights, duties and obligations of the owner of a party wall easement at law;
- b) Each Canal Frontage Property Owner shall have, own and hold an easement and right of support together with the right and privilege of joining to and using each Party Wall locate on a boundary line of his property;
- c) If any portion of the Bulkhead is damaged or destroyed by the act, default or negligence of the Owner of Canal Frontage Property, such Owner shall promptly rebuild and repair the Bulkhead on his property and shall compensate the adjoining property Owners for any damages to their respective property,
- d) If a Party Wall shall be damaged or destroyed by a cause other than the act, default or negligence of any Owner, such Party Wall shall be repaired and rebuilt at the joint expense of each Owner entitled to the use thereof on the basis of 50% each of the net costs of restoration after the Application of any sum or sums received by either Owner from insurance covering such casualty risk. Each Owner hereby grants to each adjoining Owner a lien on and against his Canal Frontage Property to secure the payment of his allocated share of such repair and restoration costs, and each Owner hereby grants to each adjoining Owner a perpetual easement for the purposes of going on to such Owner's Canal Frontage Property to repair and restore the Party Wall in the event of damage (the provisions of this Section 2.5 (d) being applicable only to Owners and Lots and Reserves entitled to the use of the damaged Party Wall),
- e) Each Owner shall at all times keep and maintain his Canal Frontage Property adequately backfilled and vegetated with Seashore Paspalum grass of the Sea Isle-1 variety (and not, for example, Bermuda or St. Augustine grasses that require nitrogen fertilizers and more water), as per USACE Permit #22607-1, so as to prevent erosion of the land behind the Bulkhead and prevent undermining of the Bulkhead by ground water, seepage, wave action or otherwise; and further, no changes shall be made in the grade of any Canal Frontage Property nor shall any building or other structure be permitted on any Canal Frontage Property which may materially increase the loads carried by the Bulkhead or otherwise materially adversely affect the structural integrity of the Bulkhead. All weep holes (PVC pipe) cast in the Bulkhead panels must be kept clear of all obstructions. The purpose of said PVC pipe is to relieve the hydrostatic pressure against the panel, therefore extending the economic life of the structure. Additionally, at the time the bulkheading was constructed, bags of pea gravel were buried behind the panels to inhibit soil seepage and or leakage through the weepholes

The developer has paid Shirley and Sons Construction, Inc., the bulkhead contractor, for the construction of the bulkheading at Sunset Cove Specifications for the fabric filter cloth that was used to line the areas behind the panels were doubled, with additional expense

incurred to ensure the fabric filter cloth was installed in a continuous manner throughout the project site.

NEVER excavate or otherwise unearth or disturb the area around this fabric that would cause damage to the fabric filter cloth. The individual property owner is responsible for any damage to this filter cloth and or the bulkhead panels through cause or neglect.

- f) The covenants and conditions of this Section 2.5 (f) shall run with the title to each Lot and Reserve comprising the Canal Frontage Property and shall be binding upon and inure to the benefit of each Canal Frontage Property Owner and their respective successors, administrators, executors and assigns; provided, however, that no present or future Owner of Canal Frontage Property shall be liable under the terms hereof except for their acts or defaults as the Owner of Canal Frontage Property

2.7 Intertidal Fringe Marsh.

In conjunction with the construction of the Canals and Bulkhead, Declarant shall plant the intertidal fringe marsh on the Nature Reserve frontage property within a strip of land that is forty feet (40') in width along, adjacent to, and on the northerly boundary of the subdivision in compliance with the Permit. AFTER THE INITIAL PLANTING BY DECLARANT, THE ASSOCIATION SHALL MAINTAIN THIS INTERTIDAL FRINGE MARSH WITHIN THIS 40' STRIP ON SUCH NATURE RESERVE PROPERTY IN THE MANNER REQUIRED BY THE PERMIT, INCLUDING REPLANTING IF NECESSARY.

2.8 Remedial Action by the Association.

Should any Owner fail to maintain the Bulkhead, after receiving fifteen (15) days written notice of such violation, the Association shall have the right, but not the obligation, to take the actions specified in the notice of such violations and to assess that lot owner for any repair action taken. The Declarant, for itself and each subsequent Owner, hereby grants to the Association the right, license, easement and authority to enter upon each Lot and Reserve for the purposes of correcting the violations as hereinabove set forth, and neither the Association nor any of its employees, agents or contractors shall be liable for trespass or any other legal or equitable violation in pursuing the remedies herein provided for. All costs and expenses incurred by the Association in effecting such remedy or abatement pursuant to this section will be paid to the Association by the Owner of the Lot for which such costs and expenses are incurred upon demand. If such costs and expenses are not paid to the Association within ten (10) days after written demand to the Owner, said amounts shall accrue interest at a rate that is the lesser of (i) 15% per annum, or (ii) the highest amount of interest allowed by applicable law. Further, if said costs and expenses are not paid to the Association by the Owner within thirty (30) days after the date of written demand therefore, said costs and expenses, together with interest thereon and costs of collection and all other amounts for which an Owner can become liable hereunder, shall be a charge on the land and shall be a continuing lien upon the Lot or Reserve for which such costs and expenses are incurred in the same manner and subject to all the provisions of Article VIII hereof. All such costs and expenses, together with such interest, collection costs, and reasonable attorney's fees, shall be the personal obligation of the Owner of such Lot or Reserve at the time such costs and expenses are

incurred The suit to recover a money judgment (together with reasonable attorneys' fees and costs as aforesaid) may be maintainable without filing or foreclosing a lien securing the same.

2.9 No Wake Areas and the Operation of Watercraft

All canals, lakes, and entrance channels shall be "No Wake" areas and all motorized watercraft shall be operated in a manner, and at a speed, so as to cause no visible wake. All boat owners shall be liable for damage caused by wakes

No motorized watercraft, including personal watercraft, shall use the two Circulation Channels, located at the far eastern and western quadrants of the bayside access areas on the northern shoreline of the Subdivision. These two described areas may (only) be used by self propelled watercraft, such as kayaks and canoes The center or middle channel shall (only) be used by all motorized watercraft.

Motorized personal watercraft, such as Seadoos, Waverunners and other associated watercraft of this type, will be monitored closely for compliance with the above restrictions. Operators of these crafts should be mindful of the aural and visual obstructions these crafts may cause to fishermen, hikers, bird watchers, kayakers and other eco-pursuits. Operators of these described personal watercrafts should be mindful of their impact upon the environment and upon the peaceful pursuits of other citizens of the Subdivision and operate these types of crafts responsibly

2.10 Use and Renting of Boathouses.

All boathouses shall be for the use of the Lot Owners solely. All boathouses shall be used solely by the owner of the adjacent or related lot and shall not be rented to a third person, nor shall any Member or Lot Owner be delegated the right to use his or her boathouse to a third person without compensation. All Dry Lot Owners, at the request of the Declarant, Declarant's affiliates or the Association, shall furnish proof of property insurance for their respective boathouse.

2.11 Boathouses.

Construction of all boathouses will utilize pilings of wood or concrete. All boathouses will be engineered and approved by architectural control at the owner's expense. A minimum setback of 17' from the bulkhead is required for all boathouses except those boathouses located on Block G Lots. For those lots located in Block G, a minimum setback of 20' perpendicular from the bulkhead is required to allow for the planting of Spartina grass by the Sunset Cove Galveston Homeowner's Association, Inc. Furthermore, boathouses shall not extend beyond the 30' Flow Easement established for all Wet Lots.

All boathouse locations and layout for construction of the boathouses for each location have been defined on a plat to ensure ease of access for all watercraft and maximum view corridor preservation A copy of this plat is available for review at the offices of the Declarant and the Sunset Cove Galveston Homeowner's Association, Inc. A copy of this plat will be made for individual lots, when requested by the property owner

Typical boathouses will measure 13' by 30'. Some Lots located in the cul-de-sacs may feature a maximum building specification of 13' by 40'. Those specific Lots are Block B: Lots 5,6,7,8. Block D: Lots 2,3,4,5. Block E: Lots 4,5,6,7. Block F: Lots 5,6,7,8. These described cul-de-sac lots feature more water frontage than other lots, thus the allowance for larger boathouses

Maximum boathouse height shall not exceed 15' from the mean sea level or as approved by the ARB. Because of lot elevations, boathouses will have step-downs of at least 3' to 4' to ensure practical engineering and construction practices and to enhance view. Walkways to boathouses shall not exceed a length of 17' nor be wider than 6'. "Catwalks" or elevated walkways extending directly from the homesite pad toward the boathouse shall not be allowed.

The construction of a "Catwalk" or elevated walkway extending from the homesite pad to the boathouse is expensive to the homeowner (typical construction cost of \$10,000) and is detrimental to the overall design aesthetics.

Gazebos, palapas or other such structures may be constructed on the decking above the boathouses. Construction of this type of amenity shall have maximum dimensions of 14' by 13' and shall not exceed a height of 14' (to the top of the ridge) and shall be centered on the deck above the boathouse. All lighting of docks shall be limited to underwater lighting, and 60 watt exterior lights. All proposed dock construction shall be subject to prior approval by the ARB and no dock construction may take place prior to such approval.

2.12 Restricted Activities.

The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by, Declarant or the Board of Directors:

- a) Parking of commercial vehicles or equipment, mobile homes, campers and similar recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than carports, except temporarily during loading and unloading; provided, however, that construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as any vehicle with commercial writing on their exteriors or vehicles primarily used, designed, or registered for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies including, without limitation, police and sheriff insignias,
- b) All vehicles are restricted to and shall adhere to posted speed limit signs within the Community.
- c) No powerboats in Waterways located in the natural areas, no motorized vehicles in any conservation easements or any marsh slough shall be allowed. However, motorized vehicles are allowed for maintenance purposes by the Association and Declarant in the conservation easement/open space reserve areas.

- d) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs (limit of 2) (no Pit Bulls are allowed), cats (limit of 2), or other household pets of the nature commonly sold in pet stores may be permitted in a Lot; provided, however, that none of those pets roam free, or, in the discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owners or Occupants of other Lots shall be removed by the owner thereof upon request of the Board. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners are responsible for animal excrement from pets under their control and shall remove the substance immediately, via a pooper scooper or similar device and be disposed of properly. For pet excrement unremoved, and after one warning, a minimum fine of \$100 will be assessed to the offending Owner for each offense thereafter. No animals are allowed in the swimming pool. The Board may adopt additional rules clarifying the number and types of pets permitted in a Lot. Pets shall be registered, licensed, and inoculated as required by law. Please be responsible for your pets for the mutual enjoyment of all lot Owners/Members;
- e) Any activity which emits foul or obnoxious odors outside the Lot or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the Owners and or Occupants of other Lots (this paragraph shall not preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment during reasonable hours);
- f) Any activity which violates local, state, or federal laws or regulations, provided, however, that the Board shall have no obligation to take enforcement action in the event of a violation,
- g) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy or noisy condition to exist outside of enclosed structures on the Lot;
- h) Any noxious or offensive activity which in the determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the Owners or Occupants of other Lots,
- i) Outside burning of trash, leaves, debris, or other materials, except during the normal course of construction by Declarant or a person authorized to do so by Declarant;
- j) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable source of annoyance, as the Board may determine, to Owners or Occupants of other Lots, except alarm devices used exclusively for security purposes, provided such alarm device contains a system which causes it to shut off automatically;
- k) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, body of water, natural area or elsewhere within the Community into such areas is prohibited, except that fertilizers (fish emulsion and organic type only) may be applied to landscaping on Lots provided care is taken to minimize runoff into such areas. Use of Nitrogen fertilizers is prohibited. Run

off from fertilizers featuring high levels of nitrogen result in algae bloom, affecting water quality and resultant fish and marine life kills. We strongly recommend the use of Organicare © lawn products.

- l) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;
- m) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, the Association and Galveston Municipal Utility District No. 30 (the "District") shall have such right, provided, however, that the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;
- n) Discharge of firearms or use of explosives; provided, no Association director, officer, employee or managing agent shall have any duty to exercise self-help or to become physically involved to stop such discharge;
- o) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and for the operation of boats, lawn mowers, pool, spa and hot tub heaters, and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;
- p) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis;
- q) Capturing, trapping, hunting or killing wildlife within the Community (other than by or on behalf of the Association, Declarant or by a representative or designee of a Governmental Authority),
- r) Any activities by persons other than Declarant or its designees which materially disturb or destroy the vegetation, wildlife, Wetlands, or air quality within the Community (except as may be approved pursuant to Article IV, or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution,
- s) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to Article IV, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed;
- t) Operation of motorized vehicles other than mowing equipment and golf carts (responsible operation required) on pathways or trails maintained by the Association;
- u) Swimming or use of personal floatation devices in the ditches, ponds. Declarant, its successors and assigns, shall be permitted to draw water from any body of water within the Community for purposes of irrigation and such other purposes as Declarant shall deem

desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of canals, ponds, or other bodies of water within or adjacent to the Community;

- v) Entry onto any Lot, other than your own or by owner permission, to access any body of water, wetland or similar area within the Community is not allowed, except the authorized agents, employees, contractors, and designees of Declarant or the Association may enter upon any Lot for the purpose of gaining access to any such area;
- w) Any construction, erection, placement, or modification of any structure or thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, all lighting, signs (except those signs expressly permitted by Sunset Cove Realty or the Declarant for the purposes of sales and promotion of Lots and the Community as a whole), fences, basketball hoops, clothes hanging devices; garbage cans; woodpiles; swimming pools, spas and hot tubs; air conditioners; tanks; solar energy devices; and landscaping, hedges, irrigation and sprinkler systems, walls, mailboxes, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that antennas, satellite dishes, and any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may be regulated only in strict compliance with all applicable laws and regulations. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus,
- x) A reasonable number of holiday and religious lights and decorations may be displayed on a Lot for up to 30 days prior to a publicly observed holiday or religious observance and up to 15 days thereafter without prior approval, subject to the right of the Association or Declarant to require removal of any such decorations which it deems to (A) be excessive in number, size, or brightness, relative to other Lots in the area; (B) draw excessive attention or traffic, (C) unreasonably interfere with the use and enjoyment of neighboring properties; or (D) cause a dangerous condition to exist. The Association shall have the right, upon five days prior written notice, to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence; and
- y) One United States flag and one State of Texas flag not exceeding 36"x60" in size may be mounted on the exterior façade of the dwelling at a location approved pursuant to Article V of the Declaration;
- z) Picketing, protest marches, sit-in demonstrations, protest speeches, or other forms of public protest or conduct, including, without limitation, displaying signs or placards on the Lot or any vehicle, apparatus or otherwise within public view in the Community, which tends to vilify, ridicule, demigrate, or impugn the character of Declarant, the Association, their respective officers, directors or employees, or any Owner or Occupant. Each Owner, by

acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on such Owner's constitutional right of free speech,

- aa) Any activity which generates a level of noise audible to Occupants of other Lots while inside their dwellings (including, without limitation, lawn maintenance, recreational activities, games, parties, music, and other activities conducted outdoors or on porches or decks) between the hours of 11.00 p.m and 8:00 a.m , except that during the construction of dwellings on the Lots, Declarant and builders may commence construction activities within the Community at 7 00 a.m.; and
- bb) Door-to-door solicitation within the Community,
- cc) Any drainage of water from a swimming pool upon the Lot into the Canal Area;
- dd) Any interference with natural drainage into the storm sewer system,
- ee) Disposal of any landscaping or construction debris into any body of water; and
- ff) Installation or construction of any improvements beyond the rear property line or setback line adjacent to any portion of the Canal.
- gg) The operators of motorized personal watercraft such as Seadoos, Waverunners and all other motorized watercraft need to be aware of their impact upon the peaceful pursuit of water related recreation and sports activities enjoyed by other members of the Subdivision Operators of all motorized watercraft should realize the inherent negative impact these types of crafts have upon the environment including noise generated which may interrupt fishing, birdwatching and the like, as well as excessive wake
- hh) Under the laws of the State of Texas, as administered by Texas Parks & Wildlife, no minor is allowed to operate personal or other watercraft in or around the waterways of Galveston Bay without the direct supervision and presence of an adult accompanying the minor. Please refer to the Water Safety Digest published by the Texas Parks & Wildlife Department. Additional information may be obtained from the Texas Parks & Wildlife Website at www.tpwd.state.tx.us/fishboat The mailing address for TP&W is 4200 Smith School Road; Austin, TX. 78744. The toll free number to TP&W is 800-792-1112.
- ii) The center or main channel located on the northern shoreline of the Subdivision will be used by all motorized watercraft. The two Circulation Channels located to the east and west of the center channel will be reserved for use by self propelled watercraft such as kayaks and canoes Motorized watercraft shall be prohibited from use of these described Circulation Channels

3. Prohibited Conditions

The following shall be prohibited in the Community:

- a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community;
- b) Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated or otherwise fallen into disrepair; and
- c) Sprinkler or irrigation systems which draw upon water from lagoons, creeks, streams, rivers, ponds, Wetlands, canals, or other ground or surface waters within the Community, except that Declarant, its designees, and the Association shall have the right to draw water from such sources for the purpose of irrigating Common Areas.
- d) Any and all illegal activities as clearly defined and designated by the laws and or ordinances of the United States of America, the State of Texas, Galveston County and the City of Galveston.

