



## **Article II Definitions**

Unless the context otherwise prohibits, the following words, when used in this Declaration, shall mean and refer to the following:

**SECTION 2.01.** “Architectural Control Committee” or “ACC” shall mean the committee established pursuant to Article IV of this Declaration.

**SECTION 2.02.** “Architectural Guidelines” or “Landscape Standards” shall mean the procedural, aesthetic, environmental and architectural standards, policies and procedures from time to time adopted by the Architectural Control Committee in accordance with Article IV hereof.

**SECTION 2.03.** “Association” shall mean Seagrass Beach POA, a Texas nonprofit corporation, presently or hereafter incorporated by or on behalf of Declarant for the purposes contemplated by this Declaration, and its predecessors, successors and assigns by merger, consolidation or otherwise.

**SECTION 2.04.** “Board” or “Board of Directors” shall mean the Board of Directors of the Association, whether such Board is appointed by Declarant or elected in accordance with applicable Governing Documents.

**SECTION 2.05.** “Bylaws” shall mean the Bylaws of the Association, as from time to time amended in accordance with applicable provisions of the Bylaws, whether or not such Bylaws or amendments thereto are filed of record. Each person acquiring any right, title or interest in the Subdivision shall acquire and hold such right, title or interest subject to all of the terms and provisions of the Bylaws, and any amendments thereto.

**SECTION 2.06.** “Community Properties” shall mean Shared Utility Facilities, if any, the area designated by the Plat as Common Area, Common Open Space bordering this area, esplanades in the center of the public streets, if any, Pool Areas, and to other properties, real or personal, conveyed to or dedicated to the use of, or otherwise acquired by the Association for the common use and enjoyment of the Members of the Association, together with all improvements thereon and appurtenant thereto.

**SECTION 2.07.** “Declarant” shall mean **Seagrass Beach, LLC, a Texas limited liability company**, and its successors and assigns if such successors or assigns:

- (a) acquire all the undeveloped or developed but previously unoccupied or unsold Lots within the Subdivision from Declarant for purposes of development and resale; or
- (b) are expressly designated in writings by Declarant as a successor or assign of Declarant hereunder, in whole or in part.

**SECTION 2.08.** “Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions, and Easements for Seagrass Beach, and any amendments thereto.

**SECTION 2.09.** “Development Period” shall mean from June 13, 2016 and ending on the earlier occurrence of either of the following events:

- (a) when Seventy-Five (75%) percent of the lots have been sold; or
- (b) June 15, 2026; or

- (c) Upon recordation of Declarant's statement in the Real Property Records of Galveston County, Texas, that the Development Period has ended or has been terminated by Declarant.

**SECTION 2.10.** "Governing Documents" shall mean all applicable provisions of the Declaration, the Bylaws and Articles of Incorporation of the Association, Rules and Regulations, Architectural Control Guidelines, all written decisions and resolutions of the ACC and Board, all amendments to any of the foregoing.

**SECTION 2.11.** "Lot" shall mean a building site within the Subdivision, whether conveyed by metes and bounds or by reference to the Plat, upon which there has or will be built a single family residential dwelling.

**SECTION 2.12.** "Member" shall mean every Person who holds a membership in the Association.

**SECTION 2.13.** "Owner" shall mean the owner, whether one or more persons, of the fee simple title to any Lot, including any mortgagee or lien holder who acquires fee simple title to any Lot through judicial or non-judicial foreclosure or proceedings in lieu thereof, but excluding any Person holding a lien or other encumbrance, easement, mineral interest or royalty interest burdening the title thereto or otherwise having an interest merely as security for the performance of an obligation.

**SECTION 2.14.** "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other entity.

**SECTION 2.15.** "Plat" shall mean the map or plat of the Subdivision described in Section 1.01.

**SECTION 2.16.** "Regulated Modification" shall mean the placement construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural appearance or standards, patterns of usage, or grades or topography generally prevailing in the Subdivision as of the date of establishment of the Regulated Modification, including, by way of illustration and not of limitation:

- (a) any building, garage, porch, shed, greenhouse, bathhouse, coup or cage, covered or uncovered patio, swimming pool, clothes line, radio or television antenna, satellite, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent modification or alteration;
- (b) an excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the flow of surface or subsurface waters to, from, upon or across any Lot or any other portion of the Subdivision, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon, under or across any Lot or other portion of the Subdivision;
- (c) any changes in the grade of any Lot or other portion of the Subdivision, and any similar disturbance to the surface of the land within the Subdivision; and
- (d) any erosion control system of devices permitted or required as to any Lot or other portion of the Subdivision.

**SECTION 2.17.** “Rules and Regulations” shall mean the policies and procedures from time to time adopted by the Board of Directors regulating the operation, use and occupancy of the Subdivision, including the Lots and Community Properties, in accordance with Article VII hereof.

**SECTION 2.18.** “Reserve Area(s)” shall mean the real property as designated by the Plat as RESERVES.

**SECTION 2.19.** “Shared Utility Facilities” shall mean any, private roads, pedestrian easements, sanitary facilities, any drainage or storm water facilities, any water pipelines, water meters and related water facilities and other common or shared facilities or services constructed, owned, maintained or provided by Declarant or the Association: (i) which connect, for any one or more of the Lots, the individual water and/or sewer lines which service any Lot(s) to the water and/or sewer facilities owned, maintained or operated by the City of Bolivar Peninsula, State of Texas, or any other utility provider; or (ii) which connect or provide multiple Lots common facilities or services.

**SECTION 2.20.** “Subdivision” shall mean and refer to Seagrass Beach as more particularly described in Section 1.01 hereof, and any other real property subjected to this Declaration as herein provided.

**SECTION 2.21.** “Subdivision Access Facilities” shall mean (i) any controlled access gate, guardhouse and any other access limiting structure or device, and (ii) any fences, freestanding fence type walls, hedges, gates, gateposts, Subdivision identification signs and related improvements which are constructed or maintained by Declarant or the Association within the Subdivision Service Easement.

**SECTION 2.22.** “Subdivision Service Easement” shall mean the area in which Subdivision fencing will be placed and maintained, and all other areas designated by Declarant or the Association for use as to Shared Utility Facilities or any Subdivision Access Facilities as provided in Article IX.

**SECTION 2.23.** “Utility Easement Area” shall mean all utility easements as provided for in Article IX.

### **Article III Seagrass Beach POA**

**SECTION 3.01. Organization.** Seagrass Beach POA (the “Association”) shall be organized and formed by Declarant as a non-profit corporation under the laws of the State of Texas. The Association shall have full power, authority and standing to enforce all provisions of the Governing Documents. The principle purposes of the Association are the collection, expenditure and management of the funds and financial affairs of the Association, enforcement of all provisions of the Governing Documents, providing for maintenance, preservation and architectural control within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision, and the promotion of the health, safety and welfare of the residents and Owners of Lots within the Subdivision.

**SECTION 3.02. Board of Directors.**

- (a) Purpose. The Association shall act through a Board of Directors which shall manage the affairs of the Association as specified in this Declaration and other applicable Governing Documents.
- (b) Composition. Declarant or his Assigns shall act as and constitute the Board of Directors during the Development Period, and for such purposes may designate any agent or employee

of Declarant to discharge such function. Thereafter, the Board shall be composed and its members elected as provided in the Bylaws.

(c) Open Meetings and Records. Meetings of the Board of Directors, and minutes, documentation and communications related thereto shall be open to Members; provided, by resolution the Board of Directors may agree to meet in executive closed session to discuss privileged communications and such other matters as the board shall deem in its sole good faith opinion the best interest of the privacy rights of individual Members, consideration of competitive bids until a final bid is accepted, and matters where any conflict of interest exists between a Member and the Association and disclosure would detrimentally affect the interest of the Association.

**SECTION 3.03. Membership.** Every Person who is the record holder of a fee simple title or undivided fee simple title interest in any Lot that is subject to this Declaration shall be deemed to have membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate any Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall automatically pass with the title to the Lot.

**SECTION 3.04. Voting Rights of Members.**

(a) Development Period: During the Development Period there shall be two (2) classes of membership entitled to voting rights in the Association which shall be as follows:

(i) Class A: All Members in the Association, other than the Declarant, shall be entitled to one (1) votes per lot owned on each matter coming before the members.

(ii) Class B: Class B Members shall be those individuals or entities who are herein defined as "Declarant" or his assigns, and for each Lot owned that shall be entitled to five (5) votes per lot owned on each matter coming before the members.

(b) Post-Development Period: Upon termination of the Development Period, any remaining Class B membership shall automatically convert to Class A membership, and thereafter there shall be only one (1) class of voting membership. Class A Members, for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members unless their voting rights have been suspended as herein provided.

(c) Multiple Owners: When more than one Person holds an ownership interest in a Lot, all such Persons shall be Members, but in no event shall they be entitled to more than one (1) vote with respect to that particular Lot. When more than one Person holds an ownership interest in a Lot, the vote of all such joint Owners shall be controlled by a majority of such joint Owners. Any individual Owner from among such joint Owners shall be conclusively presumed to be acting in accordance with the decision of the majority in voting either in person or by proxy unless another joint Owner is voting to the contrary, either in person or by proxy. If more than one such joint Owner is voting in person or by proxy, the single vote of such joint Owners shall be cast in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners shall be permitted to vote as to any such matter upon which a majority decision cannot be reached.

(d) Cumulative Voting Prohibited: Cumulative voting shall not be permitted as to any matter placed before the membership for a vote, including election of Directors.

(e) Suspension of Voting Rights: Voting rights of any Member may be suspended for breach of the Governing Documents as herein provided.

### **SECTION 3.05. Records Production and Copying Policy.**

Except for information deemed confidential by law or court order, the Association will make its books and records open to and reasonably available for examination by an owner of property in the Subdivision or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with Texas Property Code section 209.005. Owners are also entitled to obtain copies of information in the Property Owners Association's books and records on payment of the Charges for the copies. To the extent the Charges in this policy exceed the charges in section 70.3 of title 1 of the Texas Administrative Code, the amounts in section 70.3 of title 1 of the Texas Administrative Code govern.

Information not subject to inspection by owners includes but is not limited to-

1. any document that constitutes the work product of the Association's attorney or that is privileged as an attorney-client communication;
2. files and records of the Association's attorney relating to the Association, excluding invoices requested by an owner under Texas Property Code section 209.008(d); and
3. except to the extent the information is provided in the meeting minutes or as authorized by Texas Property Code section 209.005(l), (a) information that identifies the dedicatory instrument violation history of an individual owner; (b) an owner's personal financial information, including records of payment or nonpayment of amounts due the Association; (c) an owner's contact information, other than the owner's address; and (d) information related to an employee of the Property Owners Association, including personnel files.