Exhibit "D"

By-Laws

Sunset Cove Galveston Home Owners Association, Inc.

Article I. Name, Principal Office, and Definitions

1.1 Name

The name of the nonprofit corporation is Sunset Cove Galveston Home Owners Association, Inc. (the "Association")

1.2 Principal Office

The Association's principal office shall be located in the State of Texas in such location as the Board of Directors (the "Board"), determines or as the Association's affairs require. Meetings and all official activity are planned to take place at the Sunset Cove Realty Sales Office, located at Lot 1, Block K of the subdivision Prior to the construction of the sales office, meetings and official activity shall take place at the current Sunset Cove Sales Office, located in Galveston at 13680 F M 3005, Ste E (mailing address: 4171 Pirates Beach; Galveston, TX 77554) For larger, Community-Wide meetings, the Texas A&M University-Galveston (TAMUG) Research Center, located immediately adjacent to and northwest of the subdivision, may be used, if constructed The open air community center, located at Sunset Cove, may also be employed

1.3 Definitions

The words used in these By-Laws shall have their normal, commonly understood definitions Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Sunset Cove as it may be amended, or amended and restated, from time to time ("Declaration"), unless the context indicates otherwise. The interpretation of certain references, as set forth in Section 2.2 of Declaration, shall also apply to the words used in these By-Laws

Article II. Membership: Meetings, Quorum, Voting, Proxies

2.1 Membership

The Association initially shall have two classes of membership, Class "A" and Class "B" as more fully set forth in the Declaration. The Declarant may establish additional classes of membership as set forth in the Declaration. Provisions of the Declaration pertaining to membership are incorporated herein by this reference.

2.2 Change of Membership

Change of membership in the Association shall be established by recording a deed or other instrument conveying record fee title to any Lot The grantee named in such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall terminate. The new Owner shall deliver a copy of the conveyance instrument to the Association within 14 days after

the conveyance and the new Owner shall not be entitled to voting privileges until the same has been received by the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot acquired

2.3 Place of Meetings

The Association shall hold meetings at its principal office or at such other place as the Board may designate. Meetings may be conducted electronically (i.e., via the Internet, intranet, or teleconference) if and to the extent permitted by law.

2.4 Annual Meetings

The Association shall hold its first meeting, whether a regular or special meeting, within one year after the date of the Association's incorporation. The Board shall set the date and time of subsequent regular annual meetings to occur during the first quarter of each year thereafter.

2.5 Special Meetings

The President may call a special meeting of the Association. It also shall be the President's duty to call a special meeting if so directed by Board resolution or upon written petition of Members representing at least 10% of the total Class "A" votes in the Association describing the purpose or purposes for which the special meeting is to be held. If the President does not call a special meeting pursuant to this Section within 30 days after the date such written petition is delivered to the Association's Secretary, any Member signing the petition may set the time and place of the special meeting and give the Association notice pursuant to Section 2.6.

2.6 Notice of Meetings

The Association's Secretary shall cause written notice stating the place, day, and hour of any Association meeting to be given in any manner permitted by applicable law. If permitted by law, notice may be published in a newspaper, or by radio, television, or other form of public broadcast communication in the County, delivered by hand delivery, or sent by facsimile, electronic mail, or other electronic communication device, or such other manner which is reasonably calculated, as the Board determines in its discretion, to provide personal notice to Members. Notice shall be given at least 10 and, in any event, not more than 60, days before the date of the meeting, by or at the direction of the President, the Secretary, or the officers or Persons calling the meeting.

The notice of any meeting shall also state the items on the agenda, including, without limitation, the general nature of any proposed amendment to the Governing Documents, any budget changes, and any proposal to remove a director or officer. No other business shall be transacted at a special meeting except as stated in the notice for the special meeting. Unless one-third (1/3) or more of the votes entitled to be cast in the election of directors are represented in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters that are described in the meeting notice.

If mailed, the notice of a meeting shall be deemed given when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, electronic mail, or other electronic communication device, notice shall be deemed delivered when transmitted to the Member at his or her address, e-mail address, or telephone or fax number as it appears on the Association's records. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

2.7 Waiver of Notice

Waiver of lack of proper notice of an Association meeting shall be the equivalent of proper notice. Any Member may waive, in writing, lack of proper notice of an Association meeting, either before or after such meeting. A Member's attendance at any meeting, regular or special, shall be deemed a waiver by such Member of lack of proper notice of the meeting, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order

2.8 Adjournment of Meetings

If the Association cannot hold a meeting because a quorum is not present, or if the Members otherwise elect (with the approval of the Declarant during the Development and Sales Period), a majority of the Members who are present may adjourn the meeting to a time at least 5 but not more than 30 days from the date called for the original meeting. Notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. At the reconvened meeting, if a quorum is present, any business may be transacted that was planned at the initial meeting.

2.9 Voting

Members shall have such voting rights as are set forth in the Declaration, which provisions are incorporated herein by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

2.10 List for Voting

After setting a record date for notice of a meeting, the Board shall prepare a list of Members, along with all contact information and the number of votes due each Member, entitled to a notice of such meeting. The list for voting shall be available for inspection per Texas law.

2.11 Proxies

On any matter as to which a Member is entitled personally to cast the vote for his or her Lot, such vote may be cast in person or by proxy, subject to applicable law

Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member or his/her duly authorized attorney, dated, and filed with the Association's Secretary or acting Secretary

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot(s) for which it was given, (b) the receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is an individual by the Secretary or the person presiding over a meeting; (c) 90 days from meeting date for which the proxy was originally given, unless the proxy specifies a shorter period, or (d) 11 months after the date of the proxy, unless the proxy specifies a shorter period

2.12 Majority

As used in these By-Laws, the term "majority" shall mean those votes and corresponding Owners which total more than 50% of the total eligible number

2.13 Quorum

Members or their proxies entitled to cast 10% of the total Class "A" votes in the Association and the Class "B" member, if such exists, shall constitute a quorum at all meetings. If no quorum is present, the meeting may be adjourned and rescheduled. At such reconvened meeting, the quorum requirement shall be lowered to 5%. Thereafter, the quorum requirements shall be continuously lowered by ½ until such time as a quorum is present.

2.14 Conduct of Meetings

The President shall preside over all meetings at which he/she is present, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.15 Action Without a Meeting

Members may take any action that applicable law permits the Members to take at a meeting (subject to limitations of Governing Documents), if the action is approved by Members representing at least the minimum number of votes in the Association necessary to authorize such action at a meeting, assuming the number of votes cast equals or exceeds the quorum required to authorize the action. Such approval shall be evidenced by one or more written consents authorizing the proposed action dated and signed by members holding the requisite votes. The Association need not give prior notice before soliciting such consent, provided, however, that the Association must send written consent forms to all members for action authorized pursuant to this section to be valid. Members shall sign, date, and deliver such consents to the Association within 60 days after the Association's receipt of the earliest dated consent. The Association's Secretary shall file such consents with the Association's minutes and the consents shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all members entitled to vote, fairly summarizing the material features of the authorize action.

2.16 Order of Business

The order of business at all annual meetings of the Members shall be as follows. (a) roll call to determine a quorum (b) proof of meeting notice or waiver of notice; (c) reading of minutes, or waiver thereof, of preceding annual meeting, (d) reports of officers and committees, if any (e) election of inspector(s) of election if an election is to be held; (f) election of Class "A" Directors if applicable; (h) unfinished business, if any; and (i) new business.

Article III. Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1 Governing Body; Composition

The Board shall govern the Association's affairs. Each director shall have one vote. Directors must be Members or residents of the Community, except in the case of directors that the Class "B" Member appoints. A director must be at least 18 years old. No more than one representative of any Member which is a legal entity, nor more than one occupant of any Lot, shall serve on the Board at a time, except in the case of directors that the Class "B" Member appoints.

3.2 Number of Directors

The initial Board shall consist of the three directors identified in the Articles of Incorporation. Upon termination of the Class "B" Control Period, the number of directors shall be increased to five. The Board may, by resolution, increase or decrease the number of directors.

3.3 Nomination and Election Procedures

(a) Nominations and Declarations of Candidacy

Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. Nominations for election to the Board also may be made by a nominating committee. The nominating committee, if any, shall consist of a Chairman, required to be a Member, and two or more Members, all appointed by a majority of the Board. The Board shall also permit nominations from the floor at any election meeting.

The Board shall give each candidate a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures.

A Member may cast the vote(s) assigned to the Lot(s) which he or she owns for each position to be filled at an election. That number of candidates equal to the number of positions to be filled who receive the greatest number of votes shall be elected.

3.4 Election and Term of Office

(a) The Class "B" Member shall have complete discretion in appointing, removing, and replacing directors during the Class "B" Control Period.

(b) Upon termination of the Class "B" Control Period, the President shall call for an election at which the Class "A" Members shall be entitled to elect four of the five directors. The remaining director shall be appointed by the Class "B" Member. The two directors receiving the largest number of Class "A" votes shall be elected for a term of two years and the remaining two directors shall be elected for a term of one year.

(c) Until termination of the Class "B" Control Period, the Declarant shall be entitled to appoint one director. Upon termination of the Class "B" Control Period, the director elected by the Declarant shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which the Class "A" Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

Notwithstanding the stated length of any term, directors shall hold office until their respective successors have been elected. Directors elected by the Class "A" Members are hereafter referred to as the "Class "A" Directors."

Upon expiration of the term of each Class "A" Director elected pursuant to this subsection and thereafter, a successor shall be elected for a term of two years.

3.5 Removal of Directors and Vacancies

Any Class "A" Director may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such Class "A" Director. Any Class "A" Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Class "A" Director, a successor shall be elected by the Class "A" members entitled to elect the Class "A" Director so removed to fill the vacancy for the remainder of such Class "A" Director's term. Class "A" Directors may not be removed by the Class "B" Member.

Any Class "A" Director who has three consecutive unexcused absences from Board meetings, or who is more than 60 days delinquent (or occupies or represents a Lot for which assessments are so delinquent) in the payment of any assessment or other charge due the Association may be removed by a majority vote of the Board, excluding the Class "A" Director at issue. If the Class "A" Director is removed, the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members entitled to fill such directorship may elect a successor for the remainder of the term. If they fail to do so, the Board may appoint another director to fill the vacancy until filled by election. Any director that the Board appoints shall be selected from among Members and residents within the Voting Group represented by the director who vacated the position.

This Section shall not apply to directors the Class "B" Member appoints nor to any director serving as Declarant's representative. Such directors may be removed and replaced only by the Class "B" Member or Declarant. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings

3.6 Organizational Meetings

Within 30 days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.7 Regular Meetings

The Board may hold regular meetings at such time and place as the Board shall determine, but the Board shall hold at least one such meeting during each fiscal year.

3.8 Special Meetings

The Board shall hold special Board meetings when called by written notice signed by the President, Vice President, or any two directors.

3.9 Notice; Waiver of Notice

(a) Notices of Board meetings shall specify time and place and the nature of any special business to be considered. The Board shall give notice by personal delivery, first class mail (to be received 7 days prior), telephone or facsimile, e-mail, or other electronic communication device, with confirmation of transmission. Except by mail, all communication must be received 72 hours prior to meeting. All such

notices shall be given at the director's telephone number, fax number, e-mail address, or sent to director's address, each as shown on the Association's records

(b) Except for emergency meetings, notice of a Board meeting may be posted in a conspicuous place within the Community at least 48 hours in advance of the meeting or provided in any other manner reasonably anticipated to provide notice to all Members, including, without limitation, publication in an Association newsletter with Community-wide circulation or posting on a Community internet or intranet page, if applicable. In lieu of notice of each regular Board meeting, the Board may post or publish a schedule of upcoming Board meetings

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the meeting's purpose. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10 Telephonic Participation in Meetings

Members of the Board or any committee designated by the Board may participate in a Board or committee meeting by means of telephone or other electronic means, through which all persons participating in the meeting can converse with each other at the same time. Participation in this manner shall constitute presence at the meeting for all purposes. Participants attending by electronic means may vote by electronic transmission.

3.11 Quorum of Board

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless these By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue, notwithstanding the withdrawal of directors, if at least a majority of the required quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12 Conduct of Meetings

The President shall preside over all Board meetings at which he or she is present, and the Secretary shall keep (or cause to be kept) a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.13 Open Meetings; Executive Session

Subject to the provisions of Section 3.14, all Board meetings shall be open to all Members. However, attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak and the Board concurs. In such case, the President (or other officer conducting the meeting) may limit the time any such individual may speak.

Notwithstanding the above, the President may call a special Board meeting, or adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss with the Association's attorney matters relating to pending or threatened litigation which are protected by the

attorney-client privileges, or to discuss among the Board any other matter of a sensitive nature, if applicable law permits. In such cases, no recording will be permitted

3.14 Action Without a Formal Meeting

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all directors sign consent in writing, setting forth the action so taken. Such consent shall have the same effect as a unanimous vote.

C. Powers and Duties

3.15 Powers

The Board shall have all of the powers and duties necessary for administering the Association's affairs and for performing all of the Association's responsibilities and exercising all of the Association's rights as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or applicable law require to be done and exercised exclusively by the membership generally.

3.16 Duties

The Board's duties shall include, without limitation:

- (a) those obligations set forth in the Declaration and elsewhere in these By-Laws;
- (b) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, however, that any reserve funds may be deposited, in the Board's business judgment, in depositories other than banks,
- (c) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association if, in the exercise of its business judgment, it deems it prudent to so,
- (d) keeping books with detailed accounts of the Association's receipts and expenditures; and
- (e) maintaining, and retaining for the time periods required, the official records of the Association, as provided in Title 32, Chapter Nine of Vernon's Texas Civil Statutes, or such other applicable law.

3.17 Compensation

The Association shall not compensate a director for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf if approved by a majority of the other directors. In addition, nothing herein shall prohibit the Association from compensating a director for services or supplies he/she furnishes to the Association in a capacity other than as director pursuant to a contract or agreement with the Association. The foregoing also applies to any entity with which a director is affiliated.

3.18 Right of Class "B" Member to Disapprove Actions

During the Development and Sale Period, the Declarant shall have a right, to the extent not prohibited by law, to veto any action, policy, or program of the Association, the Board, and/or any committee which, in the Declarant's discretion, would tend to impair rights or interests of the Declarant, or any Affiliate of

Declarant's, interfere with development or construction of any portion of the Community, or diminish the level of services the Association provides.

(a) Notice.

The Association, the Board and each committee shall give the Declarant written notice of their meetings and proposed actions to be approved at their meetings (or by written consent in lieu of meeting) The notice shall comply with the requirement for notice to directors under Section 3 9 and shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting

(b) Opportunity to be Heard.

The Association, the Board and each committee shall give the Declarant the opportunity at any meeting to join in, or to have its representatives or agents join in, discussion from the floor concerning any prospective action, policy, or program which would be subject to the veto right described in this Section

(c) Exercise of Rights.

The Declarant may exercise its veto right at any time within 30 days following the meeting at which such action was proposed or, if the action is approved without a meeting, at any time within 30 days following receipt of written notice of the proposed action. The Declarant, its representatives or agents, may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. This veto right may be used to block proposed actions but shall not include a right to require any action or counteraction by the Association, Board or any committee The Declarant shall not use its veto right to prevent expenditures required to comply with applicable laws

(d) Condition of Implementation.

No action, policy, or program subject to the Declarant's veto right shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met, and then subject to the Declarant's rights under subsection (c)

3.19 Management

The Board may employ a professional managing agent or agents, at such compensation as the Board may establish, subject to Section 8 13 and Exhibit I. *Management Company Services* of the Declaration, to perform such duties and services as the Board shall authorize and as are otherwise within the scope of the Board's authority The Board may delegate such powers as are necessary to perform the manager's duties, but shall not delegate policymaking authority or the obligation to adopt a budget The Board may contract with or employ Declarant or any of its Affiliates as managing agent or manager

The Board may delegate to one or more of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Class "A" Members shall have no right to terminate a management contract during the Class "B" Control Period Unless the Board otherwise grants such right, or unless the management contract otherwise provides, the Board may act in its discretion with respect to executing and terminating management contracts during the Class "B" Control Period Any management contract may, among other things, authorize the managing agent to act as the Association's agent with respect to the expenditure of Association funds within the scope of the approved Association budget, however, the managing agent shall

not be permitted to spend money in excess of the budget or reallocate greater than 10% of any budget line item without the Board's prior written approval

3.20 Accounts and Reports

The following management standards of performance shall be followed unless the Board specifically determines otherwise

(a) Commencing at the end of the quarter in which the first Lot is sold and closed, the Board may prepare financial reports for the Association at least quarterly containing:

- i. An income statement reflecting all income and expense activity for the preceding period on a cash or accrual basis,
- ii A statement reflecting all cash receipts and disbursements for the preceding period,
- iii A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- iv. A balance sheet as of the last day of the preceding period, and
- v. A delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution), and

(b) An annual financial report consisting of at least the following shall be prepared within 60 days (or such longer period as is permitted by law) after the close of the fiscal year:

- i. A balance sheet showing actual receipts and expenditures,
- ii An operating (income) statement, and
- iii A statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant

The Association shall provide each Owner or its authorized agent a copy of the annual financial report within 5 business days following receipt of a written request for same. In addition, if applicable law requires, the Association shall send a copy of the annual financial report to each Member by mail or personal delivery following the close of the fiscal year. All records, books and annual reports of the financial activity of the Association should be kept at the principal office of the Association in the State of Texas for at least three (3) years after the closing of each fiscal year

3.21 Right to Contract

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, cooperatives, or other owners or residents associations

3.22 Fines and Sanctions

The Association may impose fines, in such amounts as permitted by law, for any violation of the Governing Documents except with regard to assessments. To the extent the Declaration or applicable law specifically requires, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice.

The Board or its delegate shall serve the alleged violator with written notice by certified mail, return receipt requested describing

- i the nature of the alleged violation,
- ii the proposed sanction to be imposed;
- iii a period of not less than 30 days within which the alleged violator may present a written request for a hearing;
- iv. a statement that the hearing, if held before the Covenants Committee, may be appealed to the Board as set forth herein; and
- v a statement that the proposed sanction shall be imposed as contained in the notice unless the alleged violator challenges the violation within 30 days of the notice. If a timely notice for hearing is not made, or if otherwise permitted by the Governing Documents and applicable law, the sanction stated in the notice shall be imposed. The Board or Covenants Committee may suspend any proposed sanction if the violation is cured, or if a diligent effort is being made to cure, within the 30-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and/or rules by any Person. If a violator repeats the violation, or engages in a similar violation, for which notice was given within 6 months after the date of the first notice, the Board shall have the discretion to impose the proposed sanctions if the alleged violations were one continuous violation without the need to serve the alleged violator with additional notice.

(b) Hearing.

If the alleged violator requests a hearing within the allotted 30-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Proof of proper notice shall be placed in the minutes of the meeting. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. A written statement of the results of the meeting shall be filed with the minutes. The Association shall hold a hearing not later than the 30th day after the date the Covenants Committee receives Owner's request and shall notify the Owner of the date, time and location of the hearing not later than the 10th day before the date of the hearing. The Covenants Committee, the Board or Owner may request a postponement, and, if requested, a postponement shall be granted for a period of no greater than 10 days. Additional postponements may be granted upon agreement by the parties. The Owner or the Association may make an audio recording of the meeting.

(c) Appeal.

If a hearing is held before the Covenants Committee, the violator shall have the right to appeal the Covenants Committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president or secretary of the Association within 10 days after the hearing date.

(d) Additional Enforcement Rights.

Notwithstanding anything to the contrary in this Article, subject to any limitations set forth in the Declaration, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the Declaration's dispute resolution procedures, if applicable, by suit at law or inequity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including, without limitation, reasonable Legal Costs actually incurred.

3.23 Board Training Seminar

The Board may provide, or provide for, as a Common Expense, seminars and continuing educational opportunities designed to educate and inform directors of their responsibilities as directors. The Board may retain industry professionals as may be appropriate or necessary for such purpose. Each newly elected director and each re-elected director may be required to complete a training seminar within the first six months of assuming the director position.

3.24 Board Standards

In performing their duties, directors and officers shall act as fiduciaries and are entitled to insulation from liability as provided for directors and officers of corporations by applicable law and as otherwise provided by the Governing Documents.

A director or officer acting in accordance with the business judgment rule shall not be personally liable to the Association or its Members for errors in judgment made in the director's or officer's capacity as such. Unless the Governing Documents require that specific action be taken, the failure to take such specific action shall not, without further showing that the Board acted in violation of the business judgment rule, be deemed a violation of a Board duty. A director or officer shall be considered to be acting in accordance with the business judgment rule so long as the director or officers:

- i. act within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*,
- ii. affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis,
- iii. act on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other) and avoids participation in such decisions and actions, and
- iv. act in a non-fraudulent manner and without reckless indifference to the Association's affairs.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld so long as such determinations are reasonable. The Board shall exercise its power in a fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

3.25 Conflicts of Interest; Code of Ethics

Unless otherwise approved by a majority of the other directors, no Class "A" Director may transact business with the Association or a contractor engaged by the Association during his or her term as director.

A Class "A" Director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A Class "A" Director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members. The Board may void any contract which creates a prohibited conflict of interest.

Notwithstanding the above, the directors appointed by the Declarant may be employed by or otherwise transact business with Declarant or any of its Affiliates, and Declarant and its Affiliates may transact business with the Association or its contractors.

Article IV. Officers

4.1 Officers

The Association's officers shall include a President, Vice President, Secretary, and Treasurer. The officers may, but need not, be Board members, Owners, or residents of the Community; provided, however, that so long as there is a Class "B" membership, the appointment of officers who are not residents of the Community shall require the prior written consent of the Class "B" Member. The Board may appoint such other officers, including, without limitation, one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office

The Board shall elect the Association's officers at the first Board meeting following each Association annual meeting. Officers shall serve until their successors are elected.

4.3 Removal and Vacancies

Any officer may be removed with or without cause by a vote of at least a majority of the directors. The Board shall appoint a replacement to fill any vacancy in any office for the unexpired portion of the term.

4.4 Powers and Duties

The Association's officers each shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall supervise the preparation of the Association's budget, but may delegate all or part of the preparation and notification duties to a finance committee, managing agent, or both. The Secretary shall prepare or supervise the preparation of meeting minutes as required by applicable law.

4.5 Resignation

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other Association instruments shall be executed by an officer, unless the Board provides otherwise, or by such other person or persons as the Board may designate by resolution

4.7 Compensation

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3 17

4.8 President

The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board at which he or she is present. The President shall have all of the general powers and duties which are usually vested in the Office of the President of a corporation, including, but not limited to, the power, subject to the provisions of Article V, to appoint committees from among the Members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board, have general supervision, direction, and control of the business of the Association. The President shall be ex-officio a member of all standing committees, and shall have such other powers and duties as may be prescribed by the Board or these By-Laws.

4.9 Vice President

The Vice President shall take the place of the President and perform his or her duties whenever the President is absent, disabled or refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be conferred upon him or her by the Board or these By-Laws.

4.10 Secretary

The Secretary shall keep (or cause to be kept) the minutes of all meetings of the Board and the minutes of all meetings of the Association at the Association's principal office or other place as the Board may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board may direct. The Secretary shall, in general, perform (or cause to be performed) all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board required by these By-Laws or by law to be given. The Secretary shall maintain (or cause to be maintained) a book of record Owners, listing the names and addresses of the Owners furnished by the Association, and such books shall be changed only as satisfactory evidence of a change in ownership of a Lot is presented. The Secretary shall perform such other duties as may be prescribed by the Board or these By-Laws. The Secretary may delegate all or a part of such duties to the managing agent.

4.11 Treasurer

The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records, and business transactions of the Association, including accounts of all assets, liabilities, receipts, and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects.

in the name and to the credit of the Association in such depositories designated by the Board, in accordance with the Declaration and these By-Laws, shall render to the President and the directors, upon request, an account of all of his or her transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these By-Laws. The Treasurer may delegate a part of such duties to the managing agent.

Article V. Committees

5.1 General

The Board may create such committees and appoint its members, as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution.

Committees shall exercise only such authority as granted by Board resolution, provided, however, that the Board may elect not to follow a committee's advice on any matter. Committees may not act without specific Board authority and may not bind the Association contractually or financially.

5.2 Covenants Committee

The Board shall, from time to time, appoint a Covenants Committee consisting of three persons to serve as a hearing tribunal pursuant to Section 3.22. The Covenants Committee shall be comprised of Members of the Association who are not directors, officers, or employees of the Association or the spouse, parent, child, brother, or sister of a director, officer, or employee.

5.3 Other Committees

In addition to the above, the Board may create additional committees, as it deems necessary and useful. The following are examples of types of committees, along with their purpose, which the Board may create:

(a) Finance Committee to assist the Board, Treasurer and the Association's managing agent, if any, in preparing the Association's budget.

(b) Physical Maintenance Committee to assist the Board with maintenance of the Common Maintenance Areas.

(c) Dispute Resolution Committee to assist in the mediation of disputes concerning the interpretation of Use Restriction, rules, and other Governing Document provisions and advise the Board on initiating litigation involving the Association (as provided in the Declaration); provided, however, that the Dispute Resolution Committee shall not preside over matters relating to the collection of assessments or other fees and charges. Each member of the Dispute Resolution Committee shall attend a Board-approved course on dispute resolution, if the Board so requires.

The Board may establish by resolution the specific scope and limitations on the authority of the above committees.

Article VI. Miscellaneous

6.1 U.S. Army Corps of Engineers, Permit #22607-1.

The U.S. Army Corps of Engineers, Permit #22607-1 regulates the restricted use and appropriate maintenance of all wetlands located in the Sunset Cove subdivision, more specifically defined as the

approximate 30.94 acre Conservation Easement located within the subdivision and to be conveyed to the Sunset Cove Home Owners Association, Inc. It is the sole responsibility of the Home Owners Association to comply with these regulations. These regulations are described principally in General Conditions section of the Permit and the Mitigation Plan section of the permit, both made available in Exhibit G of the Declarations document for the subdivision.

Generally, the compliance responsibilities of the Home Owners Association are as such:

- Monitoring of the planted mitigation area and compliance with all related activities to ensure a successful (and continued) planted mitigation area
- Submission of regular progress reports (to the CE, Galveston District, Regulatory Branch) of the planted mitigation area
- Monitoring of dissolved oxygen in canals, one foot below water surface, for a period of two years.
- Maintenance of the nature trail (a mowed path), and gazebo, located in Conservation Easement.
- The provision of an environmental information packet (to be approved by the Corps) to every homeowner/builder¹ to educate on how best to negate potential negative environmental effects in the Conservation Easement. A signed receipt of this packet must be kept on file by the Home Owners Association.
- Promotion for the planting of native beneficial use trees/plants will be done so by utilizing common greenhouse to propagate these species.
- All other pertinent stipulations of the Mitigation Plan associated with Permit #22607-1

Non-compliance on the part of the Home Owners Association to requirements of the Permit may result in appropriate penalties as determined by the Army Corps of Engineers, for which the Home Owners Association will be responsible.

6.2 Fiscal Year

The Association's fiscal year shall be the calendar year unless otherwise established by Board resolution.

6.3 Parliamentary Rules

Except as may be modified by Board resolution, *Robert's Rules of Order* (the edition published on the date closest to the meeting) shall govern the conduct of Association proceedings when not in conflict with applicable law or the Governing Documents.

6.4 Conflicts

Conflicts between or among the Governing Documents and applicable law shall be resolved as directed in the Declaration.

6.5 Books and Records

(a) Inspection by Members and Mortgagees.

The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at reasonable times the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Community as the Board shall designate.

¹ Distribution of which shall be no less than once a year

(b) Delivery of Certain Information to Owner.

Within 10 Days after the Board's receipt of a written request from an Owner, Owner's agent, or title insurance company or its agent acting on behalf of Owner, the Association shall deliver to the Owner, the Owner's agent, or to a title insurance company or its agent acting on behalf of the Owner, copies of the following: the Declaration, By-Laws, and Articles of Incorporation, any amendments or supplements to the foregoing, the rules of the Association, and a "resale certificate." A "resale certificate" must contain the following:

- i. a statement of any right of first refusal or other restraint, if any, contained in the Declaration that restricts the Owner's right to transfer Owner's Lot;
- ii. the frequency and amount of Regular Assessments, if any,
- iii. the amount of any Special Assessment that is due after the date the resale certificate is prepared,
- iv. the total of all amounts due and unpaid to the Association that are attributable to the Owner's Lot,
- v. capital expenditures, if any, approved by the Association for the current fiscal year;
- vi. the amount of reserves, if any, for capital expenditures,
- vii. the Association's current operating budget and balance sheet,
- viii. the total of any unsatisfied judgments against the Association;
- ix. the style and case number of any pending lawsuit in which the Association is a defendant;
- x. a copy of a certificate of insurance showing the Association's property and liability insurance relating to the Common Areas and common facilities,
- xi. a description of any conditions on the Owner's Lot that the Board has actual knowledge are in violation of the Governing Documents;
- xii. a summary or copy of notices received by the Association from any Governmental Authority regarding health or housing code violations existing on the preparation date of the resale certificate relating to the Owner's Lot or the Common Area,
- xiii. the amount of the one-time initial assessment charged by the Association for a change of ownership of a Lot;
- xiv. the name, mailing address, and telephone number of the Association's managing agent, if any; and
- xv. a statement indicating that the Governing Documents allow foreclosure of the Association's lien on the Owner's Lot for failure to pay assessments.

The Association may charge a reasonable fee to assemble, copy, and deliver the information required by this subsection and may charge a reasonable fee to prepare and deliver an update of a resale certificate

(c) Rules for Inspection.

The Board may establish reasonable rules with respect to:

- I notice to be given to the custodian of the records;
- II. hours and days of the week when such an inspection may be made;
- III payment of the cost of reproducing documents requested, and
- IV such other matters as the Board deems appropriate.

(d) Inspection by Directors

Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense. The Board shall provide for such inspection to take place at the Association's office, the managing agent's office, or at a place within the Community as the Board shall designate.

6.6 Management Certificates

(a) The Association shall record in Galveston County a management certificate, signed and acknowledged by an officer or the managing agent of the Association, stating.

- I. the name of the Community,
- II. the name of the Association,
- III. the recording data for the plats of the Community,
- IV the recording data for the Declaration;
- V the mailing address of the Association or the name and mailing address of the person managing the Association, and
- VI other information the Association considers appropriate

(b) The Association shall record an amended management certificate not later than the 30th day after the date the Association has notice of a change of any information in the recorded certificate required by subsection 6.5(a)

(c) The Association and its officers, directors, employees, and agents shall not be subject to liability to any Person for a delay in recording or failure to record a management certificate, unless the delay or failure is willful or caused by gross negligence

6.7 Notices

(a) Form of Notice and Method of Delivery.

Except as otherwise provided in the Declaration or these By-Laws or by applicable law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, by facsimile, electronic mail or other electronic communication device with written confirmation of transmission

(b) Delivery Address.

Notices shall be delivered or sent to the intended recipient as follows:

- i. if to a Member, at the address, facsimile number, or email address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;
- ii. if to the Association, the Board, or a committee of either, at the address, facsimile number, or email address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section, or
- iii. if to the Declarant, at principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date.

Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective.

- i. if sent by United States mail, when deposited with the U S Postal Service, correctly addressed, with first class or higher priority postage prepaid,
- ii. if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; however, if such delivery is refused or if the intended recipient has contracted with the private carrier to leave any deliveries without obtaining a signature evidencing receipt, the notice shall be deemed duly given and effective if the attempt to deliver was timely made;
- iii. if sent by facsimile or email, upon transmission, as evidenced by a printed confirmation of transmission

6.8 Amendment

(a) By Class "B" Member.

During the Class "B" Control Period, the Class "B" Member may amend these By-Laws unilaterally

(b) By the Membership.

Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent of Members representing at least 67% of the total Class "A" votes in the Association, and the consent of the Declarant during the Development and Sales Period Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause

(c) Validity and Effective Date of Amendments.

Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

CERTIFICATION

I, the undersigned, do hereby certify.

That I am the duly elected and acting Secretary of the Sunset Cove Galveston Home Owners Association, Inc., a Texas nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ____ day of _____, 200__

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ___ day of _____, 2005.

Secretary

(CORPORATE SEAL)

EXHIBIT "E"

**Articles of Incorporation
Sunset Cove Galveston Home Owners Association, Inc.**

The undersigned, by these Articles, associate themselves for the purpose of forming a nonprofit corporation under and in accordance with the provisions of Title 32, Chapter Nine of Vernon's Texas Civil Statutes, and certify as follows.

Article 1. Name

The name of the nonprofit corporation is Sunset Cove Galveston Home Owners Association, Inc. For convenience, the corporation shall be referred to in this instrument as the "Association".

Article 2. Address

The address of the initial principal office of the Association is:

Sunset Cove Galveston Homeowners Association, Inc.
4225 Sunset Bay Drive
Galveston, Texas 77554
409 737.9700

The initial mailing address is:

Sunset Cove Sales Office
4171 Pirates Beach
Galveston, Texas 77554
409.737 9700

The permanent street address (post-construction in the subdivision) is:

4225 Sunset Bay Drive
Galveston, Texas 77554

Article 3. Definitions

All capitalized terms used in these Articles of Incorporation which are not defined herein shall have the meaning set forth in the Declaration of Covenants, Conditions, and Restrictions for Sunset Cove, recorded or to be recorded by Sunbird Development, L.P., a Texas Limited Partnership ("Declarant"), in the public records of Galveston county, Texas, as such Declaration may be amended and/or amended and restated from time to time (the "Declaration").