If a document in the Association's attorney's files and records relating to the Association would be subject to a request by an owner to inspect or copy Association documents, the document will be produced by using the copy from the attorney's files and records if the Association has not maintained a separate copy of the document.

### **Procedures for Inspecting Information or Obtaining Copies**

1. An owner or the owner's agent must submit a written request for access or information by certified mail, with sufficient detail describing the Association's books and records requested, to the mailing address of the Association or authorized representative as reflected on the most current management certificate filed with the county clerk of Galveston County, Texas.
2. The request must include enough description and detail about the information requested to enable the Association to accurately identify and locate the information requested. Owners must cooperate with the Association's reasonable efforts to clarify the type or amount of information requested.
3. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records and-

- a. if an inspection is requested, the Association, on or before the tenth business day after the date the Association receives the request, will send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the Association; or
- b. if copies of identified books and records are requested, the Association will, to the extent those books and records are in the possession, custody, or control of the Association, produce the requested books and records for the requesting party on or before the tenth business day after the date the Association receives the request.

4. If the Association is unable to produce the books or records requested that are in its possession or custody on or before the tenth business day after the date the Association receives the request, the Association must provide to the requestor written notice that-

- a. informs the owner that the Association is unable to produce the information on or before the tenth business day after the date the Association received the request; and
- b. states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the fifteenth business day after the date notice under this subsection is given.

5. If an inspection is requested or required, the inspection will take place at a mutually agreeable time during normal business hours, and the owner will identify the books and records for the Association to copy and forward to the owner.

6. The Association may produce copies of the requested information in paper copy, electronic, or other format reasonably available to the Association.

7. Before starting work on an owner's request, the Association must provide the owner with a written, itemized statement of estimated Charges for examining and copying records related to the owner's request, using amounts prescribed in this policy when the estimated Charges exceed \$40. Owners may modify the request in response to the itemized statement.

8. Within ten business days of the date the Association sent the estimate of Charges, the owner must respond in writing to the written estimate, or the request is considered automatically withdrawn. The response must state whether the owner (a) accepts the estimate per the request, (b) modifies the request, or (c) withdraws the request.

9. Owners are responsible for Charges related to the compilation, production, and reproduction of the requested information in the amounts stated in this policy. The Association

may require advance payment of the estimated Charges of compilation, production, and reproduction of the requested information.

10. If the estimated Charges are less or more than the actual Charges, the Association must submit a final invoice to the owner on or before the thirtieth business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the Association before the thirtieth business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated Charges exceeded the final invoice amount, the owner is entitled to a refund, and the refund will be issued to the owner not later than the thirtieth business day after the date the invoice is sent to the owner.

### **Charges for Examining and Copying Property Owners**

#### **A. Labor Charge for Computer Programming**

If a particular request requires the services of a computer programmer to execute an existing program or to create a new program so that requested information may be accessed and copied, the Association will charge \$28.50 an hour for the programmer's time spent on the request.

#### **B. Labor Charge for Locating, Compiling, Manipulating, and Reproducing Data and Information**

1. The charge for labor costs incurred in processing an owner's request for Association information is \$15.00 an hour. The labor charge will be calculated based on the actual time to locate, compile, manipulate, and reproduce the requested data and information.

2. A labor charge will not be billed in connection with complying with requests that are for fifty or fewer pages of paper records, unless the documents to be copied are located in (a) two or more separate buildings that are not physically connected with each other or (b) a remote storage facility.

3. A labor charge will not be billed for any time spent by an attorney, legal assistant, or any other person who reviews the requested information to determine whether it is confidential or privileged under Texas law.

4. When confidential or privileged information is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, black out, or otherwise obscure the confidential or privileged information in order to comply with the owner's request. The Association will not charge for redacting confidential or privileged information for requests of fifty or fewer pages unless the request also qualifies for a labor charge under section 552.261(a)(1) or 552.261(a)(2) of the Texas Government Code.

#### **C. Overhead Charge**



1. Whenever any labor charge is applicable to a request, the Association may include in the Charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If the Property Owners Association chooses to recover such costs, the overhead charge will be computed at Twenty (20%) percent of the charge made to cover any labor costs associated with a particular request.

For example, if one hour of labor is used for a particular request, the formula would be as follows:

- a. Labor charge for locating, compiling, and reproducing— $\$15.00 \times .20 = \$3.00$ .
- b. Labor charge for computer programming— $\$28.50 \times .20 = \$5.70$ .

If a request requires a charge for one hour of labor for locating, compiling, and reproducing information (\$15.00 per hour) and one hour of programming (\$28.50 per hour), the combined overhead would be  $\$15.00 + \$28.50 = \$43.50 \times .20 = \$8.70$ .

2. An overhead charge will not be made for requests for copies of fifty or fewer pages of standard paper records.

#### **D. Microfiche and Microfilm Charge**

If the Association already has the requested information on microfiche or microfilm, the charge for a copy must not exceed the cost of reproducing the information on microfiche or microfilm or ten cents per page for standard size paper copies of the information on microfiche or microfilm, plus any applicable labor and overhead charge for more than fifty copies.

#### **E. Remote Document Retrieval Charge**

To the extent that the retrieval of documents stored on the Association's property results in a charge to comply with a request, the Association will charge the actual cost of the retrieval.

#### **F. Copy Charges**

1. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is ten cents per page or part of a page. Each side of a piece of paper on which information is recorded is counted as a single copy. A piece of paper that has information recorded on both sides is counted as two copies. Standard paper copy is a copy of Association information that is a printed impression on one side of a piece of paper that measures up to eight and one-half by fourteen inches.

2. A "nonstandard" copy includes everything but a copy of a piece of paper measuring up to eight and one-half by fourteen inches. Microfiche, microfilm, diskettes, magnetic tapes, and CD-ROM are examples of nonstandard copies. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are-

- a. diskette—\$1.00;
- b. magnetic tape—actual cost;
- c. data cartridge—actual cost;
- d. tape cartridge—actual cost;
- e. rewritable CD (CD-RW)—\$1.00;
- f. nonrewritable CD (CD-R)—\$1.00;
- g. digital video disc (DVD)—\$3.00;
- h. JAZ drive—actual cost;
- i. other electronic media—actual cost;
- j. VHS video cassette—\$2.50;
- k. audio cassette—\$1.00;
- l. oversize paper copy (e.g., larger than eight and one-half by fourteen inches, greenbar, bluebar, not including maps and photographs using specialty paper)—\$0.50; and
- m. specialty paper (e.g., Mylar, blueprint, blueline, map, photographic)—actual cost.

**SECTION 3.06. Limitation of Liability; Indemnification**

(a) **General.** Except for intentional misconduct, knowing violation of the law, or as otherwise required by the Texas Non-Profit Corporation Act (including Article 1396-2.22A thereof, as amended), no Director shall be liable to the Association or its Members, and the Association shall not be liable to any Member, for monetary damages or otherwise for any act or omission in the Director's capacity as a Director or any act or omission of the Association within the scope of its purposes. The Association shall indemnify and keep indemnified, and hold harmless, the Director or former Director to the fullest extent necessary to

accomplishment of the foregoing and to the fullest extent otherwise allowed by law, and hold any such Director or former Director harmless from and against all claims, demands, suits, judgments, court costs, attorney's fees attachments and all other legal action as contemplated thereby. All provisions of this Section shall also apply to any officer or former officer of the Association, and to all Association Committees and members thereof (current or former), including the Architectural Control Committee.

(b) Security Services. The Association may from time to time provide Subdivision Facilities, including devices or services, intended to or which may have the affect of limiting or controlling Subdivision access, or providing patrol services or otherwise monitor activities within the Subdivision (including Community Properties), and may from time to time provide information through newsletters or otherwise regarding same (all such Subdivision Facilities herein referred to as "Security Services"). Without limitation of Section 3.06, each Owner or Member and their tenants, family, guests and invitees, covenant and agree with respect to any and all Security Services provided directly or indirectly by the Association as follows:

1. Security is the sole responsibility of local law enforcement agencies and individual Owners and Members, their tenants, and their respective guests and invitees. Security Services shall be provided at the sole discretion of the Board of Directors. The providing of any Security Services at any time shall in no way prevent the Board from thereafter or temporarily removing same.
2. Any third party providers of Security Services shall be independent contractors, the acts or omissions of which shall not be imputed to the Association or its officers, Directors, committee members, agents, or employees.
3. Providing of any Security Services shall never be construed as an undertaking by the Association to provide personal security or as a guarantee or warranty that the presence of any Security Service will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause.
4. The Association and its officers, Directors, committee members, agents, and employees shall not be liable, and each Owner or Member, their tenants, and their respective guests and invitees, shall indemnify, keep indemnified and hold the Association and its officers, Directors, committee members, agents and employees harmless at all times from any injuries, loss or damages whatsoever, including without limitation, any injury or damages caused by theft, burglary, trespass, assault, vandalism or any other crime, to any Person or property arising directly or indirectly from the providing or failure to provide any Security Services, or the discontinuation, disruption, malfunction, operation, repair, replacement or use of any Security Devices.

(c) Liability Arising From Conduct of Owners. Each Owner, and each Owner's tenants, shall indemnify, keep indemnified and hold the Association and its officers, Directors, committee members, agents and employees from and against all claims, damages, suits, judgments, court costs, attorney's fees, attachments and all other legal actions caused though the willful or negligent act or omission of an Owner, the Owner's tenants, or the family, guests, invitees, servants, agents, or employees of either.

(d) Subsequent Statutory Authority. If the Texas Non-Profit Corporation Act, Texas Miscellaneous Corporation Laws Act, Chapter 84 of the Texas Civil Practice and Remedies Code or any other applicable statute, state or federal, is construed or amended subsequently to the filing of this Declaration to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 3.06, then liability shall be

eliminated or limited and right to indemnification shall be expanded to the fullest extent permitted by such construction or amendment.

(e) No Impairment. Any repeal or modification of this Section 3.06 by the Members of the Association shall not adversely affect any rights or protection existing at the time of such repeal or modification.