Article 4. Purposes

The Association does not contemplate pecuniary gain or benefit, direct or indirect, to its members. By way of explanation and not of limitation, the purposes for which the Association is organized are:

- (a) to be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as set forth in the Governing Documents and as provided by law; and
- (b) to provide an entity for the furtherance of the interests of the owners of real property now and hereafter made subject to the Declaration (such real property is referred to in these Articles as the "Community").

Article 5. Powers

The Association shall have the following powers, which, unless indicated otherwise by the Declaration or By-Laws of the Association, shall, if exercised at all, be exercised by the Board of Directors:

- (a) all of the powers conferred upon nonprofit corporations by common law and Vernon's Texas Civil Statutes in effect from time to time, and
- (b) all of the powers necessary or desirable to perform the obligations and to exercise the rights and powers set out in these Articles, the By-Laws, and the Declaration, including, without limitation, the following:
 - i. to establish, levy, collect, and enforce payment of all charges or assessments authorized by the Declaration by any lawful means; to pay all expenses in connection therewith and all administrative and other expenses incident to the conduct of the business of the Association including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association;
 - ii. to manage, control, operate, alter, maintain, repair, improve, and replace the common areas and facilities, and any property acquired by the Association, or any property owned by another for which the Association, by rule, regulation, declaration, or agreement, has a right or duty to provide such services;
 - iii. to make rules and regulations and to enforce covenants, conditions, or restrictions affecting any property within the Community to the extent the Association may be authorized to do so under the Declaration or By-Laws,
 - iv. to engage in activities which will actively foster, promote, and advance the common interests of all owners of property within the Community subject to the Declaration;

- v. to buy, or otherwise acquire, sell, dedicate for public use, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, own, hold, use, operate, grant easements and otherwise deal in and with, real and personal property of all kinds and any right or interest therein for any purpose of the Association;
- vi. to borrow money for any purpose subject to such limitations as may be contained in the Declaration and/or By-Laws;
- vii. to enter into, make, perform, and enforce agreements of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other corporation, or other entity or agency, public or private;
- viii. to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals; and
- ix. to provide any and all supplemental municipal services to the Community as may be necessary or desirable.
- x. to enforce the provisions of the United States Army Corps of Engineers (USACE) Permit No. 22607-1, as granted to the developer and required for the construction and maintenance of the Sunset Cove subdivision where it generally pertains to environmental mitigation related to impacts to wetlands areas in the subdivision.

The foregoing enumeration of powers shall not limit in any manner the exercise of other rights and powers which may now or hereafter be allowed or permitted by law; each of the powers specified in this Article 5 are independent powers, not to be restricted in any way by reference to or inference from the terms of any paragraph or provision of this Article 5.

Article 6. Members

The Association shall be a membership corporation without certificates or shares of stock. There initially shall be two classes of membership, as more fully set forth in the Declaration. The Owner of each Lot shall be a member of the Association and shall be entitled to vote as provided in the Declaration and the By-Laws. In addition, Declarant shall be a Member for such period as provided in the Declaration, regardless of whether Declarant owns any Lot. Membership in the Association is appurtenant to, and may not be severed from the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in the Declaration, these Articles of Incorporation, or the By-Laws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot.

Change of an Owner's membership in the Association shall be established by recording in the Public Records of the County, a deed or other instrument establishing record title to a Lot. Upon such recordation, the Owner designated by such instrument shall become a member of the Association and the membership of the prior Owner shall terminate.

Article 7. Existence and Duration

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State of the State of Texas The Association shall exist in perpetuity

Article 8. Board of Directors

The Association’s business and affairs shall be conducted, managed, and controlled by a Board of Directors (the “Board”). The Board may delegate its operating authority to such companies, individuals, or committees as it, in its discretion, may determine.

The Board shall initially consist of three members, as provided in the By-Laws The names and addresses of the initial directors, who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

<u>Name</u>	<u>Address</u>
Ross Novelli Jr	4171 Pirates Beach, Galveston, Texas 77554
Murray Berliski	4171 Pirates Beach, Galveston, Texas 77554
Charles O’Hara	4171 Pirates Beach, Galveston, Texas 77554

Article 9. By-Laws

The initial By-Laws shall be adopted by the Board and thereafter may be altered, amended, rescinded or repealed in the manner provided in the By-Laws.

Article 10. Liability of Directors

To the fullest extent that Title 32, Chapter 9 of Vernon’s Texas Civil Statutes, or other applicable law, exists on the date hereof or as they may hereafter be amended, permits the limitation or elimination of the liability of directors or officers, no director or officer of the Association shall be personally liable to the Association or its members for monetary damages for breach of duty of care or other duty as a director or officer. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director or officer of the Association for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

Article 11. Indemnification

(a) Indemnity.

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 he or she is or was a director, employee, officer, or agent of the Association. Such indemnification shall include indemnification against expenses (including, without limitation, reasonable attorneys’ fees and appellate attorneys’ fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by the

indemnified person in connection with such action, suit, or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceedings, such person had no reasonable cause to believe his or her conduct was unlawful. Notwithstanding the foregoing, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his or her duty to the Association, unless, and then only to the extent that, the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses as such court shall deem proper. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to an criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. Notwithstanding the foregoing, the Association need not indemnify the managing agent of the Community unless such indemnification is required to do so by the agreement between the Association and such managing agent, approved by the Board or required by law

(b) Approval.

Any indemnification under paragraph (a) above shall be made by the Association only as authorized in the specific case upon a determination that indemnification is proper under the circumstances because the person requesting indemnification has met the applicable standard of conduct set forth in paragraph (a) above. Such determination shall be made (i) by majority vote of the members of the Board who were not parties to such action, suit, or proceeding, if sufficient to constitute a quorum of disinterested directors so directs, in a written opinion rendered by independent legal counsel engaged by the Association, or (iii) by a majority vote of the Class "A" Members and the consent of the Class "B" Member, during the Development and Sale Period.

(c) Advances.

Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in any specific case upon receipt of a written agreement by or on behalf of the affected director, officer, employee, or agent to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the Association as authorized in this Article

(d) Miscellaneous.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled by law, under the By-Laws, or pursuant to any agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs and personal representatives of such person

(e) Insurance.

The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association, including, without limitation, as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

Article 12. Interested Directors

(a) No contract or transaction between the Association and one or more of its directors or officer, or between the Association and any other corporation, partnership, or Association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be invalid, void, or voidable solely for such reason, or solely because the director or officer of the Association shall incur liability by reason of the fact that he or she is or may be interested in any such contract or transaction.

(b) Interested directors may be counted in determining the presence of a quorum at a meeting of the Board at which a contract or transaction with an interested director is to be considered.

(c) The Association may enter into contracts and transactions with Declarant and Declarant's Affiliates.

Article 13. Amendments

The Board may amend these Articles without Member approval (a) for those specific purposes permitted under Texas law, (b) for the purpose of bringing any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (c) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (d) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example the U.S. Department of Veteran Affairs, the U.S. Department of Housing and Urban Development, the Federal national Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots, or (e) to satisfy the requirements of any local, state or federal agency. Such amendments may be adopted by the Board of Directors, with the written consent of the Declarant during the Development and Sale Period. Other amendments to the Articles may be adopted by the Board of Directors with the approval of Members holding at least two-thirds (2/3) of the Class "A" votes in the Association and, during the Development and Sale Period, the written consent of the Declarant; provided, however, that no amendment may be in conflict with the Declaration. No amendment may be in conflict with the Declaration nor be effective to impair or dilute any rights of Members that are governed by the Declaration

Article 14. Dissolution

The Association may be dissolved only upon (a) a resolution duly adopted by the Board, and (b) the affirmative vote of members who are Owners of not less than two-thirds (2/3) of the Lots, and c) the consent of Declarant during the Development and Sale Period. Upon then unless otherwise agreed to in writing by HUD or the VA, any remaining real property of the Association shall be dedicated to an appropriate public agency or conveyed to a nonprofit organization to be used for purposes similar to those for which this Association was created. In the event that acceptance of such dedication is refused, such real property and the Association's remaining assets shall be granted, conveyed and assigned to ay nonprofit corporation , association, trust, or other organization to be devoted to such similar purposes. Such requirement shall not apply if the VA is not guaranteeing and HUD is not insuring any Mortgage, provided, if either agency has granted project approval for the Community, then HUD and/or the VA shall be notified of such dissolution

Article 15. Incorporator

The name of the incorporator of the Association is Ross Novelli Jr., whose current address is.

4171 Pirates Beach (mailing)
13680 FM 3005, Suite E (physical)
Galveston, Texas 77554
409-737-9700

After construction completion of the Sunset Cove Realty Sales Office in the subdivision, the street address will be:

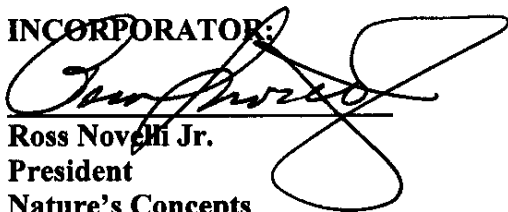
4225 Sunset Bay Drive
Galveston, Texas 77554

Article 16. Registered Agent and Office

The initial registered agent and office of the Association is Ross Novelli Jr., President of Nature's Concepts, Inc , General Partner for Sunbird Development, L.P , located at Sunset Cove Realty Sales Office

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation this ___ day January, 2005.

INCORPORATOR:

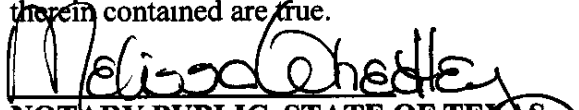


Ross Novelli Jr.
President
Nature's Concepts
General Partner for
Sunbird Development, L.P.

STATE OF TEXAS

COUNTY OF GALVESTON

The undersigned, a Notary Public, hereby certified that on this 17th day of January, 2005, personally appeared before me, **ROSS NOVELLI, JR.**, who being by me duly sworn, declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.


NOTARY PUBLIC, STATE OF TEXAS
Notary's Name Printed:

My Commission Expires: _____

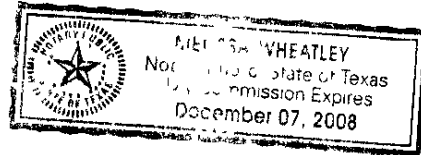


Exhibit "F"

Instrument to Grant Access Easements

The "Instrument to Grant Access Easements" is an agreement between the previous land owner, Mitchell & Mitchell Investment Corporation and the Texas A&M University System, granting access easements over two tracts of land totaling approximately 3.4324 acres. This agreement is available for review in the Sunset Cove Realty Sales Office.

Exhibit "G"

United States Army Corps of Engineers Permit #22607-1

Attached are those pages constituting the USACE Permit #22607-1, dictating construction of the subdivision and its maintenance thereafter for the purposes of environmental mitigation. The Environmental Mitigation Plan dictates not only the responsibilities of the Declarant but also the Home Owners Association, of which you are a member.

Exhibit "H"

Architectural Controls

1.0 Introduction

1.01 Purpose

These Architectural Controls have been prepared by Sunbird Development, L.P. (the "Declarant") for the purpose of promoting development of a community known as Sunset Cove Galveston, Inc. (the "Development" or "Sunset Cove"). The standards of design expressed in these Architectural Controls are intended to describe Declarant's "vision" of the Development through procedures that are clearly outlined and informative. The Declarant's intent is to encourage a cooperative approach to planning, design and construction within the Development.

1.02 Community Master Plan

Sunset Cove is a master planned community located on the bay-side of Galveston, on the island's west end. It is the intent of the Declarant to protect and enhance the natural features of the Development as well as the man-made improvements through, in part, the Architectural Controls herein. The Declarant reserves the right to revise and update these Architectural Controls as well as performance and quality standards to respond to future changes. Such changes shall be prospective and will not affect plans for improvements already approved by the ARB in accordance with these Architectural Controls.

These Architectural Controls contain general provisions applicable to all of the Development as well as specific provisions that may vary according to, among other factors, structural type and location within the Development.

1.03 Relationship to Legal Documents and Governmental Approvals

These Architectural Controls are supplementary to the Declaration of Covenants, Conditions and Restrictions for Sunset Cove (the "Covenants") recorded in the Galveston County, Texas public records. The criteria are intended to complement the Covenants and should a conflict arise, the Covenants shall prevail. In addition, Owners shall be responsible for obtaining all permits and approvals from the City, County and other Governmental Authorities. In the event of a conflict between the Architectural Controls and such governmental approvals, the most restrictive requirement shall control. Unless otherwise specified, all capitalized terms shall have the meaning set forth in the Covenants.

1.04 Approval of Contractors

In order to ensure that appropriate standards of construction are maintained throughout the Development, all general contractors must be approved by the Architectural Review Board ("ARB") prior to engaging in any construction activities within the Development. The ARB has

implemented an approval process that requires the submission of a written application for approval and sets forth qualifications that contractors must meet. Both the qualification requirements and the application form are subject to change at the sole discretion of the ARB. Approval of contractors may not be construed as a recommendation of a specific contractor by the ARB or the Declarant or any Declarant Affiliate, nor a guarantee or endorsement of the work of such contractor. The requirements established by the ARB for approval of contractors are solely for Declarant's and Declarant's Affiliates' protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved contractor. Owner's selection of a contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such contractor.

Approved builders at the time of preparation of this document are: Hancock House, Sonrise Builders, Metro Builders and Cunningham Builders. All other builders must be prequalified.

1.05 Rules and Regulations

The Sunset Cove Construction Rules and Regulations ("Rules and Regulations") are a supplement to the Architectural Controls and contain additional information and forms for use by Owners and their contractors during the construction process. Owners are responsible for obtaining the latest Rules and Regulations from the ARB.

2.0 Organization and Responsibilities of the Architectural Review Board

2.01 Mission and Function

The Covenants state that no structure is to be erected upon any Lot and no improvements of any kind or other work shall take place within the Development without being approved by the ARB pursuant to Article IV of the Covenants. These Architectural Controls are utilized by the ARB for the evaluation of projects submitted to them but are not the exclusive basis for the ARB's decisions. The final decision of the ARB may be based on purely aesthetic considerations. It is important to note that these opinions are subjective and may vary as ARB members change over time.

The ARB is comprised of one or more members appointed by the Declarant. The right to appoint members to the ARB shall be retained by Declarant until 5 years after the Development and Sale Period unless Declarant earlier terminates its rights in a recorded instrument. At such time, the Board of Directors of the Home Owners Association of Sunset Cove Galveston, Inc. (the "Association") shall appoint the members of the ARB in accordance with Article IV of the Covenants.

2.02 Scope of Responsibility

The ARB has the following responsibilities:

1. Reviewing all new construction plans submitted by an Owner for adherence to these Architectural Controls and compatibility of the design with the adjoining sites and Common Areas.

2. Reviewing all modifications to existing structures, including, but not limited to, walls, fences, exterior painting, material replacements, window tinting, shutters, louvers, additions, play structures, and landscaping.
- 3 Monitoring the design and construction process in order to ensure compliance with the Covenants, these Architectural Controls and the Rules and Regulations
4. Enforcing the Architectural Controls and the Rules and Regulations through Special Assessments, self-help, fines, or other measures as described in the Covenants and the Rules and Regulations.
5. Interpreting the Covenants, these Architectural Controls and the Rules and Regulations at the request of the Owners or Owner's contractor

2.03 Enforcement Powers

Any structure or improvement that is placed on a Lot in the Development without ARB approval shall be in violation of these Architectural Controls and the Covenants. The ARB has the power to request that the non-conforming structure or any other exterior improvements, including, without limitation, landscaping, be brought into compliance at the Owner's expense. Should the Owner fail to comply with the request of the ARB, the ARB has the right to act in accordance with Article VII of the Covenants to bring the non-conforming item into compliance.

2.04 Limitation of Liability

Approval by the ARB does not constitute a representation of warranty as to the quality, fitness, or suitability of the design or materials specified in the plans. Owners should work with their architect and/or contractor to determine whether the design and materials are appropriate for the intended use. In addition, approval by the ARB does not assure approval by any governmental agencies that require permits for construction. Owners are responsible for obtaining or ensuring that their architect and/or contractor obtains all required permits before commencement of construction. The Declarant, the Association, the Board of Directors of the Association (the "Board"), any committee, or member of any of the foregoing shall not be liable or responsible for any injury, damages, or loss arising out of the manner or quality of approved construction on, or modifications to, any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Article IV of the Covenants.