#### **Article IV Architectural Control Committee**

##### **SECTION 4.01. Organization.**

(a) General. There is hereby established an Architectural Control Committee (herein sometimes referred to as the "ACC"). Declarant or his assigns shall act as the ACC during the Development Period, and shall retain all authority of the ACC as to initial construction of a residence upon each Lot which is commenced during the Development Period whether or not such initial construction is completed during or after the Development Period. Declarant shall not be required to obtain ACC approval regarding any of its developmental activities during the Development Period. Builders approved by the Declarant for construction within the subdivision, (herein referred to as "Approved Builders"), will be required to submit plans and specifications for construction of a residence upon a Lot, together with landscaping plans for the Lot, to follow the procedures outlined by this Article IV.

Upon termination of the Development Period, the ACC shall be composed of either: (i) all members of the Board of Directors; or (ii) an executive committee of the Board of Directors formed and designated as the ACC by resolution adopted by the Board of Directors. The ACC may designate any one (1) of its members to act in its stead.

(b) ACC Executive Committee. If an executive committee is appointed by the Board of Directors to act as the ACC, then the provisions of this Section shall apply. Such executive committee shall be composed of three (3) or five (5) members, a majority of whom shall at all times also be Directors. All such members shall serve at the discretion of the Board, and all of its decisions shall be subject to review and modification by the Board except as herein otherwise expressly provided. In the event of the death or resignation of any person serving on the Committee, the Board of Directors shall designate a successor or successors who shall have all the authority and power of his/her or their predecessor(s). Until such successor member or members shall have been appointed, the remaining members shall have the full authority to exercise all powers of the ACC.

(c) Compensation. No person on the ACC shall be entitled to compensation for services performed; provided, the ACC may employ one or more architects, engineers, attorneys or other consultants, as approved by the Board of Directors of the Association, to assist the ACC in carrying out its duties hereunder, and the Association shall pay such consultants for services rendered to the ACC, and members of the ACC may be reimbursed for reasonable expenses in such manner and amounts as may be approved by the Board of Directors.

##### **SECTION 4.02. Function and Powers.**

(a) Submission of Plans Required. Except as to any building or construction by Declarant, no Regulated Modification nor construction of a residence on a Lot, shall be commenced, constructed, erected, placed, maintained or made unless and until complete plans and specifications have been submitted to and approved in writing by the ACC as to compliance with applicable Architectural Review Criteria as set forth in Section 4.03. Any plans and

specifications to be submitted shall specify, in such form as the ACC may reasonably require, the location upon the Lot or within the subdivision where the Regulated Modification will occur or be placed; the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in construction of the Regulated Modification; appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking, and landscaping details; intended uses and such other information, plans or specifications as may be requested or required by the ACC which in the sole opinion of the ACC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

(b) Architectural Guidelines. The ACC may, from time to time, promulgate, modify and delete such reasonable Architectural Guidelines to the Subdivision, including Lots and Community Properties, as it shall deem appropriate to maintain or enhance the architectural, environmental, or aesthetic standards of the Subdivision. Such authority shall include, but shall not be limited to, the right to specify:

(i) Specific procedural guidelines for submission or request for, and plans, specifications, and other information necessary to obtain, ACC approval to commence, erect, or maintain any Regulated Modification, and procedural requirements for the conduct of all activities necessary to accomplish the same;

(ii) Specific types of Regulated Modifications which may be commenced, constructed, erected, or maintained upon any Lot or anywhere within the Subdivision, as well as specific types of Regulated Modifications which shall not be permitted upon any Lot or within the Subdivision;

(iii) Permissible uses of any Regulated Modification;

(iv) A limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of Regulated Modifications;

(v) Minimum setbacks;

(vi) The location, height, and extent of fences, walls, or other screening devices, walks, decks, patios, or courtyards;

(vii) The orientation of structures and landscaping with respect to streets, walks, driveways, and structures on adjacent properties; and

(viii) In general, all requirements reasonably deemed necessary to maximize compliance with Architectural Review Criteria as set forth in Section 4.03.

(ix) The ACC has developed specific landscape standards and all landscaping must conform to the Seagrass Beach Subdivision Landscape Standards on file with the ACC.

(c) Manner and Effect of Adoption of Architectural Guidelines. Architectural Guidelines shall be of equal dignity with, and shall be enforceable in the same manner as, the provisions of this Declaration, provided: (i) such Architectural Guidelines shall not be deemed a waiver to modification, or repeal of any of the provisions of this Declaration and shall not be less restrictive than provided herein, but the same may be more restrictive than provided herein in accordance with the aesthetics, environment or architectural appearance or standards generally prevailing in the Subdivision as of the date of enactment, and may supplement the provisions hereof; (ii) such Architectural Guidelines shall not be enacted retroactively except that if any Regulated Modifications existing at the time of enactment is in violation of an Architectural Guideline when enacted, then any re-construction or replacement of such Regulated Modification thereafter shall be in conformity with applicable architectural Guidelines, and all repairs, modifications, or maintenance performed thereon shall be performed in such a manner as to bring the Regulated Modification, so far as practicable, in compliance with applicable Architectural Guidelines; and (iii) Architectural Guidelines shall not become effective until such Architectural Guidelines have been recorded in the Official Public Records of Galveston County, Texas .

(d) Variances. Declarant, during the Development Period, and thereafter the ACC or Board, by vote of two-thirds (2/3rds) of all members of the ACC or Board as the case may be, may grant specific variances to the Architectural Guidelines and to the architectural and use restrictions set forth in Articles VII and VIII of this Declaration upon specific findings of compliance with the grounds for granting of a variance as set forth hereafter. A variance shall be granted only with respect to the specific instances upon written request, therefore shall not be binding with respect to any other request for a variance whether or not the provisions of this Declaration or other Governing Documents except for the limited purpose and to the extent of the specific variance expressly granted. A variance may be granted only upon the specific findings that:

- (i) Denial of the variance will cause the applicant a substantial hardship; and
- (ii) The variance is necessary due to unusual circumstances not occasioned by the conduct of the applicant for the variance, and which are reasonable beyond the control of the applicant and the Association to mitigate or rectify; and
- (iii) The applicant for a variance has acted in good faith in seeking a variance or in his failure to comply with the provisions of this Declaration and other Governing Documents; and
- (iv) The granting of a specific variance will not materially and adversely affect the architectural, aesthetic or environmental integrity of the Subdivision or the scheme of development therein.

**SECTION 4.03. Architectural Review Criteria – General**. The ACC shall evaluate all submitted applications for ACC approval on the individual merits of the particular application. Judgments and decisions of the ACC shall be based on the following criteria applied in accordance with the aesthetics, environment or architectural appearance or standards generally prevailing in the Subdivision as of the date of submission of an application:

- (a) Compliance with Governing Documents and Governmental Laws. The proposed Regulated Modification shall substantially comply with applicable provisions of the Governing Documents and governmental laws, ordinances and regulations.
- (b) Harmony and Compatibility. The Regulated Modification shall relate favorably to its surroundings and the Subdivision in terms of harmony, compatibility and conformity with surrounding buildings, structures, grades, topography, location, color, workmanship, materials, usage and design.
- (c) Precedence for Approval or Disapproval. The ACC shall use all reasonable efforts to achieve consistency in the approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to similar applications for architectural approval, and the decisions and actions of the ACC with regard thereto.

**SECTION 4.04. Basis for Disapproval by ACC**. The ACC may disapprove any request for approval submitted pursuant to this Article IV for any of the following reasons:

- (a) Failure to comply with any applicable Architectural Review Criteria as set forth in Section 4.03; or
- (b) Lack of sufficient information, plans or specifications as reasonably determined by the ACC to enable the ACC to fairly and fully evaluate the aesthetic, environmental or architectural impact of a proposed Regulated Modification or the uses thereof, or failure to include any information, plans or specifications required by applicable Governing Documents, or as may be requested by the ACC.

In the event of disapproval, the ACC shall so notify the applicant in writing; and if disapproval is based on lack of sufficient information, plans or specifications, then the ACC shall also notify applicant of the additional information, plans or specifications required.

**SECTION 4.05. Approval and Conditional Approval by ACC.**

(a) Manner. The ACC may fully approve any request for approval made pursuant to this Article IV, or the ACC may approve any such request subject to compliance with conditions stated in a conditional approval. A conditional approval shall be effective only upon full compliance with the stated condition(s). The ACC shall notify the applicant in writing of such approval (together with any qualifications or conditions of approval).

(b) Effect. Except for fraud, misrepresentation, accident or mistake, approval or conditional approval shall be final as to each Regulated Modification covered thereby, and such approval or conditional approval may not be revoked or rescinded thereafter. Approval or conditional approval shall not constitute a waiver, modification or repeal of any covenant, condition or restriction contained in this Declaration, or other Governing Documents, or preclude by estoppel or otherwise full enforcement of all provisions hereof, except as to compliance with Sections 4.02(a) and 4.02(b) and except to the extent of a specific variance granted pursuant to Section 4.02(d). Approval of any plans and specifications shall not be deemed a waiver of the right of the ACC to subsequently disapprove similar requests for approval, or any of the features or elements included therein.

**SECTION 4.06. Submission and Response; Failure of ACC to Act.**

(a) Submission and Response. Applications for ACC approval and requests for variances, shall be delivered to the ACC in accordance with Section 12.01 hereof, and shall be deemed submitted to the ACC only upon actual receipt thereof. All responses by the ACC shall be in writing, and shall be deemed given when deposited in the United States mail, postage prepaid and addressed to the applicant for approval or variance at the address specified in the application or request for variance or the last known address of the applicant according to the records of the Association. The ACC shall have no duty to respond to, and the provisions of this Section shall not apply regarding any application or request for variance if the Person(s) identified in the application do not appear as Members or Owners according to the books and records of the Association. Where more than one (1) Member or Owner applies for approval or a variance, the mailing of a response to any such Member or Owner as aforesaid shall constitute notice to all such Members or Owners.

(b) Failure to Respond - Applications. If any applicant has not received notice from the ACC approving, conditionally approving or disapproving a request for approval within thirty (30) days after the Application was originally received by the ACC, said applicant may notify the ACC in writing of that fact. If notice of failure to respond as aforesaid is not received by the ACC within forty-five (45) days after submission of an application, approval of the application shall be deemed denied. If notice of failure to respond is given to the ACC as aforesaid, then the request for approval to which such notice relates shall be deemed approved by the ACC unless the ACC shall respond to the contrary not later than fifteen (15) days after the date such notice is received by the ACC.

(c) Failure to Respond – Variances. Failure of the ACC to respond to any request for a variance within thirty (30) days after the request was originally received by the ACC shall operate as a denial in all respects of the request for variance.

**SECTION 4.07. Implied Conditions of Approval.** Unless expressly waived or modified by the ACC in writing and except as otherwise provided as to initial construction of a residence upon a Lot as set forth in Section 8.04 hereof, each and every approval or conditional approval by the ACC of a Regulated Modification shall be subject to compliance with the following conditions whether or not stated in the approval or conditional approval:

(a) Commencement and Completion of Work. Work on each Regulated Modification shall commence within thirty (30) days after ACC approval or conditional approval thereof. Upon commencement, the work shall be prosecuted diligently to obtain completion of all work as reasonably soon thereafter as possible, and in any event the work shall be substantially completed within sixty (60) days after ACC approval or conditional approval.

(b) Equipment and Materials. No equipment or building or other materials necessary to completion of a Regulated Modification shall be placed or stored upon a Lot more than thirty (30) days prior to commencement of the work on the Regulated Modification. All such equipment and materials shall be placed within the property lines of the affected Lot. So far as practical, all such equipment and materials shall be stored in locations not visible from any street, Lot or the Community Properties. Upon completion of the work on the Regulated Modification, any such equipment and materials shall be immediately removed from the Lot and Subdivision.

(c) New Construction Materials Required. Only new construction materials (except for used brick if approved by the ACC) may be used in construction of any Regulated Modification.

(d) Compliance with Plans. All work on a Regulated Modification shall proceed in strict compliance with the plans and specifications approved by the ACC, all conditions stated by the ACC and all applicable Governing Documents and governmental regulations and ordinances.

**SECTION 4.08. Inspection Right.** Upon reasonable notice (oral or written), any member of the ACC or the Board of Directors and their designated representatives may enter upon a Lot without liability for trespass or otherwise, for purposes of confirming compliance with any applicable provisions of the Governing Documents regarding a proposed Regulated Modification, the work in progress, and the completed Regulated Modification.

**SECTION 4.09. Records of Architectural Control Committee.** The ACC shall not be required to maintain records of any of its meetings. The ACC shall keep and maintain records evidencing the final decisions of the ACC regarding all requests for approval and requests for variance for not less than four (4) years after the dates of such records, and all current Architectural Guidelines.

**SECTION 4.10. Liability of Architectural Control Committee.** Neither the Association nor the ACC, nor any member, subcommittee, employee or agent of either, shall be liable to any Owner, Member or any other Person for any actions or failure to act as a member of the Board or ACC, or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of plans or specifications and no publication of Architectural Guidelines shall ever be construed as representing or implying that, or as a warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements except as stated in Section 4.05(b), or as to any matters relating to the health, safety, workmanship or suitability for any purpose of the Regulated Modification. Any person submitting plans and/or specification and/or any other matter for approval hereunder, and any person on whose behalf said plans and/or specifications or any other matter



are submitted, by submitting of same, agrees to indemnify and hold the ACC, the Board and the Association, and all officers, agents or employees thereof, harmless from and against any cost, claim, damage, penalty, fine, expense or liability whatsoever, including reasonable attorneys fees and court costs at all judicial levels, arising out of or in connection with any approval, conditional approval or denial of approval of plans and/or specifications or any other matter submitted to the ACC.

**Article V**  
**Maintenance Fund**

**SECTION 5.01. Obligation for Payment to Maintenance Fund.**

(a) Establishment of Maintenance Fund. There is hereby established a Maintenance Fund into which shall be paid all assessments as provided for herein. The Board shall be responsible for the collection, management, control and expenditure of the Maintenance Fund which shall be deposited in accounts specifically designated for the Association as from time to time designated by the Board.

(b) Type of Assessments. Each Owner of any Lot, by acceptance of a contract for deed, deed or other instrument of conveyance therefore and whether or not it shall be so expressed therein, covenants and agrees to pay the following assessments (collectively herein referred to as the "Maintenance Fund"), to wit:

(i) Regular or annual assessments;

(ii) Shared Utility Facilities assessments, if any;

(iii) Special assessments, such assessments to be established and collected as hereinafter provided; and

(iv) Specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration.

(c) Purpose of Maintenance Fund. The Maintenance Fund shall be used exclusively for the purpose of promoting the recreation, health, safety, welfare, common benefit and employment of the owners and occupants of the Subdivision, including the maintenance of all Community Properties and Shared Utility Facilities, if any, the discharge of all obligations of the Association pursuant to this Declaration and other Governing Documents, and the doing of any other thing necessary or desirable in the opinion of the Board for accomplishment of the foregoing, including the establishment and maintenance of reserves for repairs, maintenance, taxes, insurance, and other charges, and the expenditure of funds for the benefit of other properties within the vicinity of the Subdivision if in the judgment of the Board the Subdivision as a whole will benefit thereby. The judgment of the Board in establishing any assessments and in the collection, management and expenditure of the Maintenance Fund shall be final and conclusive so long as exercised in good faith.

(d) Personal Obligation; Transferees. In addition to the assessment lien herein established, all assessments shall be and remain the personal obligation of the Owner or Owners who owned the Lot at the time the assessment became due notwithstanding any subsequent transfer of such Lot. Except as provided in Sections 5.01(e) and 5.07(c), each Owner's transferee, whether by purchase, gift, devise or otherwise, and whether voluntary or by operation of law, shall also be jointly and severally liable for payment of all unpaid assessments at the time of transfer without prejudice to the rights of the transferee to recover from the transferor the amounts paid by said transferee.

(e) Statement of Assessments. Any transferee (or prospective transferee upon presentment of an earnest money contract or other writing satisfactory to the Board) shall be entitled to a

statement from the Association setting forth all assessments due as of the date of the written request. Any such request shall be in writing, shall be addressed to the Association (with copy to Declarant if made during the Development Period), and shall be delivered by and only by certified mail, return receipt requested. The Board may set a reasonable charge for providing a statement of indebtedness, the payment of which shall be a condition precedent to the Board's obligation to provide same. If the Association fails to respond to a proper written request for a statement of indebtedness within the time specified by the requesting party, which specified time shall not be less than ten (10) business days after receipt of same by the Association (and Declarant, if applicable), and upon submission of a properly executed certified mail return receipt to the Association (and Declarant, if applicable), such transferee (or prospective transferee) shall not be liable for, nor shall the Lot transferred be subject to a lien for, any unpaid assessments against the subject Lot accruing prior to the date of the written request. Except for fraud or misrepresentation, any statement of indebtedness provided as aforesaid shall be conclusive upon the Association.

**SECTION 5.02. Management of Maintenance Fund.**

**(a) When Assessed; Payment Rates.**

(i) Regular assessments and Shared Utility Facilities assessments shall be assessed on a monthly basis. Except as otherwise determined by the Board, regular assessments and Shared Utility Facilities assessments shall be due and payable annually, in advance, on the first (1st) day of January of each calendar year. The Board may elect to collect either regular assessments or Shared Utility Facilities assessments, or both, in advance on a monthly or quarterly basis in which case such assessments shall be due and payable, in advance, on or before the first (1st) day of each month or each quarter, as the case may be.

(ii) In the event of foreclosure of a first mortgage or first deed of trust or in the event of a discharge in bankruptcy, the purchaser at foreclosure or the owner discharged in bankruptcy shall be liable for unpaid regular assessments and Shared Utility Facilities assessments which are assessed or assessable from and after the first (1st) day of the month following the date of foreclosure or filing of bankruptcy, and any installments for special assessments or under any agreement for payment of any assessments over a period of time which become due and payable after said date. The foregoing shall apply regardless of whether assessments are payable annually, quarterly or monthly.

(iii) Except as provided in Sections 5.02(b) and (c) and Section 5.05, both regular and special assessments and Shared Utility Facilities assessments on all Lots, including Lots owned by Declarant, shall be fixed at a uniform rate and shall be determined on a per Lot basis.

**(b) Payment of Assessment by Declarant During Development Period.** Notwithstanding anything to the contrary contained herein, all Lots owned by Declarant shall be exempt from payment of all assessments (regular, Shared Utility Facilities, special or specific) until the first (1st) day of the month following expiration or termination of the Development Period at which time the provision of Section 5.02(c) shall become applicable to Declarant with respect to any Lots then owned by Declarant. In lieu of payment of assessments as aforesaid, Developer shall contribute to the Maintenance Fund during the Development Period an amount equal to the Actual Operating Expenses of the Association less all assessments received from all other Owners or builders up to a maximum contribution equal to the full annualized rate of assessments which would otherwise be applicable to Declarant's Lots. Said contribution shall be paid from time to time as Declarant shall determine, but not less

frequently than annually within sixty (60) days after the end of Declarant's fiscal year. "Actual Operating Expenses" shall mean those expenses reasonably necessary for the discharge of the Association's functions and duties under this Declaration, but shall not include capital expenditures (determined in accordance with generally accepted accounting principals), any amounts paid or to be paid to capital or contingency reserves, or prepaid items, inventory or similar expenses attributable to periods after expiration or termination of the Development Period. The determination of Actual Operating Expenses by Declarant shall be final and conclusive so long as made in good faith.

(c) Application of Payment. All payments made by or on behalf of an Owner, builder or Declarant for assessments (regular, Shared Utility Facilities, special or specific) shall be deemed made upon the date of receipt of the payment by the Association or its designated agent. All payments received, including payments received in consequence of judicial or non-judicial foreclosure, shall be applied first to payment of all Shared Utility Facilities assessments due, then to payment of all specific assessments due which application to be made in inverse order of the specific assessments, listed in Sections 5.06 (a)(i) through (a)(v), then to payment of all special assessments due, and finally to payment of all regular assessments due, application within each category to be on a first in, first out basis.

### **SECTION 5.03. Commencement, Base Rate and Subsequent Computation of Regular Assessments.**

(a) Commencement and Initial Base Rate. Regular assessments shall commence as to each Owner and builder upon closing and conveyance of a Lot to the Owner or builder, and as to Declarant upon the first (1st) day of the month following expiration or termination of the Development Period. The full annualized initial base rate of regular assessments for 2016 shall not exceed One Thousand and 00/100 Dollars (\$1,000.00) per Lot per year;

(b) Establishment of Budget and Rate of Regular Assessment. Annually, prior to the close of each fiscal year, the Board shall:

(i) Prepare a budget covering the estimated costs and expenses of operations during the coming year;

(ii) Fix an annualized regular rate of assessment and Shared Utility Facilities assessment, if any, and

(iii) Specify separately as to such annualized regular rate of assessment and Shared Utility Facilities assessment if any, whether same shall be payable monthly, quarterly or annually. Any such budget may be modified, corrected or amended and/or the rate of assessment changed by the Board from time to time as the Board may determine.