3.0 Design Review Process

3.01 Review of Plans and Specifications

The design review process is divided into 3 steps

Step One: Pre-Design Review (optional)

Step Two: Sketch Plan Review

Step Three. Final Plan Review

The ARB will review design submissions at each step during scheduled ARB meetings. Submission requirements for each step are described in these Architectural Controls. Two sets of complete drawings (to scale) must be submitted to the ARB for each step of the design review process. One set will be retained by the ARB and one red-lined set will be returned to the Owner. Incomplete submissions will not be reviewed and will be rejected and subsequent review of such resubmitted plans will be done at a cost of \$125.00 per hour. The decision to reject a set of plans will be based upon a "black and white" violation that has been published to all Owners. Submissions are due 7 calendar days before each meeting, which meetings will be held as often as necessary for expedient plan review, but no less than once per week, unless there are no action items for ARB review or approval. The Owner must contact the ARB no less than 7 days prior to the next scheduled meeting to schedule a review appointment with the ARB. After the ARB receives all requests for review appointments, the ARB will prepare an agenda of meeting times for distribution to each Owner that requested a meeting. If no submissions or meeting requests are made for a particular review meeting, then the ARB may cancel that review meeting. The ARB may, in its sole discretion, increase the frequency of review meetings to meet Owner's requests.

3.02 ARB Contact Information

All requests for appointments and information and submissions of applications for design review, modifications or variances should be directed to the ARB at:

Sunset Cove Galveston Homeowners Association, Inc.
Attention: Architectural Review Board
Sunset Cove Galveston Subdivision
c/o Zero/Six Consulting, LLC
8423 Stewart Road
Galveston, Texas 77554
Tel: (409) 740-0090
Fax (409) 740-0554
www.z6consulting.com

3.03 Architect and Contractor Licensing Requirements

All plans for the construction of dwellings and other buildings or significant structures on Lots in the Development must be designed and drawn by an architect or Professional Engineer who is registered and licensed in the State of Texas and all plans or documents pertaining to dwellings or other significant structures on Lots shall bear the seal of such architect or Professional Engineering. All construction work must be completed by a contractor licensed in the State of Texas and, if necessary, the City of Galveston, and approved by the ARB

3.04 Contractor Qualification Requirements and Application

An Owner's contractor must meet the following minimum qualifications prior to submitting a Builder Application to the ARB for approval.

- 1 Minimum of 5 years of home building experience

2. Satisfactory references from at least 5 homeowners
- 3 Satisfactory references from at least 3 subcontractors
4. Satisfactory financial references
- 5 Financial statements reflecting positive cash flow
- 6 Written home warranty
7. Evidence of commercial general liability insurance, worker's compensation, builder's risk, and any other coverage deemed necessary by Declarant in such amounts and form as determined by Declarant. Contractors shall be required to name Nature's Concepts, Inc , Sunbird Development, L.P., and the Sunset Cove Galveston Homeowners Association, Inc. as additional insureds

If the above qualifications are met, the Owner's contractor must submit a Builder Application, in the form attached to these Architectural Controls, and be approved by the ARB prior to the Owner submitting an Application for Final Plan Review A Compliance Deposit (as defined and more particularly described in the Rules and Regulations) in an amount set forth in Section 11.0 must be paid by the Owner's contractor or Owner to the Association upon submission of the Application for Final Plan Review. Approval of a contractor may not be construed as a recommendation of a specific contractor by the ARB or Declarant or any Declarant Affiliate, nor a guarantee or endorsement of the work of such contractor. The ARB, in its sole discretion, may allow a contractor approved by the ARB to be deemed approved for construction on additional Lots as long as such contractor is in compliance with the Covenants, these Architectural Controls and the Rules and Regulations A Compliance Deposit must be posted for each Lot upon which the contractor is constructing improvements.

3.05 Design Review Fees

ARB fees for new construction, modifications and variances are set forth in Section 11.0 of these Architectural Controls and are paid to the Association. The purpose of these fees is to cover all expenses related to the processing of applications for construction or modification and architect review of plans and specifications. The ARB reserves the right to change or waive these fees from time to time without prior notice. The design review fees must be submitted with the applicable design review applications. Applications received without the design review fee will be considered incomplete and returned to the Owner.

3.06 Pre-Design Review Meeting

The purpose of the pre-design review meeting is for the Owner and ARB to review and discuss these Architectural Controls and the Owner's intended design of improvements. This meeting is not mandatory; however, it is strongly recommended that the Owner and the Owner's design team schedule this meeting prior to sketch plan review to ensure that the intended design of improvements will be in accordance with the Architectural Controls An Owner may choose to combine the pre-design review meeting with sketch plan review. In such event, both of the

applicable review fees shall be paid. Attached to these Architectural Controls is a Pre-Design Review Checklist of Materials, which describes all of the materials and information that Owners should bring to the meeting. In addition, a pre-design review fee must be submitted to the ARB at the time of the meeting. In order to schedule a pre-design review meeting, an Owner must contact the ARB to set up an appointment as set forth in Section 3.01.

3.07 Sketch Plan Review

The purpose of sketch plan review is for the ARB to review the initial design of all improvements including landscaping. This is a mandatory step in the ARB review process. For sketch plan review, an Owner must submit an Application for Sketch Plan Review and all materials and information described on the Sketch Plan Review Checklist, which application and checklist is attached to these Architectural Controls. In addition, a sketch plan review fee must be submitted to the ARB with the application. In order to schedule a sketch plan review meeting, an Owner must contact the ARB to set up an appointment as set forth in Section 3.01. If an Owner chooses to combine pre-design review with sketch plan review, the Owner must notify the ARB at the time of scheduling the meeting to allow enough time to be scheduled. The ARB will make every effort to provide its comments to the Owner during the sketch plan review meeting or within 10 calendar days after the meeting.

3.08 Final Plan Review

Prior to obtaining a building permit from the City of Galveston and commencing construction, all plans and specifications for improvements, including landscaping, shall be approved by the ARB. For final plan review, an Owner must submit an Application for Final Plan Review and all materials and information on the Final Plan Review Checklist, which application and checklist is attached to these Architectural Controls. The materials and information submitted must address conditions imposed by the ARB during the sketch plan review. The name of the contractor approved by the ARB must be shown on the application. A Final Plan Review fee and the Compliance Deposit must be submitted to the ARB with the application.

3.09 Approval of Final Plan Applications

In accordance with Article IV of the Covenants, the ARB shall make a determination on each application for final plan review within 45 calendar days after receipt of a complete application, the review fee, Compliance Deposit, and all materials and information required as set forth in these Architectural Controls; provided, however, that the ARB will make every effort to make a determination on each application within 14 calendar days

After the initial 45-day period has elapsed, if the Owner has not received notice of the ARB's determination, the Owner may make a second written request for approval of the plans previously submitted which shall be marked "Second Request". If the ARB fails to respond within 7 business days (from receipt), approval shall be deemed given. Notwithstanding anything to the contrary in the Declaration or the By-Laws, Owners shall send any such "Second Request" via the U.S. Postal Service or other delivery method which obtains a signed receipt upon delivery. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with these

Architectural Controls or the Covenants unless a written variance has been granted pursuant to Section 3.14 of these Architectural Controls.

3.10 Conditions of Approval/Rejection of Final Plans

Approval by the ARB shall in no way relieve the Owner of responsibility and liability for the adherence to any applicable ordinances and codes. Plans submitted for review or any portion thereof may be disapproved upon any grounds, which are consistent with the purpose and objectives of the ARB, including purely aesthetic considerations.

3.11 Appeals Process-Final Plan Approval

If an application for final plan approval is denied or conditions are imposed by the ARB, the Owner or Owner's authorized agent may request the ARB to reconsider its decision by providing additional supporting information (such request herein referred to as the "appeal"). The ARB must receive the written request for appeal not more than 15 calendar days following the date of the original decision of the ARB. Within 15 calendar days following receipt of the written request for appeal, the ARB shall reconsider the application and render its written decision. The failure of the ARB to render a decision within the 15-day period shall be deemed a decision against the Owner. The decision of the ARB shall be binding and final.

3.12 Authorization to Commence Construction

After an Owner receives final plan approval and prior to commencement of construction, the Owner and contractor shall sign a Construction Compliance Agreement and receive a completed Construction Authorization form from the ARB in the forms attached to these Architectural Controls. All requirements set forth in these Architectural Controls and the Rules and Regulations, as they pertain to construction site conditions, must be satisfied, and the Lot inspected by the ARB, prior to issuance of a completed Construction Authorization form.

3.13 Completion of Construction

Upon completion of construction and installation of landscaping, Owner or Owner's authorized agent must submit a request for ARB inspection using the form attached to the Rules and Regulations. Upon passing inspection, a Certificate of Compliance, in the form attached to the Rules and Regulations, will be issued to the Owner.

3.14 Variances to the Architectural Controls

From time to time, the Architectural Controls or existing site conditions may impose an undue hardship that may inhibit construction on a particular Lot. In such case, the Owner must submit to the ARB a Variance Application, in the form attached to these Architectural Controls, in addition to the Application for Final Construction Approval or Modifications Approval, as the case may be. All variance requests must be submitted to, and approved by, the ARB prior to submission to the appropriate Governmental Authorities, if such variance is subject to governmental approval. The ARB will grant or deny the variance request in writing within 15 calendar days of receipt of the request. No variances are allowed unless the Owner has received a written notice of approval.

from the ARB. Any variance granted is unique and does not set any precedent for future decisions of the ARB. During the Development and Sale Period, a variance requires Declarant's written consent

3.15 Unscheduled Meetings with the ARB

Unscheduled reviews will be considered on a case-by-case basis for modifications not requiring major engineering or site development changes. The ARB reserves the right to refuse an unscheduled review for any reason.

3.16 Modifications of Existing Structures

All modifications of existing structures and exterior improvements, including, without limitation, landscaping, must be approved by the ARB. The Owner or Owner's authorized agent shall submit plans showing the nature of the work to be performed and an Application for Modifications Approval. A review fee and a Compliance Deposit may be required by the ARB as set forth in Section 11.0 of these Architectural Controls. The Compliance Deposit, if any, shall be returned in accordance with the Rules and Regulations

3.17 Use of Plans and Copyright

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright or other intellectual property right associated with the plans. Neither the submission of the plans to the ARB, or the distribution and review of the plans by the ARB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB shall hold the members of the ARB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process.

4.0 Architectural Standards

4.01 General Standards

Homes must be designed in conformity with the standards, requirements and Controls set forth in the Covenants and these Architectural Controls. All permanent improvements must be sited within the setbacks. Plans submitted for review, or any portion thereof, may be disapproved upon any grounds that are inconsistent with the purpose and objectives of the ARB, including purely aesthetic considerations.

4.02 Modular and Manufactured Home Construction

No manufactured home shall be placed, erected, constructed, or permitted within the Development. Prefabricated accessory structures, like sheds and gazebos, must be reviewed and approved in strict accordance with Article IV of the Covenants

4.03 Dwelling Size/Minimum Standards/Maximum Standards

Minimum and maximum square footages shall be defined as heated floor space. Heated floor space does not include garages, carports, covered walks, or porches. Variances from minimum dwelling sizes may be granted if the site conditions present a hardship. Variances may also be granted if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the existing architectural aesthetics.

For any lot, the maximum building height, as measured from the minimum FEMA Flood Elevation Requirement is 45'. The maximum building square footage, for any lot, shall be controlled by the maximum building height and all yard (front, rear, side) setbacks. The minimum building square footage for any lot shall be 1,600 square feet. The exception to the minimum building square footage is Lot 1, Block K, Sunset Cove Realty, where no minimum requirement will be established.

4.04 Boathouse Size/ Minimum Standards/Maximum Standards

Construction of all boat houses will utilize pilings of wood or concrete. All boathouses will be engineered and approved by the ARB at owner's expense. A minimum setback of 17' from the bulkhead is required for all boathouses except those boathouses located on Block G lots. For those lots located in Block G, a minimum setback of 20' perpendicular from the bulkhead is required to allow for planting of Spartina grasses by the Sunset Cove Galveston Homeowner's Association, Inc. Furthermore, boathouses shall not extend beyond the 30' Flow Easement established for all Wet Lots.

All boathouse locations and layout for construction of the boathouses for each location have been defined on a plat to ensure ease of access for all watercraft and maximum view corridor preservation. A copy of this plat is available for review at the offices of the Declarant and the Sunset Cove Galveston Homeowners Association, Inc.

Typical boathouses will measure 13' by 30'. Some Lots located in the cul-de-sacs may feature a maximum specification of 13' by 40'. Those specific Lots are block B: Lots 5,6,7,8. Block D: 2,3,4,5. Block E: Lots 4,5,6,7. Block F: Lots 5,6,7,8. These described cul-de-sac lots feature more water frontage than other lots, thus the allowance for larger boathouses.

Maximum boathouse height shall not exceed 15' as measured from the mean sea level or as approved by the ARB. Because of Lot elevations, boathouses will have step-downs of at least 3' to 4' to ensure practical engineering and construction practices and to enhance view. Walkways to boathouses shall not exceed a length of 17' not be wider than 6'. "Catwalks" or elevated walkways extending directly from the homesite pad towards the boathouse shall not be allowed. The construction of a "Catwalk" or elevated walkway extending from the homesite pad to the boathouse is expensive to the homeowner (typical construction cost of \$10,000.) and is detrimental to the overall design aesthetics.

Gazebos, palapas or other such structures may be constructed on the decking above the boathouses. Construction of this type of amenity shall have a maximum dimension of 14' by 13' and shall not exceed a height of 14' (to the top of the ridge) and shall be centered on the deck above

the boathouse. All lighting of docks shall be limited to underwater lighting and 60 watt exterior lights. All proposed dock construction shall be subject to prior approval by the ARB and no such construction shall take place without such approval.

4.05 Setback Requirements and Height Requirements

Setback requirements are set forth and defined for each Lot on the final plat. No permanent improvements may be constructed within any setback area.

For any lot, the maximum building height, as measured from the minimum FEMA Flood Elevation Requirement is 45'. The maximum building square footage for any lot shall be controlled by the maximum building height and all yard (front, rear, side) setbacks. The minimum building square footage for any lot shall be 1600 square feet. The exception to the minimum building square footage is for Lot 1, Block K, Sunset Cove Realty, whereby no minimum is established.

4.06 Massing and Scale

Residential scale of all structures shall be promoted and maintained in the Development. Larger volume massing shall be broken down by secondary, simple, traditional forms. Variety in building massing and detailing is encouraged. Detailing, massing and materials are to be consistent on all elevations.

4.07 Front Façade

The main entry on the front elevation must be clearly defined. The composition of the façade must be balanced and in proportion to the entire structure. Foremost wall of front elevations must be planned in accordance with the existing structures on the street to present a balanced streetscape.

4.08 Porches

Porches have traditionally served as entry defining features and should serve the same function in the Development and be designed to serve as an extension of the home. Detailing of all porches must be architecturally compatible with the home. Porches are required on the street side and bay side elevations. Corner lots should have a porch that follows the street wall around the corner. The minimum depth of a porch is 8 feet. Porches used for ingress/egress purposes may be smaller with ARB approval. Porch screen colors must be submitted to the ARB for approval. Railing design must be simple and terminate at posts or columns. Porch ceilings shall be high to maximize views and light.

4.09 Exterior Materials

Hardiplank, wood siding (clapboard, lap, vertical), vinyl siding, and vinyl shake are permitted. Brick, masonry, stone, and reflective glass is permitted. Lattice screen wall may be used between piles or columns and beneath exterior stairs, if consistent with the overall architectural style of the dwelling, as determined by the ARB. Exterior materials shall be used consistently on the front, side, and rear elevations of the home.

4.10 Colors

Whites, pastels and earth tones shall be used as the main building color. Bright colors could be used in limited amounts for trim details and architectural design elements to focus attention. The use of primary and brighter colors may be considered by the ARB.

4.11 Finished Floor Elevations

The Development is located within the VE flood zone and minimum elevation requirements exist for all habitable spaces; therefore, the Federal Emergency Management Act (FEMA) requires elevated construction. A "plus 4", or four feet over the minimum elevation is required. For example, a minimum elevation of 17' combined with the "plus 4" requirement would equal a minimum elevation of 21' above sea level.

4.12 Roofs

The main roof pitch should be 5-8:12. Pitches for porches, breezeways and other secondary structures may have a flatter pitch of 3-6:12, provided they are approved by the ARB. Mansard, parapets, flat, and A-frame roofs are not permitted. Roof overhangs are limited to a maximum size of 24 inches. All roof penetrations (gas flues, exhaust vents, plumbing vents, skylights, etc.) shall be located on the rear roof slopes, if possible, so they are not visible from the street. Roof penetrations must be painted a color that is compatible with the roof color. Failure to paint roof penetrations may result in a deduction from the Compliance Deposit. Roof penetrations visible from the street must be approved in writing by the ARB.

Approved roof materials and colors are as follows:

- A 30-year or better dimensional fiberglass shingles (brown, tan, and grey)
- B. Metal: standing seam, galvanized, corrugated (brown, tan, grey, weathered galvanize, copper color, zinc color) (painted metal roofs are prohibited)
- C Concrete tile (brown, tan, grey)

4.13 Chimneys

The materials used for chimney finishes shall be compatible with the overall design of the main structure, as determined by the ARB.

4.14 Garages, Carports and Garage Doors

Front loaded garages or carports shall be set back a minimum of 2 feet from the front elevation of the home. All side loaded or courtyard garages must face away from the main street and public view. The street side elevation of a courtyard garage must incorporate windows, louvers, or shutters as necessary to provide visual interest. Garages and carports on corner lots shall not face the street side elevation. A raised panel garage door is required for all garage doors. Front-loading 2-car garages shall have a separate garage door for each car. All garages shall be attached to the main structure.

4.15 Home Identification

The ARB reserves the right to approve or deny the use of any home numbering that detracts from the appearance of the home. Home numbers shall be submitted with the plans and specifications during the final plan review.

4.16 Doors

Exterior entry doors shall be appropriate to the architectural theme and have glass or be paneled. Exterior sliding doors shall only be permitted on rear elevations. Storm and screen doors are not permitted unless they are of the appearance of a typical exterior door. All storm and screen doors shall be approved by the ARB.

4.17 Windows

Storm resistant windows are required. Windows must be wind loading and impact resistant. Use of glass block shall be reviewed on a case-by-case basis. Skylights and or roof windows will not be allowed on the street side elevations of the home. Dormer windows must be proportional in size and spacing with the geometry of the main residence.

4.18 Cornices and Exterior Trim

The use of traditional crown molding and detailing at cornices, as well as authentic detailing around window and door openings, is an important part of the overall appearance. Such detailing must be consistent on all elevations.

4.19 Awnings and Shutters

Awnings and canopies shall not be affixed to the exterior of the residence without written ARB approval.

4.20 Pilings

Exposed base pilings on front and sides of homes are prohibited. Pilings must be painted, screened, or skirted from view

5.0 Site Requirements: Utilities

5.01 Service Area

Each home is required to have an enclosed service area, which area shall contain and screen from view from the street and neighboring properties, all utility connections, HVAC units, trash bins, meters, and irrigation control boxes. The location of the service area shall be shown on the architectural and site drawings. The service area shall be screened with a wall that is architecturally compatible with the home. This screen wall shall be constructed of wood, cement siding (i.e., Hardiplank) or vinyl lattice. In addition, the screen walls shall be planted with shrubs

or blooming vines. The service area screen wall must be at least 4 inches higher than the units contained therein and serve as a noise buffer for adjacent properties. The screen wall shall be no taller than 4 ½ feet

5.02 Natural Gas

Natural gas has been provided for Sunset Cove at the expense of the developer. Use of this utility is mandatory, unless extenuating circumstances apply, in which case the homeowner must petition the ARB for permission to abandon usage of this utility.

Note: Currently the Developer is still in negotiation with Texas Gas for the establishment of this service.

5.03 Antennas and Satellite Dishes

Owners are prohibited from installing satellite dishes that are more than one meter (39.37 inches) in diameter and television antennas that are more than one meter in diameter or 12 feet above the roof line. Any permitted satellite dish or antenna shall be placed in the least visible location having clear reception. Landscaping, painting or screening may be required by the ARB to minimize visual impact. Other exterior satellite dishes, television and radio antennas are not permitted.

6.0 Site Requirements: Accessory and Decorative Structures

6.01 Arbors and Trellises

Arbors and trellises are permitted. Location, elevations and finishers must be submitted to the ARB for approval prior to beginning construction. Structural elements must be treated wood

6.02 Fences

Fences and walls must harmonize in character and color with the home. All fences shall be 48 inches in height. Fence materials shall be PVC, fiberglass or vinyl with standard vertical pickets and rail, and white in color. Fencing of the entire Lot is not permitted. Fencing shall be restricted to the rear yard of the Lot. Wood, chain link and off-the-shelf metal picket fences are prohibited. The location and materials of all fences and walls shall be submitted on the site plan for approval. Fully-enclosed fencing is mandatory at the perimeter of swimming pools and hot tubs with a locking gate mechanism.

6.03 Flagpoles

No in-ground flagpoles will be allowed. One U.S. flag and one State of Texas flag, not exceeding 36 inches x 60 inches, may be mounted on the exterior façade of the home at a location approved by the ARB. Flags shall not be hung from trees, porch railings, or overhangs.

6.04 Swimming Pools, Hot Tubs and Water Features

Any and all proposed swimming pools, hot tubs, fountains, etc. must comply with Texas State law and FEMA Controls in addition to these Architectural Controls. Pools may be installed in the rear yard of any Lot, subject to regulations as stated herein. All plans for swimming pools must be submitted to the ARB for approval. Outdoor hot tubs are subject to ARB approval. Location of a hot tub shall be shown on the site plan. Hot tubs shall not be installed in the front or side yard of any Lot. Hot tubs installed in the rear yard of Lots adjacent to other Lots may be subject to additional screening requirements as imposed by the ARB. Refer to Exhibit C. *Initial Use Restrictions* (of the Declaration) for restrictions on locations of swimming pools and other regulations regarding their installation.

6.05 Decorative Objects

No decorative objects may be placed in the street side or side yard of any home without written approval by the ARB. This includes the following: sculptures, birdbaths, fountains, birdhouses, and lawn ornaments. All decorative objects placed on the Lot are subject to ARB approval. Decorative planters may be placed around the home, however, the size, number and type of planters are subject to ARB approval.

6.06 Clothesline

There shall be no outdoor clotheslines on any Lot.

6.07 Dog Houses and Bird Houses

Dog houses must be screened from view. All pets shall be kept on a leash when outside. Birdhouses are allowed as long as they are not placed in the side or street side yard.

6.08 Play Structures and Basketball Goals

Swing sets and play structures are allowed under certain conditions. The structures must be made of wood or similar material with a natural finish. Plans showing the location and finish of all play structures must be submitted and approved prior to construction. Basketball goals are permitted, if the goal is a permanent structure and the backboard itself is not facing the street. The location and finish of basketball goals shall be submitted and approved prior to construction.

7.0 Site Requirements: Lot Fill Materials, Grading, Erosion Control and Drainage, Storm Water Permits

7.01 Lot Fill Materials

The Declarant has retained Affolter Contracting, Ltd. for completion of all related dirt and fill material work. Owners and the Owner's contractor shall be responsible for ensuring that the piling system supporting the Owner's home is designed in accordance with soil conditions and home specifics. Owner is advised that Owner and/or Owner's contractor, or another professional engaged by Owner or Owner's contractor, should determine whether all of the soil conditions of

the Lot, including fill material, are adequate for the construction of a home on the Lot. No clay fill shall be allowed for any alteration to a Lot. All sand fill proposed shall be approved for type and activity by the ARB and the Declarant.

7.02 Grading, Erosion Control and Drainage

A proposed grading and drainage plan will be provided for each lot, illustrating existing drainage patterns established for the proper function of the storm water collection system. Drainage from the home site must flow in accordance with the flow patterns shown on the master drainage and grading plans. Drainage shall not flow onto adjacent Lots. Owners will be held responsible for the repair of any adverse effects (i.e. erosion) of improper or excessive storm water runoff. Erosion control measures, including silt fencing, shall be installed and maintained by the Owner's contractor during construction. Failure to construct and maintain erosion control measures and drainage systems shall result in fines in accordance with the Rules and Regulations.

NO CHANGES TO THE DRAINAGE PLAN ARE ALLOWED.

7.03 Storm Water Permits

Prior to commencing any construction activity on a Lot, Owner's contractor shall obtain local and state storm water permits and comply with all required storm water control measures required by the Texas Commission on Environmental Quality (TCEQ) and the City of Galveston

8.0 Site Requirements: Driveways and Walks

8.01 Driveways

All driveways are encouraged to be constructed of brick or concrete pavers or concrete with a uniform pattern of scoring joints. Colored or stamped concrete must be submitted and approved by the ARB prior to installation. Driveways shall have a minimum width of 12' with adequate space for turnaround and or guest parking. Driveways shall be connected to the street using a standard concrete edge detail and a standard City of Galveston driveway detail. Entry statements used in conjunction with the driveway are subject to ARB approval. The entry must be discrete and reflect the architectural details and materials of other site elements and the home. This element must be set back off the street behind the R.O.W. line.

8.02 Walks

Walkways shall be constructed using materials consistent with the driveway or prominent architectural features of the home. All walks shall be a maximum of four feet in width. All material selections and location of walks shall be approved by the ARB.

Approved materials for walkways are as follows:

- a. Concrete/stamped concrete
- b. Brick/stone pavers

9.0 Site Requirements: Landscaping and Irrigation

9.01 Landscape Budget and Submission Requirements

Generally, the landscaping budget will be between 5% and 10% of the total construction budget. Submission requirements for landscape plans are described in the Design Review Checklist. Attached also is a suitable list of landscape plants for the Development.

9.02 Landscape Plan Requirements

At a minimum, the following landscaping will be required for all homes

1. Four or more 3" caliper interior trees or palm trees with a minimum 8' clear trunk height shall be required on the smallest lots with proportionately more trees on larger lots. No trees with maturity heights greater than 7' shall be allowed in the side yard setbacks (a.k.a. view protection corridors)
2. Blank areas of walls shall be landscaped with upright shrubs, small trees (4' minimum height) or trellises with blooming vines. Other plant materials or aesthetic treatments may be considered by the ARB to ensure visual interest and softening of these blank areas.
- 3 Sod is required in any grass areas For the types of allowable sod, refer to the list of suitable plants and perimeter plantings attached to these Architectural Controls.
4. Bark mulch or approved equal shall be used in all plant beds and areas without grass This shall be maintained in a weed-free condition
5. Landscape plans for lots with water frontage require salt tolerant plants
6. Any plantings by an Owner within the R O W. or easements shall require ARB approval.
7. In accordance with Sunset Cove landscape plans, Declarant will install landscaping, street furniture/lighting and associated irrigation within the R.O.W. and fronting their lot. The landscaping may consist of street trees, bedding plants or shrubs.
8. In accordance with the deed restrictions and the USACE Mitigation Plan requirements, the use of native grass such as Seashore paspalum will be required (as well as the use of nature-friendly fish emulsions for fertilizer) instead of Bermuda grass or St. Augustine grasses that require more nitrogen and more water.

Refer to the list of suitable plants and perimeter plantings attached to these Architectural Controls when preparing a landscape plan. Substitutions must be approved by the ARB.

9.03 Timing of Landscape Installation

All landscape installation shall be completed within 45 calendar days of receiving a certificate of occupancy. Landscaping must be complete before an Owner may submit a Request for ARB Inspection and Compliance Deposit Refund. If the 45-day deadline cannot be met, the Owner may request an extension, in writing, from the ARB. Failure to meet this deadline will result in fines in accordance with the Rules and Regulations.

9.04 Irrigation Requirements

An automatic, underground irrigation system shall irrigate all landscape areas including separately zoned lawn areas and plant beds. Irrigation over-spray is not permitted. A drip irrigation system is highly recommended. Declarant may provide initial irrigation for all planting areas located in the rights-of-way and other designated areas. All care and related expenses for these designated areas will be the responsibility of the Sunset Cove Galveston Homeowner's Association, Inc.

10.0 Additional Requirements

10.01 Storage of Recreational Vehicles and Equipment

All recreational vehicles (golf carts, boats, motor homes, and campers) shall be kept in a garage or carport. If recreational vehicles are stored in a carport, they must be screened from view on the side elevation. These and any other vehicles or equipment (trade vehicles, trailers) not stored in a garage or screened from view in a carport may be removed from the property by the Association at the Owner's expense.

10.02 Signage

Only contractor signs, as described in the Rules and Regulations, are allowed on the Lot during construction. Subcontractor signs are prohibited on the Lot. Any additional signage or displays found on a Lot may be removed at any time without warning.

"For sale" signs, issued by Sunset Cove Realty, Inc. and participating realtors are permitted for the sale of homes within the Development. These signs advertising the sale of a home or lot have been designed by the Declarant and a template is available for usage. This was done to ensure uniformity and minimum distraction from the beauty of the community. Any and all signs not following the template provided will be removed with no further notice given.

10.03 Exterior Lighting

All exterior lights shall consist of shielded fixtures that prevent light from escaping through the top and sides of the fixture. Down lighting is encouraged to reduce glare, to better light drives and paths, to protect neighboring properties from bright light sources, and to generally minimize light pollution. Colored lights are prohibited. Amber lights are subject to ARB approval. Spotlights and floodlights will be considered on a case-by-case basis, depending on orientation and location. All landscape lighting must consist of low voltage lamps. Landscape lighting shall have a maximum height of 42". All exterior lighting fixtures and locations must be approved by the ARB.

10.04 Holiday Lighting and Decorations

Holiday lighting and decorations may only be displayed on a Lot for up to 30 calendar days prior to a publicly observed holiday or religious observance and up to 15 calendar days thereafter without prior ARB approval, subject to the right of the Association or Declarant to require removal of any such decorations as set forth in Exhibit "C" of the Covenants. Any window with holiday lights must be tastefully done. Temporary ornamental sculptures or structures and all other exterior holiday lights are permitted only with the approval of the ARB, as per exterior lighting standards set by the Board.

11.0 Schedule of ARB Fees*

Sketch Plan Review Fee	\$75.00
Final Plan Review Fee	\$150.00
Design review fee for revisions to approved plans	\$100.00
Variance Request	\$100.00
Modifications Review Fee**	\$250.00
Compliance Deposit for new construction	\$2,500.00
Compliance Deposit for modifications**	\$500.00

*The review fees are based upon the following hours of ARB, architect and landscape architect review and are subject to change:

Sketch Plan Review:	1 hours
Final Plan Review:	2 hours

Any additional time spent on reviewing plans or meeting with an Owner shall be billed to the Owner at an hourly rate of \$125.00 per hour. No reduction in fees is allowed if less review time is required.

**The ARB shall determine, in its sole discretion, if a review fee and Compliance Deposit is required based upon the extent of the construction required in the modification

**12.0 Minimum Building Square Footage, Maximum Building Square Footage
Maximum Building Height, Setback Requirements**

For any lot, the maximum building height, as measured from the minimum FEMA Flood Elevation Requirement, is 45'. The maximum building square footage, for any lot, shall be controlled by the maximum building height and all yard (front, rear, side) setbacks. The minimum building square footage, for any lot, shall be 1,600 square feet. The exception to the minimum

building square footage is for Lot 1, Block K, Sunset Cove Realty, whereby no minimum is established.

Exhibit "H"

Architectural Controls

1.0 Introduction

1.01 Purpose

These Architectural Controls have been prepared by Sunbird Development, L.P. (the "Declarant") for the purpose of promoting development of a community known as Sunset Cove Galveston, Inc. (the "Development" or "Sunset Cove"). The standards of design expressed in these Architectural Controls are intended to describe Declarant's "vision" of the Development through procedures that are clearly outlined and informative. The Declarant's intent is to encourage a cooperative approach to planning, design and construction within the Development.

1.02 Community Master Plan

Sunset Cove is a master planned community located on the bay-side of Galveston, on the island's west end. It is the intent of the Declarant to protect and enhance the natural features of the Development as well as the man-made improvements through, in part, the Architectural Controls herein. The Declarant reserves the right to revise and update these Architectural Controls as well as performance and quality standards to respond to future changes. Such changes shall be prospective and will not affect plans for improvements already approved by the ARB in accordance with these Architectural Controls.

These Architectural Controls contain general provisions applicable to all of the Development as well as specific provisions that may vary according to, among other factors, structural type and location within the Development.

1.03 Relationship to Legal Documents and Governmental Approvals

These Architectural Controls are supplementary to the Declaration of Covenants, Conditions and Restrictions for Sunset Cove (the "Covenants") recorded in the Galveston County, Texas public records. The criteria are intended to complement the Covenants and should a conflict arise, the Covenants shall prevail. In addition, Owners shall be responsible for obtaining all permits and approvals from the City, County and other Governmental Authorities. In the event of a conflict between the Architectural Controls and such governmental approvals, the most restrictive requirement shall control. Unless otherwise specified, all capitalized terms shall have the meaning set forth in the Covenants.

1.04 Approval of Contractors

In order to ensure that appropriate standards of construction are maintained throughout the Development, all general contractors must be approved by the Architectural Review Board ("ARB") prior to engaging in any construction activities within the Development. The ARB has implemented an approval process that requires the submission of a written application for approval and sets forth qualifications that contractors must meet. Both the qualification requirements and

the application form are subject to change at the sole discretion of the ARB. Approval of contractors may not be construed as a recommendation of a specific contractor by the ARB or the Declarant or any Declarant Affiliate, nor a guarantee or endorsement of the work of such contractor. The requirements established by the ARB for approval of contractors are solely for Declarant's and Declarant's Affiliates' protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved contractor. Owner's selection of a contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such contractor

Approved builders at the time of preparation of this document are: Hancock House, Sunrise Builders, Metro Builders and Cunningham Builders. All other builders must be prequalified.