(c) Notice of Rate of Assessment. At any time when the existing rate of assessment will be changed, the Board shall cause a notice of rate of assessment to be levied against each Lot to be mailed or delivered to each Owner. The notice of rate of assessment shall become effective on the date stated in the notice of rate of assessment (which date shall not be less than thirty (30) days after mailing or delivery of same) unless the budget or notice of rate of assessment is disapproved by vote of the Owners of two-thirds (2/3rds) of the Lots then contained within the Subdivision at a special meeting of the Owners called within thirty (30) days and actually conducted within sixty (60) days after the effective date of the notice of rate of assessment. Such special meeting shall be called and conducted upon the written request of any two (2) members of the Board or the Owners of ten percent (10%) of the Lots then contained within the Subdivision. In the event a notice of rate of assessment is mailed or delivered later than thirty (30) days prior to the effective date of the rate of assessment stated therein, then the stated rate of assessment shall become effective on the first (1st) day of the

month following expiration of thirty (30) days from mailing or delivery of same, again subject to the right of the membership to disapprove the rate of assessment as aforesaid.

(d) Disapproved or Undetermined Rate of Assessment. Notwithstanding anything to the contrary herein, in the event the Owners disapprove any proposed rate of assessment or the Association fails for any reason to establish a rate of assessment, then and until such time as a rate of assessment shall have been determined, as provided herein, the rate of assessment or initial base rate of assessment above set forth, as the case may be, then in effect shall continue in full force and effect; and the omission or failure for any reason to determine a rate of assessment or to mail or deliver a notice of rate of assessment shall not be deemed a waiver, modification or release of an Owner's obligation to pay assessments or other charges.

**SECTION 5.04. Special Assessments.** In addition to the other assessments authorized herein, the Board may levy special assessments at any time during each fiscal year for purposes of defraying, in whole or in part, any expenses not anticipated by the budget then in effect, or to replace part or all of any contingency or reserve fund. So long as the total amount of special assessments allocable to each Lot does not exceed One Thousand Dollars (\$1,000.00) in any one fiscal year, the Association may impose the special assessment without vote or approval of any Owner. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by the Owners of two-thirds (2/3rds) of the Lots then contained within the Subdivision. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Notwithstanding the foregoing, in the event of a natural disaster or act of God and in order to maintain, preserve, protect, repair or remediate the Subdivision, the Association shall reserve the right to levy special assessments in excess of One Thousand Dollars (\$1,000.00) against each Lot within the subdivision.

**SECTION 5.05. Shared Utility Facilities Assessment.** Each Lot and the Owner thereof shall be subject to such Shared Utility Facilities assessments as may be set by Declarant during the Development Period and thereafter by the Board, payable and to be determined in the same manner as regular assessments except as herein provided. The amount of the Shared Utility Facilities assessment shall reflect the anticipated costs and expenses of providing the Shared Utility Facilities, including without limitation any charges by the City of Bolivar Peninsula, State of Texas or any other shared utility or service provider for water, sewer and all other shared facilities or services, as well as all anticipated construction, maintenance, repair or replacement expenses. The Shared Utility Facilities assessment shall be uniform as to each Lot except that the Board may apply surcharges to individual Lots to cover added expenses for swimming pools, spas or similar appurtenance, or other factors unique to individual Lots causing higher expenses related to such Lots. The initial base rate of the Shared Utility Facilities assessment per Lot per year shall be set by Declarant during the Development Period, or if not set by Declarant then thereafter by the Board.

**SECTION 5.06. Specific Assessments.**

(a) Types. Specific assessments shall be assessed against individual Lots and the Owner thereafter at the time liability for same accrues as follows:

(i) Interest. Interest at the rate of the lesser of eighteen percent (18%) per annum or the maximum legal rate shall be charged on all delinquent assessments, regular, Shared Utility Facilities, special or specific, which are not paid in full within thirty (30) days after the due date from and after the date payment of same is due.

(ii) Late Charges. A late charge in the amount of Twenty-Five Dollars and 00/100 Dollars (\$25.00), or such other reasonable amount as from time to time determined by the Board, is hereby imposed as to any regular, Shared Utility Facilities or special assessment, and as to any of the specific assessments which are not paid in full within thirty (30) days after payment of same is due.

(iii) Compliance Costs. All expenses incurred by reason of a breach or violation of or to obtain compliance with any provisions of this Declaration or other Governing Documents shall be assessed against the Owner of the Lot who occasioned the incurrence of such expenses, including reasonable attorney's fees whether incurred prior to, during the pendency of, or after successful completion of any action in a court of competent Jurisdiction.

(iv) Foreclosure of Assessment Lien. In the event of foreclosure of the assessment lien as herein provided, the Owner shall be required to pay to the Association a reasonable rental as determined by the Board for the use of the Lot and improvements thereon during the period of foreclosure, and the Board shall be entitled to a receiver to collect same. The "period of foreclosure" shall commence on the date of posting of the Lot for foreclosure in the event of non-judicial foreclosure, or on the date of entry of judgment granting foreclosure in the event of judicial foreclosure. The "period of foreclosure" shall continue through the date of acquisition of actual possession of the Lot by the purchaser at the foreclosure sale.

(v) Other Obligations. All other monetary obligations established by or pursuant to this Declaration, or other Governing Documents, including reasonable charges as the Board may by resolution from time to time determine for providing a statement of indebtedness, a transfer fee to reflect changes of ownership or occupancy on the records of the Association, fines for violation of Rules and Regulations and charges for processing of applications for architectural approval, if any, which are intended to apply to one (1) or several but not all Lots shall be assessed against the Owner(s) of the Lot(s) incurring same.

(b) Payment Waiver. Specific assessments shall become due and payable immediately upon the occurrence of the event giving rise to liability for payment of same. Failure of the Association to impose or collect any specific assessment shall not be grounds for any action against the Association, or any director, officer, agent or employee thereof, and shall not constitute a waiver of the Association's right to exercise its authority under this Section in the future. For good cause shown as determined in the sole good faith discretion of the Board, the Board may waive, wholly or partially, imposition of any specific assessment; provided, any such waiver shall be conditioned upon payment in full of all remaining monetary obligations then owed to the Association or receipt of written commitment that same will be paid within a specified period of time.

#### **SECTION 5.07. Lien for Assessments**

(a) Establishment of Lien. All sums assessed against any Lot pursuant to this Declaration, whether by regular, Shared Utility Facilities, special or specific assessment as provided herein, shall be secured by a continuing lien on such Lot in favor of the Association.

(b) Perfection of Lien. The recordation of this Declaration constitutes record notice and perfection of the Association's continuing lien, effective from the date of recordation of this Declaration. No further recordation of a claim of lien or other notice of any type or kind whatsoever shall be required to establish or perfect such lien. To further evidence such lien, the Association may, but shall not be required to, prepare and file in the Real Property

Records of Galveston County, Texas, written notice of default in payment of assessments in such form as the Association may direct.

(c) Priority of Lien. The Association's continuing lien shall be superior to all other liens or encumbrances on each Lot except:

- (i) A first purchase money mortgage or deed of trust covering a Lot or any lien for work and materials used in constructing improvements thereon if duly recorded before the date sums assessed pursuant to this Declaration became due, and only to the extent of sums unpaid under such liens or encumbrances; and
- (ii) Liens for real estate taxes and other governmental assessments or charges. Sale or transfer of a Lot shall not affect the Association's lien; provided, however, in the event of sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a superior lien as aforesaid or discharge of an Owner in bankruptcy, the Association's lien shall be extinguished only to the extent same secures payment of assessments or charges due up to the date of foreclosure or as of the date of filing of bankruptcy. Foreclosure of a superior lien shall not relieve the former Owner of the Lot from the personal obligation for payment of assessments due up to the date of foreclosure. Foreclosure of a superior lien or discharge in bankruptcy shall not relieve the effected Lot or any Owner thereof subsequent to the date of foreclosure or filing of bankruptcy from liability for assessments thereafter assessed or from the Association's lien therefore. Except as set forth above, all other Persons acquiring liens or encumbrances on any Lot shall be deemed to consent that such liens or encumbrances shall be inferior to the Association's lien for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. In addition to the automatic subordination provided hereinabove, the Board may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board may determine.

**SECTION 5.08. Effect of Nonpayment of Assessments.**

- (a) Effect. Any assessments which are not paid when due shall be delinquent. If any assessments are not paid within thirty (30) days after the due date, then:
  - (i) late charges, interest from the due date, and all costs of collection (including reasonable attorney's fees), all as set forth in Section 5.06, shall be added to and included in the amount of such assessment; and
  - (ii) upon ten (10) days written notice, the Association may: (1) accelerate through the end of the twelve (12) month period from the first (1st) day of the month following the date of giving of notice of acceleration all regular and Shared Utility Facilities assessments, and any installments for special or specific assessments due or to become due during said period;
- (b) Action for Debt; Foreclosure. Each Owner vests in the Association or its agents the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt, and to foreclose the Association's lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale, and each Owner expressly grants to the Association a power of sale in connection with the non-judicial foreclosure of the Association's lien. Non-judicial foreclosure shall be conducted by notice and posting of sale in accordance with the then applicable laws of the State of Texas; and the Association is expressly empowered hereby to designate a trustee in writing from time to time to post or cause to be posted any required notices and to conduct any such non-judicial

foreclosure sale. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale, and to acquire, hold, lease, mortgage, or convey the same.

**SECTION 5.09. Assessments as Independent Covenant.** No Owner may waive or otherwise escape liability for the payment of assessments as provided for herein for any reason, including, by way of illustration but not limitation, by nonuse of the Community Properties or abandonment of the Lot; and no diminution or abatement of assessments shall be claimed or allowed by reason of any alleged actions or failure to act by the Association whether or not required under this Declaration or other Governing Documents, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or by reason of any action taken by the Association to comply with any law, ordinance, or any order or directive of any governmental authority, the obligation to pay assessments hereby expressly declared to be a separate and independent covenant and contractual obligation on the part of each Owner.