1.05 Rules and Regulations

The Sunset Cove Construction Rules and Regulations ("Rules and Regulations") are a supplement to the Architectural Controls and contain additional information and forms for use by Owners and their contractors during the construction process. Owners are responsible for obtaining the latest Rules and Regulations from the ARB.

2.0 Organization and Responsibilities of the Architectural Review Board

2.01 Mission and Function

The Covenants state that no structure is to be erected upon any Lot and no improvements of any kind or other work shall take place within the Development without being approved by the ARB pursuant to Article IV of the Covenants. These Architectural Controls are utilized by the ARB for the evaluation of projects submitted to them but are not the exclusive basis for the ARB's decisions. The final decision of the ARB may be based on purely aesthetic considerations. It is important to note that these opinions are subjective and may vary as ARB members change over time.

The ARB is comprised of one or more members appointed by the Declarant. The right to appoint members to the ARB shall be retained by Declarant until 5 years after the Development and Sale Period unless Declarant earlier terminates its rights in a recorded instrument. At such time, the Board of Directors of the Home Owners Association of Sunset Cove Galveston, Inc. (the "Association") shall appoint the members of the ARB in accordance with Article IV of the Covenants

2.02 Scope of Responsibility

The ARB has the following responsibilities:

1. Reviewing all new construction plans submitted by an Owner for adherence to these Architectural Controls and compatibility of the design with the adjoining sites and Common Areas
2. Reviewing all modifications to existing structures, including, but not limited to, walls, fences, exterior painting, material replacements, window tinting, shutters, louvers, additions, play structures, and landscaping.

3 Monitoring the design and construction process in order to ensure compliance with the Covenants, these Architectural Controls and the Rules and Regulations

4. Enforcing the Architectural Controls and the Rules and Regulations through Special Assessments, self-help, fines, or other measures as described in the Covenants and the Rules and Regulations.

5. Interpreting the Covenants, these Architectural Controls and the Rules and Regulations at the request of the Owners or Owner's contractor.

2.03 Enforcement Powers

Any structure or improvement that is placed on a Lot in the Development without ARB approval shall be in violation of these Architectural Controls and the Covenants. The ARB has the power to request that the non-conforming structure or any other exterior improvements, including, without limitation, landscaping, be brought into compliance at the Owner's expense. Should the Owner fail to comply with the request of the ARB, the ARB has the right to act in accordance with Article VII of the Covenants to bring the non-conforming item into compliance.

2.04 Limitation of Liability

Approval by the ARB does not constitute a representation of warranty as to the quality, fitness, or suitability of the design or materials specified in the plans. Owners should work with their architect and/or contractor to determine whether the design and materials are appropriate for the intended use. In addition, approval by the ARB does not assure approval by any governmental agencies that require permits for construction. Owners are responsible for obtaining or ensuring that their architect and/or contractor obtains all required permits before commencement of construction. The Declarant, the Association, the Board of Directors of the Association (the "Board"), any committee, or member of any of the foregoing shall not be liable or responsible for any injury, damages, or loss arising out of the manner or quality of approved construction on, or modifications to, any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Article IV of the Covenants.

3.0 Design Review Process

3.01 Review of Plans and Specifications

The design review process is divided into 3 steps

Step One: Pre-Design Review (optional)

Step Two: Sketch Plan Review

Step Three: Final Plan Review

The ARB will review design submissions at each step during scheduled ARB meetings. Submission requirements for each step are described in these Architectural Controls. Two sets of

complete drawings (to scale) must be submitted to the ARB for each step of the design review process. One set will be retained by the ARB and one red-lined set will be returned to the Owner. Incomplete submissions will not be reviewed and will be rejected and subsequent review of such resubmitted plans will be done at a cost of \$125.00 per hour. The decision to reject a set of plans will be based upon a "black and white" violation that has been published to all Owners. Submissions are due 7 calendar days before each meeting, which meetings will be held as often as necessary for expedient plan review, but no less than once per week, unless there are no action items for ARB review or approval. The Owner must contact the ARB no less than 7 days prior to the next scheduled meeting to schedule a review appointment with the ARB. After the ARB receives all requests for review appointments, the ARB will prepare an agenda of meeting times for distribution to each Owner that requested a meeting. If no submissions or meeting requests are made for a particular review meeting, then the ARB may cancel that review meeting. The ARB may, in its sole discretion, increase the frequency of review meetings to meet Owner's requests.

3.02 ARB Contact Information

All requests for appointments and information and submissions of applications for design review, modifications or variances should be directed to the ARB at:

Sunset Cove Galveston Homeowners Association, Inc.
Attention: Architectural Review Board
Sunset Cove Galveston Subdivision
c/o Zero/Six Consulting, LLC
8423 Stewart Road
Galveston, Texas 77554
Tel: (409) 740-0090
Fax: (409) 740-0554
www.z6consulting.com

3.03 Architect and Contractor Licensing Requirements

All plans for the construction of dwellings and other buildings or significant structures on Lots in the Development must be designed by a Professional Engineer who is registered and licensed in the State of Texas and all plans or documents pertaining to dwellings or other significant structures on Lots shall bear the seal of such architect or Professional Engineer. All construction work must be completed by a contractor licensed in the State of Texas and, if necessary, the City of Galveston, and approved by the ARB.

3.04 Contractor Qualification Requirements and Application

An Owner's contractor must meet the following minimum qualifications prior to submitting a Builder Application to the ARB for approval:

1. Minimum of 5 years of home building experience
2. Satisfactory references from at least 5 homeowners

- 3 Satisfactory references from at least 3 subcontractors
4. Satisfactory financial references
- 5 Financial statements reflecting positive cash flow
6. Written home warranty
7. Evidence of commercial general liability insurance, worker's compensation, builder's risk, and any other coverage deemed necessary by Declarant in such amounts and form as determined by Declarant. Contractors shall be required to name Nature's Concepts, Inc., Sunbird Development, L P , and the Sunset Cove Galveston Homeowners Association, Inc. as additional insureds

If the above qualifications are met, the Owner's contractor must submit a Builder Application, in the form attached to these Architectural Controls, and be approved by the ARB prior to the Owner submitting an Application for Final Plan Review. A Compliance Deposit (as defined and more particularly described in the Rules and Regulations) in an amount set forth in Section 11.0 must be paid by the Owner's contractor or Owner to the Association upon submission of the Application for Final Plan Review. Approval of a contractor may not be construed as a recommendation of a specific contractor by the ARB or Declarant or any Declarant Affiliate, nor a guarantee or endorsement of the work of such contractor. The ARB, in its sole discretion, may allow a contractor approved by the ARB to be deemed approved for construction on additional Lots as long as such contractor is in compliance with the Covenants, these Architectural Controls and the Rules and Regulations. A Compliance Deposit must be posted for each Lot upon which the contractor is constructing improvements.

3.05 Design Review Fees

ARB fees for new construction, modifications and variances are set forth in Section 11.0 of these Architectural Controls and are paid to the Association. The purpose of these fees is to cover all expenses related to the processing of applications for construction or modification and architect review of plans and specifications. The ARB reserves the right to change or waive these fees from time to time without prior notice. The design review fees must be submitted with the applicable design review applications. Applications received without the design review fee will be considered incomplete and returned to the Owner.

3.06 Pre-Design Review Meeting

The purpose of the pre-design review meeting is for the Owner and ARB to review and discuss these Architectural Controls and the Owner's intended design of improvements. This meeting is not mandatory; however, it is strongly recommended that the Owner and the Owner's design team schedule this meeting prior to sketch plan review to ensure that the intended design of improvements will be in accordance with the Architectural Controls. An Owner may choose to combine the pre-design review meeting with sketch plan review. In such event, both of the applicable review fees shall be paid. Attached to these Architectural Controls is a Pre-Design Review Checklist of Materials, which describes all of the materials and information that Owners should bring to the meeting. In addition, a pre-design review fee must be submitted to the ARB at

the time of the meeting. In order to schedule a pre-design review meeting, an Owner must contact the ARB to set up an appointment as set forth in Section 3.01.

3.07 Sketch Plan Review

The purpose of sketch plan review is for the ARB to review the initial design of all improvements including landscaping. This is a mandatory step in the ARB review process. For sketch plan review, an Owner must submit an Application for Sketch Plan Review and all materials and information described on the Sketch Plan Review Checklist, which application and checklist is attached to these Architectural Controls. In addition, a sketch plan review fee must be submitted to the ARB with the application. In order to schedule a sketch plan review meeting, an Owner must contact the ARB to set up an appointment as set forth in Section 3.01. If an Owner chooses to combine pre-design review with sketch plan review, the Owner must notify the ARB at the time of scheduling the meeting to allow enough time to be scheduled. The ARB will make every effort to provide its comments to the Owner during the sketch plan review meeting or within 10 calendar days after the meeting

3.08 Final Plan Review

Prior to obtaining a building permit from the City of Galveston and commencing construction, all plans and specifications for improvements, including landscaping, shall be approved by the ARB. For final plan review, an Owner must submit an Application for Final Plan Review and all materials and information on the Final Plan Review Checklist, which application and checklist is attached to these Architectural Controls. The materials and information submitted must address conditions imposed by the ARB during the sketch plan review. The name of the contractor approved by the ARB must be shown on the application. A Final Plan Review fee and the Compliance Deposit must be submitted to the ARB with the application.

3.09 Approval of Final Plan Applications

In accordance with Article IV of the Covenants, the ARB shall make a determination on each application for final plan review within 45 calendar days after receipt of a complete application, the review fee, Compliance Deposit, and all materials and information required as set forth in these Architectural Controls; provided, however, that the ARB will make every effort to make a determination on each application within 14 calendar days.

After the initial 45-day period has elapsed, if the Owner has not received notice of the ARB's determination, the Owner may make a second written request for approval of the plans previously submitted which shall be marked "Second Request". If the ARB fails to respond within 7 business days (from receipt), approval shall be deemed given. Notwithstanding anything to the contrary in the Declaration or the By-Laws, Owners shall send any such "Second Request" via the U.S. Postal Service or other delivery method which obtains a signed receipt upon delivery. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with these Architectural Controls or the Covenants unless a written variance has been granted pursuant to Section 3.14 of these Architectural Controls.

3.10 Conditions of Approval/Rejection of Final Plans

Approval by the ARB shall in no way relieve the Owner of responsibility and liability for the adherence to any applicable ordinances and codes. Plans submitted for review or any portion thereof may be disapproved upon any grounds, which are consistent with the purpose and objectives of the ARB, including purely aesthetic considerations.

3.11 Appeals Process-Final Plan Approval

If an application for final plan approval is denied or conditions are imposed by the ARB, the Owner or Owner's authorized agent may request the ARB to reconsider its decision by providing additional supporting information (such request herein referred to as the "appeal") The ARB must receive the written request for appeal not more than 15 calendar days following the date of the original decision of the ARB. Within 15 calendar days following receipt of the written request for appeal, the ARB shall reconsider the application and render its written decision The failure of the ARB to render a decision within the 15-day period shall be deemed a decision against the Owner. The decision of the ARB shall be binding and final.

3.12 Authorization to Commence Construction

After an Owner receives final plan approval and prior to commencement of construction, the Owner and contractor shall sign a Construction Compliance Agreement and receive a completed Construction Authorization form from the ARB in the forms attached to these Architectural Controls All requirements set forth in these Architectural Controls and the Rules and Regulations, as they pertain to construction site conditions, must be satisfied, and the Lot inspected by the ARB, prior to issuance of a completed Construction Authorization form

3.13 Completion of Construction

Upon completion of construction and installation of landscaping, Owner or Owner's authorized agent must submit a request for ARB inspection using the form attached to the Rules and Regulations Upon passing inspection, a Certificate of Compliance, in the form attached to the Rules and Regulations, will be issued to the Owner.

3.14 Variances to the Architectural Controls

From time to time, the Architectural Controls or existing site conditions may impose an undue hardship that may inhibit construction on a particular Lot. In such case, the Owner must submit to the ARB a Variance Application, in the form attached to these Architectural Controls, in addition to the Application for Final Construction Approval or Modifications Approval, as the case may be. All variance requests must be submitted to, and approved by, the ARB prior to submission to the appropriate Governmental Authorities, if such variance is subject to governmental approval The ARB will grant or deny the variance request in writing within 15 calendar days of receipt of the request. No variances are allowed unless the Owner has received a written notice of approval from the ARB. Any variance granted is unique and does not set any precedent for future decisions of the ARB During the Development and Sale Period, a variance requires Declarant's written consent.

3.15 Unscheduled Meetings with the ARB

Unscheduled reviews will be considered on a case-by-case basis for modifications not requiring major engineering or site development changes. The ARB reserves the right to refuse an unscheduled review for any reason.

3.16 Modifications of Existing Structures

All modifications of existing structures and exterior improvements, including, without limitation, landscaping, must be approved by the ARB. The Owner or Owner's authorized agent shall submit plans showing the nature of the work to be performed and an Application for Modifications Approval. A review fee and a Compliance Deposit may be required by the ARB as set forth in Section 11.0 of these Architectural Controls. The Compliance Deposit, if any, shall be returned in accordance with the Rules and Regulations.

3.17 Use of Plans and Copyright

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright or other intellectual property right associated with the plans. Neither the submission of the plans to the ARB, or the distribution and review of the plans by the ARB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB shall hold the members of the ARB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process.

4.0 Architectural Standards

4.01 General Standards

Homes must be designed in conformity with the standards, requirements and Controls set forth in the Covenants and these Architectural Controls. All permanent improvements must be sited within the setbacks. Plans submitted for review, or any portion thereof, may be disapproved upon any grounds that are inconsistent with the purpose and objectives of the ARB, including purely aesthetic considerations.

4.02 Modular and Manufactured Home Construction

No manufactured home shall be placed, erected, constructed, or permitted within the Development. Prefabricated accessory structures, like sheds and gazebos, must be reviewed and approved in strict accordance with Article IV of the Covenants.

4.03 Dwelling Size/Minimum Standards/Maximum Standards

Minimum and maximum square footages shall be defined as heated floor space. Heated floor space does not include garages, carports, covered walks, or porches. Variances from minimum dwelling sizes may be granted if the site conditions present a hardship. Variances may also be granted if, in

the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the existing architectural aesthetics.

For any lot, the maximum building height, as measured from the minimum FEMA Flood Elevation Requirement is 45 feet. The maximum building square footage, for any lot, shall be controlled by the maximum building height and all yard (front, rear, side) setbacks. The minimum building square footage for any lot shall be 1,600 square feet. The exception to the minimum building square footage is Lot 1, Block K, Sunset Cove Realty, where no minimum requirement will be established.

4.04 Boathouse Size/ Minimum Standards/Maximum Standards

The Developer has secured three (3) approved boathouse designs. Owners must construct a boathouse which complies with any of such approved designs. Minor variations will be allowed, but must have the prior written approval of the ARB prior to the commencement of construction.

Gazebos, palapas or other such structures may be constructed on the decking above the boathouses. Construction of this type of amenity shall have a maximum dimension of 14' by 13' and shall not exceed a height of 14' (to the top of the ridge) and shall be centered on the deck above the boathouse. All lighting of docks shall be limited to underwater lighting and 60 watt exterior lights. All proposed dock construction shall be subject to prior approval by the ARB and no such construction shall take place without such approval.

4.05 Setback Requirements and Height Requirements

Setback requirements are set forth and defined for each Lot on the final plat. No permanent improvements may be constructed within any setback area.

For any lot, the maximum building height, as measured from the minimum FEMA Flood Elevation Requirement is 45'. The maximum building square footage for any lot shall be controlled by the maximum building height and all yard (front, rear, side) setbacks. The minimum building square footage for any lot shall be 1600 square feet. The exception to the minimum building square footage is for Lot 1, Block K, Sunset Cove Realty, whereby no minimum is established.

4.06 Massing and Scale

Residential scale of all structures shall be promoted and maintained in the Development. Larger volume massing shall be broken down by secondary, simple, traditional forms. Variety in building massing and detailing is encouraged. Detailing, massing and materials are to be consistent on all elevations.

4.07 Front Façade

The main entry on the front elevation must be clearly defined. The composition of the façade must be balanced and in proportion to the entire structure. Foremost wall of front elevations must be planned in accordance with the existing structures on the street to present a balanced streetscape.

4.08 Porches

Porches have traditionally served as entry defining features and should serve the same function in the Development and be designed to serve as an extension of the home. Detailing of all porches must be architecturally compatible with the home. Porches are required on the street side and bay side elevations. Corner lots should have a porch that follows the street wall around the corner. The minimum depth of a porch is 8 feet. Porches used for ingress/egress purposes may be smaller with ARB approval. Porch screen colors must be submitted to the ARB for approval. Railing design must be simple and terminate at posts or columns. Porch ceilings shall be high to maximize views and light.