**SECTION 5.10. Guidelines for Alternative Payment Plans.** The Association will provide delinquent owners an alternative payment schedule by which an owner may make partial payments to the Association for delinquent regular or special assessments or any other amount owed to the Association without accruing additional monetary penalties. For purposes of these guidelines, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

Administrative Fee: Ten and 00/100 Dollars (\$10.00)

Annual Interest Rate. Five (5%) percent

The Association establishes these guidelines to allow owners who are delinquent in payment of a debt to the Association to pay the debt in partial payments to avoid monetary penalties. However, delinquency in payment of a debt may result in nonmonetary penalties, such as loss of privileges.

Payments under a payment plan will incur the Administrative Fee and interest at the Annual Interest Rate.

To be entitled to pay a debt under a payment plan, an owner who is delinquent on a debt must submit a written request to the Association.

Owners can make no more than Two (2) requests for a payment plan within a twelve-month period. The Property Owners Association is not required to enter into a payment plan agreement with an owner who failed to honor the terms of a previous payment plan agreement during the two years following the owner's default under the previous payment plan agreement.

## **Article VI Maintenance**

**SECTION 6.01. Responsibility of Association.** The Association shall maintain the Community Properties and Shared Utility Facilities, if any, and keep same in good repair. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Community Properties. The Association shall also construct and maintain such drainage facilities and devices upon the Community Properties, and upon area bayous or other drainage courses and area lands to the extent it may reasonably do so, as may be reasonably necessary to protect Lots from and to provide effective erosion control for the Subdivision.

**SECTION 6.02. Owner's Responsibility.**

(a) General. All maintenance of improved Lots and all improvements thereon shall be the sole responsibility of the Owner thereof who shall maintain such Lot in a manner consistent with the standards of use, conduct, appearance and maintenance generally prevailing in the Subdivision as may be more specifically determined by this Declaration and other Governing Documents, including as determined from time to time by duly adopted Architectural Guidelines and Rules and Regulations.

(b) Disturbance of Community Properties. In the event that the performance of any Owner's maintenance responsibilities shall require that any portion of the Community Properties, including any Shared Utility Facilities, be modified, removed or disturbed, then such Owner's obligations shall be performed, at the option of the Association, either under the supervision of the Association in accordance with plans and specifications approved by the Association, or by the Association at the expense of the Owner. If the Association shall perform such obligations at the expense of the Owner, the Owner shall pay such expense upon demand. Such indebtedness shall be added to and become a part of the specific assessment to which such Owner and the Owner's Lot shall be subject, and shall be secured by the continuing lien hereby established against such Owner's Lot.

(c) Owner's Default. In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible under this Declaration or other Governing Documents, or (ii) the need for maintenance, repair, or replacement which is the opinion of the Association hereunder, has been caused through the willful or negligent act of an Owner, the Owner's tenants, or the family, guests, or invitees of either, then the Association may perform the repair, replacement or maintenance at such Owner's sole cost and expense; provided, the Association shall, except in the event of an emergency, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall be delivered or mailed to the Lot affected, and the Owner's last known address according to the records of the Association if different than the Lot address, and shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work within ten (10) days and to complete same within a reasonable time not to exceed thirty (30) days unless otherwise specifically approved by the Association. If any Owner does not comply with the provisions hereof, the Association shall have the right (but not the obligation), through its officers, directors, agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements located thereon; and in case of emergency, or to the extent necessary to prevent rat infestation, or to diminish health, fire or other safety hazards, the Association shall have the right (but not the obligation), through its officers, directors, agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its officers, directors, agents or employees shall be liable for trespass or any other tort or claim for damages in connection with the performance of any maintenance and the other work authorized under this Article VI. All costs of such maintenance, repair or replacement shall be added to and become a part of the specific assessment to which such Owner and the Owner's Lot shall be subject, and shall be secured by the continuing lien hereby established against such Owner's Lot.



**Article VII**  
**Use Restrictions**

**SECTION 7.01. Residential Use.** Each and every Lot is hereby restricted to residential dwellings for single family residential use only. No business, professional, commercial or manufacturing use shall be made of any Lot or any improvement located thereon, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the premises as a residence.

No structure other than one single family residence and its permitted outbuildings shall be constructed, placed on or permitted to remain on any Lot in the Subdivision. Without limitation of the foregoing, as used in this Declaration: (i) the term "residential use" shall be construed to prohibit the use of any Lot for apartment houses or other type of dwelling designed for multi-family dwelling, or the use of any garage as a garage apartment or residential living quarters; (ii) the term "single family" shall be construed to mean and include only parents, children, grandparents, and grandchildren and domestic servants; and (iii) in no event shall a single family residence be occupied by more persons than the product of the total number of bona fide bedrooms contained in the single family residence multiplied by three (3).

**SECTION 7.02. Animals and Livestock.** No hogs, horses, livestock or poultry of any kind shall be raised, bred, or kept on any Lot. Consistent with its use as a residence, dogs, cats or other household pets may be kept on a Lot, provided that they are not kept, bred or maintained for any business purpose, and further provided that no more than two (2) such pets shall 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 an enclosed yard. In the event permitted pets, as aforesaid, are permitted to roam free, or, in the sole discretion of the Association, endanger the health or safety, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any property located adjacent to or in the vicinity of the Subdivision, the Association may cause any such pet to be removed from the Subdivision and may prohibit the return of any such pet to the Subdivision, all at the sole expense of the Owner and without liability of any kind whatsoever to the Association or any Person which the Association may direct to remove any such pet. Without prejudice to the Association's right to remove any household pets, no household pet that has caused damage or injury may be walked in the Subdivision regardless of whether such pet is leashed.

**SECTION 7.03. Vehicles.**

(a) **Street and Driveway Parking.** No vehicle of any kind shall be parked, stored or otherwise permitted to remain in excess of twenty-four (24) hours upon any street or upon any Community Properties, except as provided in Section 7.03 (b), unless prior written consent of the Board is obtained. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter ton pickup, bus, unused vehicle, or 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) shall be parked or kept on any street in front of, or along the side or back of any Lot, or on any Lot, or on any driveway at any time unless such vehicle is stored within a garage.

(b) **Assigned Parking.** Declarant during the Development Period and the Board thereafter may designate specific areas in the Subdivision as either in its sole discretion may determine as parking area for any Lot or as visitor parking. Parking area for a Lot may be conveyed as appurtenant to a Lot and in such event such parking area shall be and remain appurtenant to and pass with title to the Lot. Any designation of parking areas except when made

appurtenant to a Lot as aforesaid may be changed from time to time as Declarant or the Board may determine.

(c) Repair of Vehicles. No Person shall be permitted to perform work on any vehicle on any street in front of or along the side or back of any Lot, or on any Lot, at any time other than temporary emergency repairs required in order to promptly remove an inoperable or disabled vehicle from the Subdivision or to and within a garage.

(d) Vehicle Defined. As used in this Section, "vehicle" shall include without limitation, motor homes, boats, trailers, motorcycles, scooters, trucks, campers, buses, and automobiles.

**SECTION 7.04. Nuisance; Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No Lot shall 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 motor vehicles or other mechanical devices, shall be performed within the Subdivision. No substance, thing, or material shall 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. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or a nuisance to any residents of the Subdivision or to any Person using any property adjacent to the Lot. There shall 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 Subdivision. No spirituous, vinous, malt, medicated bitters, alcohol, drugs or other intoxicants shall be sold or offered for sale on any part of any Lot or any other place within the Subdivision. No Lot or any part thereof shall be used for any immoral or illegal purposes. Upon the good faith determination of the Board that a violation of this Section exists, the Board may take such actions as it shall deem necessary to abate the violation in the manner provided in Section 6.02(c) at the sole cost and expense of the violating owner.

**SECTION 7.05. Septic Tanks.** No septic tank, private water well or similar private sewage or water systems shall be permitted upon any Lot.

**SECTION 7.06. Disposal of Trash.** No trash, rubbish, garbage, manure, debris or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall 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 shall be placed in plastic bags tied or otherwise tightly secured, and shall be placed in an area adequately screened by planting or fencing from public view 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 shall be kept in a clean and sanitary condition, and shall comply with all current laws and regulations and those which may from time to time be promulgated by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. All such prohibited matter shall be removed from each Lot at regular intervals if not removed or removable by a regular garbage and sanitation service. Trash and garbage for pickup by a regular service shall be placed in such area or areas as the Board may from time to time direct, or as the garbage and sanitation service or as the local garbage and sanitation service on the Bolivar Peninsula may require; provided trash and garbage shall not be placed for pickup earlier than twelve (12) hours prior to a scheduled pickup day and all receptacles must be removed from public view the same day trash and garbage is collected.

**SECTION 7.07. Development Activities.** Declarant may or will be required during the Development Period to engage in construction activities upon multiple Lots or Community Properties, store equipment or materials on multiple Lots, Community Properties or Reserve Area(s), create accumulations of trash and debris and otherwise engage in activities and create conditions related to its initial development of the Subdivision (the "Development Activities"). Declarant will use reasonable efforts to minimize the adverse effects of its Developmental Activities upon Owners and their tenants, guests and invitees. However, Declarant shall not be liable to any Owner, tenant or guests or invitees of either for any consequences of the reasonable conducting of its Developmental Activities. Further, Declarant may establish any reasonable regulations as to Owners, tenants, and the guests and invitees of either which Declarant deems appropriate to avoid hindrance or interference with its Developmental Activities, including limiting or denying access to areas of the Subdivision, designating temporary dumping sites, maintenance of metal buildings or structures and use of Community Properties and/or Subdivision Facilities in connection with its Developmental Activities.

**SECTION 7.08. Permitted Hours for Construction Activity.** Except in an emergency or when other unusual circumstances exist as determined by the Board, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays. Construction work shall be permitted on Sunday between the hours of 12:00 p.m. to 6:00 p.m. provided that the activity is not offensive in nature.

**SECTION 7.09. Building Materials.** No Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot and/or upon an adjacent vacant Lot at the time construction is commenced. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay, after which time such materials shall be removed from the Lot(s) and Subdivision. Under no circumstances shall building materials be placed or stored on any street or walkway or upon any Community Properties.

**SECTION 7.10. Outdoor Cooking.** Outdoor cooking shall be permitted on any Lot only in equipment especially constructed for same, and only in such manner as not to create a hazard of fire or injury to persons or property. Outdoor cooking is prohibited upon Community Properties unless authorized by the Board. All outdoor cooking equipment shall be properly maintained, and shall be stored in an area screened from public view when not in use.