4.09 Exterior Materials

Hardiplank, wood siding (clapboard, lap, vertical), vinyl siding, and vinyl shake are permitted. Brick, masonry, stone, and reflective glass is permitted. Lattice screen wall may be used between piles or columns and beneath exterior stairs, if consistent with the overall architectural style of the dwelling, as determined by the ARB. Exterior materials shall be used consistently on the front, side, and rear elevations of the home.

4.10 Colors

Whites, pastels and earth tones shall be used as the main building color. Bright colors could be used in limited amounts for trim details and architectural design elements to focus attention. The use of primary and brighter colors may be considered by the ARB.

4.11 Finished Floor Elevations

The Development is located within the VE flood zone and minimum elevation requirements exist for all habitable spaces, therefore, the Federal Emergency Management Act (FEMA) requires elevated construction. A "plus 4", or four feet over the minimum elevation is required. For example, a minimum elevation of 17' combined with the "plus 4" requirement would equal a minimum elevation of 21' above sea level.

4.12 Roofs

The main roof designs must be approved by the ARB. All designs for breezeways and other secondary structures must be approved by the ARB. Mansard, parapets, flat, and A-frame roofs are not permitted. Roof overhangs are limited to a maximum size of 24 inches. All roof penetrations (gas flues, exhaust vents, plumbing vents, skylights, etc.) shall be located on the rear roof slopes, if possible, so they are not visible from the street. Roof penetrations must be painted a color that is compatible with the roof color. Failure to paint roof penetrations may result in a deduction from the Compliance Deposit. Roof penetrations visible from the street must be approved in writing by the ARB.

Approved roof materials and colors are as follows:

- A. 30-year or better dimensional fiberglass shingles (brown, tan, and grey)

B. Metal: standing seam, galvanized, corrugated (brown, tan, grey, weathered galvanize, copper color, zinc color) (painted metal roofs are prohibited)

C. Concrete tile (brown, tan, grey)

4.13 Chimneys

The materials used for chimney finishes shall be compatible with the overall design of the main structure, as determined by the ARB.

4.14 Garages, Carports and Garage Doors

Front loaded garages or carports shall be set back a minimum of 2 feet from the front elevation of the home. All side loaded or courtyard garages must face away from the main street and public view. The street side elevation of a courtyard garage must incorporate windows, louvers, or shutters as necessary to provide visual interest. Garages and carports on corner lots shall not face the street side elevation. A raised panel garage door is required for all garage doors. Front-loading 2-car garages shall have a separate garage door for each car. All garages shall be attached to the main structure.

4.15 Home Identification

The ARB reserves the right to approve or deny the use of any home numbering that detracts from the appearance of the home. Home numbers shall be submitted with the plans and specifications during the final plan review.

4.16 Doors

Exterior entry doors shall be appropriate to the architectural theme and have glass or be paneled. Exterior sliding doors shall only be permitted on rear elevations. Storm and screen doors are not permitted unless they are of the appearance of a typical exterior door. All storm and screen doors shall be approved by the ARB.

4.17 Windows

Storm resistant windows are required. Windows must be wind loading and impact resistant. Use of glass block shall be reviewed on a case-by-case basis. Skylights and or roof windows will not be allowed on the street side elevations of the home. Dormer windows must be proportional in size and spacing with the geometry of the main residence.

4.18 Cornices and Exterior Trim

The use of traditional crown molding and detailing at cornices, as well as authentic detailing around window and door openings, is an important part of the overall appearance. Such detailing must be consistent on all elevations.

4.19 Awnings and Shutters

Awnings and canopies shall not be affixed to the exterior of the residence without written ARB approval

4.20 Pilings

Exposed bare wooden pilings on front and sides of homes are prohibited. Such exposed wooden Pilings must be painted, screened, or skirted from view. Concrete pilings do not need to be painted, screened, or skirted from view

5.0 Site Requirements: Utilities

5.01 Service Area

Each home is required to have an enclosed service area, which area shall contain and screen from view from the street and neighboring properties, all utility connections, trash bins, meters, and irrigation control boxes. The location of the service area shall be shown on the architectural and site drawings. The service area shall be screened with a wall that is architecturally compatible with the home. This screen wall shall be constructed of wood, cement siding (i.e., Hardiplank) or vinyl lattice. In addition, the screen walls shall be planted with shrubs or blooming vines. The service area screen wall must be at least 4 inches higher than the units contained therein and serve as a noise buffer for adjacent properties. The screen wall shall be no taller than 4 ½ feet

HVAC units should be screened in a similar manner; however; HVAC units must be located above applicable Base Flood Elevation set by the Federal Emergency Management Association

5.02 Propane Gas

A looped propane gas system may be provided to all lots. If such system is provided, then no Owner shall install any individual propane tanks. If a looped system is not provided then, if an Owner chooses to use propane gas as a heating source for the home, tanks must be installed underground and only in the rear yard of the Lot. All underground propane tank support structures shall be designed by a professional engineer registered in the State of Texas. Tanks above ground are strictly prohibited.

5.03 Antennas and Satellite Dishes

Owners are prohibited from installing satellite dishes that are more than one meter (39.37 inches) in diameter and television antennas that are more than one meter in diameter or 12 feet above the roof line. Any permitted satellite dish or antenna shall be placed in the least visible location having clear reception. Landscaping, painting or screening may be required by the ARB to minimize visual impact. Other exterior satellite dishes, television and radio antennas are not permitted.

6.0 Site Requirements: Accessory and Decorative Structures

6.01 Arbors and Trellises

Arbors and trellises are permitted. Location, elevations and finishers must be submitted to the ARB for approval prior to beginning construction. Structural elements must be treated wood.

6.02 Fences

Fences and walls must harmonize in character and color with the home. All fences shall be 48 inches in height. Fence materials shall be PVC, fiberglass or vinyl with standard vertical pickets and rail, and white in color. Fencing of the entire Lot is not permitted. Fencing shall be restricted to the rear yard of the Lot. Wood, chain link and off-the-shelf metal picket fences are prohibited. The location and materials of all fences and walls shall be submitted on the site plan for approval. Fully-enclosed fencing is mandatory at the perimeter of swimming pools and hot tubs with a locking gate mechanism.

6.03 Flagpoles

No in-ground flagpoles will be allowed. One U.S. flag and one State of Texas flag, not exceeding 36 inches x 60 inches, may be mounted on the exterior façade of the home at a location approved by the ARB. Flags shall not be hung from trees, porch railings, or overhangs.

6.04 Swimming Pools, Hot Tubs and Water Features

Any and all proposed swimming pools, hot tubs, fountains, etc. must comply with Texas State law and FEMA Controls in addition to these Architectural Controls. Pools may be installed in the rear yard of any Lot, subject to regulations as stated herein. All plans for swimming pools must be submitted to the ARB for approval. Outdoor hot tubs are subject to ARB approval. Location of a hot tub shall be shown on the site plan. Hot tubs shall not be installed in the front or side yard of any Lot. Hot tubs installed in the rear yard of Lots adjacent to other Lots may be subject to additional screening requirements as imposed by the ARB. Refer to Exhibit C *Initial Use Restrictions* (of the Declaration) for restrictions on locations of swimming pools and other regulations regarding their installation.

6.05 Decorative Objects

No decorative objects may be placed in the street side or side yard of any home without written approval by the ARB. This includes the following: sculptures, birdbaths, fountains, birdhouses, and lawn ornaments. All decorative objects placed on the Lot are subject to ARB approval. Decorative planters may be placed around the home; however, the size, number and type of planters are subject to ARB approval.

6.06 Clothesline

There shall be no outdoor clotheslines on any Lot.

6.07 Dog Houses and Bird Houses

Dog houses must be screened from view. All pets shall be kept on a leash when outside. Birdhouses are allowed as long as they are not placed in the side or street side yard.

6.08 Play Structures and Basketball Goals

Swing sets and play structures are allowed under certain conditions. The structures must be made of wood or similar material with a natural finish. Plans showing the location and finish of all play structures must be submitted and approved prior to construction. Basketball goals are permitted, if the goal is a permanent structure and the backboard itself is not facing the street. The location and finish of basketball goals shall be submitted and approved prior to construction

7.0 Site Requirements: Lot Fill Materials, Grading, Erosion Control and Drainage, Storm Water Permits

7.01 Lot Fill Materials

The Declarant has retained Affolter Contracting, Ltd. for completion of all related dirt and fill material work. Owners and the Owner's contractor shall be responsible for ensuring that the piling system supporting the Owner's home is designed in accordance with soil conditions and home specifics. Owner is advised that Owner and/or Owner's contractor, or another professional engaged by Owner or Owner's contractor, should determine whether all of the soil conditions of the Lot, including fill material, are adequate for the construction of a home on the Lot. No clay fill shall be allowed for any alteration to a Lot. All sand fill proposed shall be approved for type and activity by the ARB and the Declarant.

7.02 Grading, Erosion Control and Drainage

A proposed grading and drainage plan will be provided for each lot, illustrating existing drainage patterns established for the proper function of the storm water collection system. Drainage from the home site must flow in accordance with the flow patterns shown on the master drainage and grading plans. Drainage shall not flow onto adjacent Lots. Owners will be held responsible for the repair of any adverse effects (i.e. erosion) of improper or excessive storm water runoff. Erosion control measures, including silt fencing, shall be installed and maintained by the Owner's contractor during construction. Failure to construct and maintain erosion control measures and drainage systems shall result in fines in accordance with the Rules and Regulations

NO CHANGES TO THE DRAINAGE PLAN ARE ALLOWED.

7.03 Storm Water Permits

Prior to commencing any construction activity on a Lot, Owner's contractor shall obtain local and state storm water permits and comply with all required storm water control measures required by the Texas Commission on Environmental Quality (TCEQ) and the City of Galveston.

8.0 Site Requirements: Driveways and Walks

8.01 Driveways

All driveways are encouraged to be constructed of brick or concrete pavers or concrete with a uniform pattern of scoring joints. Colored or stamped concrete must be submitted and approved by the ARB prior to installation. Driveways shall have a minimum width of 12' with adequate space for turnaround and or guest parking. Driveways shall be connected to the street using a standard concrete edge detail and a standard City of Galveston driveway detail. Entry statements used in conjunction with the driveway are subject to ARB approval. The entry must be discrete and reflect the architectural details and materials of other site elements and the home. This element must be set back off the street behind the R.O W. line.

8.02 Walks

Walkways shall be constructed using materials consistent with the driveway or prominent architectural features of the home. All walks shall be a maximum of four feet in width. All material selections and location of walks shall be approved by the ARB.

Approved materials for walkways are as follows:

- a. Concrete/stamped concrete
- b. Brick/stone pavers

9.0 Site Requirements: Landscaping and Irrigation

9.01 Landscape Budget and Submission Requirements

Generally, the landscaping budget will be between 5% and 10% of the total construction budget. Submission requirements for landscape plans are described in the Design Review Checklist. Attached also is a suitable list of landscape plants for the Development.

9.02 Landscape Plan Requirements

At a minimum, the following landscaping will be required for all homes:

1. Four or more 3" caliper interior trees or palm trees with a minimum 8' clear trunk height shall be required on the smallest lots with proportionately more trees on larger lots. No trees with maturity heights greater than 7' shall be allowed in the side yard setbacks (a.k.a. view protection corridors)
2. Blank areas of walls shall be landscaped with upright shrubs, small trees (4' minimum height) or trellises with blooming vines. Other plant materials or aesthetic treatments may be considered by the ARB to ensure visual interest and softening of these blank areas.
3. Sod is required in any grass areas. For the types of allowable sod, refer to the list of suitable plants and perimeter plantings attached to these Architectural Controls.

4. Bark mulch or approved equal shall be used in all plant beds and areas without grass. This shall be maintained in a weed-free condition.

5. Landscape plans for lots with water frontage require salt tolerant plants

6. Any plantings by an Owner within the R.O.W. or easements shall require ARB approval

7. In accordance with Sunset Cove landscape plans, Declarant will install landscaping, street furniture/lighting and associated irrigation within the R.O.W. and fronting their lot. The landscaping may consist of street trees, bedding plants or shrubs.

8. In accordance with the deed restrictions and the USACE Mitigation Plan requirements, the use of native grass such as Seashore paspalum will be required (as well as the use of nature-friendly fish emulsions for fertilizer) instead of Bermuda grass or St. Augustine grasses that require more nitrogen and more water.

Refer to the list of suitable plants and perimeter plantings attached to these Architectural Controls when preparing a landscape plan. Substitutions must be approved by the ARB.

9.03 Timing of Landscape Installation

All landscape installation shall be completed within 45 calendar days of receiving a certificate of occupancy. Landscaping must be complete before an Owner may submit a Request for ARB Inspection and Compliance Deposit Refund. If the 45-day deadline cannot be met, the Owner may request an extension, in writing, from the ARB. Failure to meet this deadline will result in fines in accordance with the Rules and Regulations.

9.04 Irrigation Requirements

An automatic, underground irrigation system shall irrigate all landscape areas including separately zoned lawn areas and plant beds. Irrigation over-spray is not permitted. A drip irrigation system is highly recommended. Declarant may provide initial irrigation for all planting areas located in the rights-of-way and other designated areas. All care and related expenses for these designated areas will be the responsibility of the Sunset Cove Galveston Homeowner's Association, Inc

10.0 Additional Requirements

10.01 Storage of Recreational Vehicles and Equipment

All recreational vehicles (golf carts, boats, motor homes, and campers) shall be kept in a garage or carport. If recreational vehicles are stored in a carport, they must be screened from view on the side elevation. These and any other vehicles or equipment (trade vehicles, trailers) not stored in a garage or screened from view in a carport may be removed from the property by the Association at the Owner's expense

10.02 Signage

Only contractor signs, as described in the Rules and Regulations, are allowed on the Lot during construction. Subcontractor signs are prohibited on the Lot. Any additional signage or displays found on a Lot may be removed at any time without warning.

“For sale” signs, issued by Sunset Cove Realty, Inc. and participating realtors are permitted for the sale of homes within the Development. These signs advertising the sale of a home or lot have been designed by the Declarant and a template is available for usage. This was done to ensure uniformity and minimum distraction from the beauty of the community. Any and all signs not following the template provided will be removed with no further notice given.

10.03 Exterior Lighting

All exterior lights shall consist of shielded fixtures that prevent light from escaping through the top and sides of the fixture. Down lighting is encouraged to reduce glare, to better light drives and paths, to protect neighboring properties from bright light sources, and to generally minimize light pollution. Colored lights are prohibited. Amber lights are subject to ARB approval. Spotlights and floodlights will be considered on a case-by-case basis, depending on orientation and location. All landscape lighting must consist of low voltage lamps. Landscape lighting shall have a maximum height of 42”. All exterior lighting fixtures and locations must be approved by the ARB.

10.04 Holiday Lighting and Decorations

Holiday lighting and decorations may only be displayed on a Lot for up to 30 calendar days prior to a publicly observed holiday or religious observance and up to 15 calendar days thereafter without prior ARB approval, subject to the right of the Association or Declarant to require removal of any such decorations as set forth in Exhibit “C” of the Covenants. Any window with holiday lights must be tastefully done. Temporary ornamental sculptures or structures and all other exterior holiday lights are permitted only with the approval of the ARB, as per exterior lighting standards set by the Board.

11.0 Schedule of ARB Fees*

Sketch Plan Review Fee	\$75.00
Final Plan Review Fee	\$150.00
Design review fee for revisions to approved plans	\$100.00
Variance Request	\$100.00
Modifications Review Fee**	\$250.00
Compliance Deposit for new construction	\$2,500.00
Compliance Deposit for modifications**	\$500.00

*The review fees are based upon the following hours of ARB, architect and landscape architect review and are subject to change:

Sketch Plan Review 1 hours
Final Plan Review 2 hours

Any additional time spent on reviewing plans or meeting with an Owner shall be billed to the Owner at an hourly rate of \$125.00 per hour. No reduction in fees is allowed if less review time is required.

**The ARB shall determine, in its sole discretion, if a review fee and Compliance Deposit is required based upon the extent of the construction required in the modification.

**12.0 Minimum Building Square Footage, Maximum Building Square Footage
Maximum Building Height, Setback Requirements**

For any lot, the maximum building height, as measured from the minimum FEMA Flood Elevation Requirement, is 45'. The maximum building square footage, for any lot, shall be controlled by the maximum building height and all yard (front, rear, side) setbacks. The minimum building square footage, for any lot, shall be 1,600 square feet. The exception to the minimum building square footage is for Lot 1, Block K, Sunset Cove Realty, whereby no minimum is established.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

Mary Ann Daigle

2006 MAY 18 01:49 PM 2006033393
JOHN_S \$664.00
Mary Ann Daigle, COUNTY CLERK
GALVESTON, TEXAS

Return to : STEWART TITLE CO.
P. O. BOX 1540
GALVESTON, TEXAS 77550