**SECTION 7.11. Firearms.** The use of firearms in the Subdivision is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and small or large firearms of all types.

**SECTION 7.12. Leases.** Residential dwellings may be leased or rented according to the provisions described herein below and in accordance to the Rental Guidelines which shall be made available upon request from the Architectural Control Committee.

- (a) Restrictions. No Lot may be leased other than for use as a single family residence as herein provided and defined. No Owner may lease a Lot and attendant use of the residence and improvements thereon for transient or hotel purposes. No Owner may lease less than an entire Lot and attendant use of the residence and improvements thereon. All leases shall:
  - (i) Be in writing; and
  - (ii) Shall be specifically subject in all respects to all provisions of this Declaration and all other Governing Documents (whether or not expressly stated in the lease), and any failure by lessee to

comply with the terms and conditions of the Governing Documents shall be a default under the lease and grounds for termination of the lease and eviction by the Owner or the Association.

(b) **Liabilities.** Lessor(s) and lessee(s) shall be jointly and severally liable for the observance and performance of all of the terms and provisions of this Declaration, all other Governing Documents and lessor(s) and lessee(s) shall be jointly and severally liable for all damages, costs and expenses resulting from any violation of, and/or all fines and assessments imposed thereby.

(c) **Surrender of Use of Community Properties and Services by Lessor(s).** During all periods of time during which a Lot is occupied by lessee(s), lessor(s) shall surrender all of lessor's rights as an Owner to the use of all of the Community Properties unto such lessee(s), including without limitation all rights of use of recreational facilities, if any. The provisions of this Section shall not impair the voting rights of any lessor as Owner of any Lot, and shall not affect the rights of the lessor(s) to inspect the leased premises or to exercise any other rights or remedies customarily reserved for the protection of lessor(s).

**SECTION 7.13. Unoccupied Residences.** The Owner of a Lot with an unoccupied residence, including Declarant, any mortgagee in possession and any mortgagee obtaining title to a Lot by foreclosure or by any deed or other arrangement in lieu of foreclosure, shall remain liable for full observance and performance of all terms and conditions of this Declaration and all other Governing Documents, including in particular but 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.

**SECTION 7.14. Undeveloped Lots.** The Owner of any Lot upon which a single family residence has not been constructed shall 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 twelve inches (12") in height. Furthermore, any Lot upon which construction has not commenced, shall be mowed on a regular basis by the Association. The Association will contract to mow the unimproved lots, and invoice each of the Owners for their proportionate cost of the mowing, which shall be due and payable by the Owners on a quarterly basis.

**SECTION 7.15. Visitors, Guests and Invitees.** Each Owner and each Owner's tenant shall insure that their visitors, guests and invitees fully comply with applicable provisions of this Declaration and all other Governing Documents, and shall be liable for all costs, expenses, losses, damages and fines caused by violations by any such visitor, guest or invitee.

**SECTION 7.16. Children and Other Dependents.** Owners and their tenants shall insure that their children and other dependents, and the children and other dependents of their visitors, guests or invitees, are properly supervised at all times, and shall not permit such children and other dependents to engage in any activity or conduct that will cause damage to or require additional maintenance of any of the Community Properties or other Lots, including landscaped areas, Reserve Area(s) and recreational facilities, or which is otherwise in violation of this Declaration. The parent(s), guardian(s) or other Person(s) with whom any child or dependent resides or who are otherwise legally responsible for the care and custody of the child or dependent shall be responsible for ensuring such child or dependent complies with applicable provisions of the Declaration and other Governing Documents, and shall be liable for the consequences of any violations(s) thereof by any such child or dependent.

**SECTION 7.17. Garage Usage.** No portion of any garage shall be diverted to any use other than the parking of vehicles and other generally accepted and customary uses of a garage. In particular but not in

limitation of the foregoing, no portion of any garage shall be used as a residence or game room, or for similar residential purpose. Garage doors shall be kept in a closed position when the garage area is not being actively used.

**SECTION 7.18. Mineral Production.** No drilling, development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

**SECTION 7.19. Clotheslines.** No outside clotheslines shall be constructed or maintained on any Lot, nor shall any other outside drying of clothes be permitted.

**SECTION 7.20. Garage Sales.** Garage sales will be permitted on a specified date annually within the subdivision.

**SECTION 7.21. Rules and Regulations.** The Board is hereby specifically authorized to promulgate, modify and delete such reasonable Rules and Regulations applicable to the operation, use and occupancy of the Subdivision, including all Lots and the Community Properties, as the Board shall from time to time deem beneficial to the Subdivision. Such authority shall include, but is not limited to, the right to limit, in addition to the provisions of Section 7.03, the type and size of vehicles within the Subdivision, traffic and parking regulations and other traffic control procedures, and the maximum permissible noise levels of vehicles within the Subdivision. The Rules and Regulations shall be enforceable in the same manner as the provisions of this Declaration, provided:

- (a) Such Rules and Regulations shall not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity shall cease after enactment of the Rules and Regulations covering same, then the Rules and Regulations shall apply to the activity thereafter); and
- (b) Rules and Regulations shall not become effective until thirty (30) days after true and correct copies thereof are delivered or mailed to all Owners.

## **Article VIII Architectural Restrictions**

**SECTION 8.01. Incorporated by reference and attached hereto, see SEAGRASS BEACH SUBDIVISION ARCHITECTURAL CONTROL GUIDELINES.**

**Article IX**  
**Easements**

**SECTION 9.01. Incorporation of Other Easements.** All easements, dedications, limitations, restrictions and reservations shown on the surveys of each Lot, the Subdivision Plat and any plat or map filed in the plat or map records of Galveston County, Texas, and grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Subdivision or any Lots and filed in the real property records of Galveston County, Texas, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant covering any portion of the Subdivision or any Lot.

**SECTION 9.02. Owner's Easements for Use and Enjoyment.** Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Community Properties (except for perpetual easements granted by the Declarant during the Development Period and Board thereafter) and a private easement for vehicular and pedestrian ingress and egress over, across and upon the Private Driveway which shall be appurtenant to and shall pass with the title of the Lot, subject to the following provisions:

(a) Usage Control. The Association shall have the right to establish and regulate a limited access gate and such other security oriented systems and procedures as it may determine, if any, to issue, charge for, and require as a condition of entry to the Subdivision and Community Properties such identification cards, passes, keys, or similar devices as the Board may from time to time determine, to limit the number of guests of Lot Owners and tenants who may use the Community Properties, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests and invitees; and to charge reasonable admission and other fees for the use of any portion of the Community Properties.

(b) Suspension of Usage Rights. Except as to ingress and egress upon the Private Driveway, pursuant to and in accordance with Chapter 209 of the Texas Property the Board shall have the right to suspend the right of an Owner, and the Owner's tenant, and the guests or invitees of either, to use all or any part of the Community Properties for any infraction of the Declaration until all such infractions are cured.

**SECTION 9.03. Easements for Encroachment and Overhang.** In the event that any portion of any roadway, walkway, parking area, driveway, water line, sewer line, utility line, sprinkler system, building or any other structure or improvement, including without limitation any building steps, fences, paving, decking, footings, piers, piles, grade beams or similar improvements, or any overhang of walls or roofs of any such building or structure as originally constructed encroaches on any Lot or the Community Properties due to the unintentional placement or settling or shifting of any of the foregoing to a distance of not more than twenty-four inches (24"), as measured from any point on the common boundary between each Lot and the adjacent portion of the Community Properties or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point, it shall be deemed that the Owner of such Lot or the Association has granted a perpetual easement to the Owner of the adjoining Lot or the Association for continuing maintenance and use of such encroaching structure or improvement. The foregoing shall also apply to any necessary maintenance, repair or replacement of any of the foregoing if performed in substantial compliance with the original construction. So long as necessary, the foregoing easements shall be perpetual in duration, and once established shall not be subject to amendments or termination otherwise applicable to this Declaration.

**SECTION 9.04. Owners' Access Easement.**

(a) Defined. Each Lot and the Community Properties shall be subject to a non-exclusive access easement for the construction, maintenance, repair and replacement of improvements located upon any adjacent Lot (the "Accessing Lot") for usage by accessing Lot Owner or occupant, or their agents or employees. The Lot or Community Properties being accessed is herein referred to as the "Easement Lot".

(b) Notice; Duration. Prior to use of the Access Area, the Owner or occupant of the Accessing Lot shall give written notice of intent to utilize the Access Area stating therein the nature of intended use and the duration of such usage. Such notice shall be delivered to the Owner or occupant of the Easement Lot by regular or certified mail or personal delivery, or by attaching same to the front door of the residence located upon the Easement Lot. If by mail, such notice shall be given at least five (5) business days prior to use of the Access Area; and if by personal delivery or affixing to the front door, such notice shall be given at least forty-eight (48) hours prior to use of the Access Area. In case of emergency the Accessing Lot Owner or occupant may commence and continue usage of the Access Area without giving the foregoing notice for so long as is reasonably necessary to control the emergency and complete work necessitated thereby, but shall proceed with giving of required notice as soon as practical after commencement of usage.

(c) Usage. Usage of the Access Area shall be limited to the minimum reasonable amount of time required to complete necessary work to preserve, protect, construct, maintain, repair and replace the Accessing Lot and the residence or other structures and improvements located thereon. Work during the usage period shall be conducted in such manner as to minimize, so far as reasonably possible, inconveniences and disruptions to the Easement Lot and its occupants. Except in case of emergency or unless otherwise authorized by the Owner or occupant of the Easement Lot, work during the usage period shall be confined to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturdays.

(d) ACC Approval of Access Area Improvements. No structure or improvements other than grass, flower and shrubbery beds and sprinkler system shall be placed within the Access Area at any time without the prior written approval of the ACC.

(e) Restoration. Promptly after completion of usage of an Access Area, the Accessing Lot Owner or occupant shall thoroughly clean the Access Area and repair and restore same to substantially the same condition that existed at the time of commencement of usage; provided, such obligation for restoration shall not apply to exotic structures or improvements which substantially exceed the norms for Access Areas existing in the Subdivision at the time notice is given of intent to access the Access Area.

**SECTION 9.05. Utilities.**

(a) Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles and other service vehicles to enter upon the Lots in the performance of their duties. An easement is also specifically granted to the United States Post Office, its agents and employees to enter upon any portion of the Subdivision in performance of mail delivery or any other United States Post Office services.

(b) Changes and Additions. At the sole election of Declarant during the Development Period, and thereafter upon the written consent of a majority of the Owners, Declarant or the Association shall have the right to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public, quasi-public or private utility purposes, including,

without limitation, gas, electricity, telephone, sanitary or storm sewage, cable television, security systems, and drainage in favor of any Person furnishing or to furnish utility services to the Subdivision, along, over, above, across and under the Subdivision and any Lot, provided, such additional easements shall not interfere with any existing building (including a residence) or swimming pool within the Subdivision or upon any Lot.

**SECTION 9.06. Community Service Easements.**

(a) Defined. Declarant during the Development Period and the Association thereafter, may construct and provide the services, facilities and amenities hereafter enumerated in this Section 9.06. In such event, each Lot and the Community Properties shall be subject to a non-exclusive access easement to conduct such services or construct, maintain, repair and replace such facilities and amenities as provided in Sections 9.04(b), (c) and (e).

(b) Blanket Easement. An easement is hereby granted to Declarant and to the Association, and their respective officers, agents, employees and management personnel to enter in or cross over any Community Properties and/or the Lots to render any service or to perform any maintenance which the Association is permitted or required to provide or perform under this Declaration, including work permitted under Section 6.01(c), and all work necessary to construct maintain, repair, replace and operate the Private Driveway; and by virtue of said easement to do all things reasonably necessary to provide services or perform maintenance.

(c) Shared Utility Facilities. Declarant during the Development Period, and the Association thereafter with approval of a majority of the then Lot Owners, shall have the right, but no obligation, at the sole option and at the sole cost and expense of Declarant or the Association to construct Shared Utility Facilities. In such event the Association shall thereafter maintain the Shared Utility Facilities in good condition and repair, and for such purposes an easement is hereby granted to Declarant and the Association. Any easement areas established by this Section 9.06(c) shall be evidenced as soon as practical after establishment by filing notice of same in the Real Property Records of Galveston County, Texas.

**SECTION 9.07. Title to Easements and Appurtenances Not Conveyed.** Title to any Lot conveyed by contract, deed or other conveyance shall not be held or construed in any event to include the title to any easement established by this Article IX, including but not limited to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way or any pipes, lines, poles, or conduits on or in any utility facility, service equipment or appurtenances thereto, constructed by or under Declarant or the ACC, as the case may be, or their agents, through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Lots; and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to public service corporation or to any other party is hereby expressly reserved in Declarant during the Development Period, and thereafter in the ACC.

**Article X**

**Insurance Casualty Losses and Condemnation**

**SECTION 10.01. Insurance.** The Association or its duly authorized agent shall have the authority to obtain, with such deductibles as the Board shall determine, the following insurance coverage or substantial equivalent, and to pay all premiums or other costs thereof from the Maintenance Fund:

(a) Insurance for all insurable improvements on the Community Properties covering loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious



mischief, in an amount sufficient to cover the full replacement cost of any repair reconstruction in the event of damage or destruction from any such hazard (exclusive of land, foundations or slabs, excavations and such other items usually excluded from insurance coverage);

(b) Officers' and directors' liability insurance and public liability applicable to the Community Properties covering the Association and its members for all damage or injury caused by the negligence of the Association and the ACC or any of its members, agents or employees; and  
(c) Worker's compensation of and to the extent required by law.

**SECTION 10.02. Damage and Destruction of Lots.** Liability and property insurance for Lots and all improvements thereon (including residences and appurtenant structures, and the contents of residences) shall be the sole responsibility of the Owners thereof. At a minimum, the Owner(s) of each Lot shall obtain property insurance to insure the residence thereon, and all fixtures, equipment and other improvements pertaining thereto normally insured under building coverage. Said building coverage shall be on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value against risks of loss or damage by fire and other hazards as are covered by standard extended coverage, and shall include coverage against vandalism. Said building coverage shall be obtained effective as of the date of acquisition of ownership of a Lot by an Owner (or after substantial completion of construction of a residence thereon, if applicable), and shall remain continuously in effect to the date of acquisition of ownership by the next succeeding Owner(s). Each Owner of a Lot shall provide to the Association proof of said building coverage satisfactory to the Board upon not less than five (5) days written notice failing which the Board may obtain said building coverage on behalf of the Owner and assess as a specific assessment all premiums and all other costs and expenses related thereto to the defaulting Owner.

**SECTION 10.03. Repair or Replacement Required.** Whether or not insured, the damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction, or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter as determined by the Association. In the event of noncompliance with this provision, the Association shall have all enforcement powers permitted by law and this Declaration, including without limitation, the right to seek specific performance and/or to invoke the powers specified in Section 6.02.(c) of this Declaration.

**SECTION 10.04. Condemnation.** Whenever all or any part of the Community Properties shall be taken (or conveyed in lieu of and under threat of condemnation by the Association, acting on the written direction of a majority of Owners of Lots then contained within the Subdivision) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners.

## **Article XI Enforcement**

**SECTION 11.01. General.** The Association, its successors and assigns, and any Owner shall have the right to enforce observance and performance of all restrictions, covenants, and conditions set forth in this Declaration and in other Governing Documents, and in order to prevent a breach or to enforce the observance or performance thereof shall have the right, in addition to all legal remedies, to an injunction either prohibitive or mandatory. Failure of the Association or any Owner to enforce any of the provisions of this Declaration or any other Governing Documents shall in no event be deemed a waiver of the right

to do so thereafter as to the same or similar violation whether occurring prior or subsequent thereto. No liability shall attach to Declarant, the Association, or to any of their respective officers, directors, agents, employees or members for failure to enforce the provisions of this Declaration or any other Governing Documents.

**SECTION 11.02. Obligation for Payment of Costs and Expenses Resulting from Violations.** Each Owner and tenant of an Owner found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration or any other Governing Documents, shall be jointly and severally liable for payment to the Association for, and to indemnify the Association and to hold and save it harmless from, any and all claims, liabilities, damages, loss, costs and expenses of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after formal proceedings in a court of competent jurisdiction, incurred or attributable to any such violations, and shall pay over to the Association all sums of money which the Association or its representatives shall pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums shall be assessed as a specific assessment, and shall be due and payable upon demand by the Association or its representatives upon presentment of a written statement setting forth the Association's payment or liability to pay such sums without the necessity of any other or further notice of any act, factor information concerning the Association's rights or such Owner's or tenant's liabilities under this Section.

**SECTION 11.03. Cumulative Rights and Remedies.** Each right and remedy set forth herein shall be separate, distinct and non-exclusive, all shall be deemed cumulative, the pursuit of any right or remedy provided for herein or by law shall not preclude pursuit of any other right or remedy provided for herein or by law, and the failure to exercise a particular right or remedy shall not be construed as a waiver of such right or remedy or any other right or remedy.

## **Article XII General Provisions**

**SECTION 12.01. Notices to Association, ACC and Owners.** Unless otherwise expressly provided herein, all notices or other communications permitted or required under this Declaration shall be in writing and shall be deemed properly given if given in accordance with the following:

(a) Notices to Association or ACC. All notices or other communications to the Association or ACC shall be given by certified mail, return receipt requested, and by deposit in the United States mail, postpaid and properly addressed, to any member of the Association or ACC, such notice or other communications to be deemed given upon receipt of same by the Association and ACC. Until expiration or termination of the Development Period, the address of the Association or ACC shall be P.O. Box 2299, Friendswood, Texas 77549, or such other address as Declarant shall designate by written notice thereof filed in the Real Property Records of Galveston County, Texas.

(b) Notice to Owners. All notices or other communications to any Owner shall be deemed given upon personal delivery or when deposited in the United States mail, postage prepaid, and properly addressed to the street address of the Owner's Lot located within the Subdivision, or to the most current street address provided by an Owner for purposes of notice. Where more than one (1) Person is the Owner of a single Lot, the mailing of any notices or other communications as aforesaid to any single Owner shall constitute notice given to all such Owners.

The foregoing provisions shall also apply to notices or other communications permitted or required by the Governing Documents other than this Declaration except as otherwise expressly provided in such other Governing Documents.

**SECTION 12.02. Conveyance of Community Properties.** Declarant may convey, transfer or assign any of all Community Properties and/or Subdivision Facilities to the Association during the Development Period, and shall do so within a reasonable time after termination of the Development Period; provided, from the date of termination of the Development Period and thereafter, the Association shall be solely liable and responsible for payment (by reimbursement to Declarant or direct payment) of all costs pertaining thereto, shall be solely liable for damages or otherwise regarding the Community Properties and any usage thereof by any Person and indemnify and hold Declarant harmless regarding same to the fullest extent provided herein as to the Association. The Community Properties shall remain undivided and shall at all times be owned by the Association or its successors.

**SECTION 12.03. Term.** These covenants, conditions, restrictions, reservations, easements, liens and charges shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, predecessors, successors and assigns, and all Persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded in the Real Property Records of Galveston County, Texas, unless amended in accordance with Section 12.04 hereof and in such event shall be binding as amended, after which time said covenants, conditions, restrictions, reservations, liens and charges shall be automatically extended for successive periods of ten (10) years each unless an instrument agreeing to terminate all said covenants, conditions, restrictions, reservations, easements, liens and charges is signed during the initial twenty (20) year term by the Owners of ninety percent (90%) of the Lots then contained within the Subdivision and thereafter by the Owners of two-thirds (2/3rds) of the Lots then contained within the Subdivision and duly filed for record in the Real Property Records of Galveston County, Texas.

**SECTION 12.04. Amendment.**

(a) By Declarant. During the Development Period, Declarant shall have the right from time to time and at any time to amend, modify or repeal this Declaration, in whole or in part, without joinder of any Owner or any other Person, effective upon recordation of an instrument of amendment in the Real Property Records of Galveston County, Texas.

(b) By Owners. By a vote of sixty-seven (67%) percent of the Lot Owners then contained within the Subdivision shall always have the power and authority to amend, modify or repeal this Declaration, in whole or in part, at any time and from time to time, and any such amendment shall become effective upon the date an instrument of amendment covering same is signed by the requested number of Owners and filed for record in the Real Property Records of Galveston County, Texas.

(c) By Association. After the Development Period, the Association, by vote of the Board of Directors, shall have the right from time to time and at any time to amend, modify or repeal this Declaration, in whole or in part, without joinder of any Owner or any other Person, effective upon recordation of an instrument of amendment in the Real Property Records of Galveston County, Texas:

- (i) To resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors or omissions herein; or
- (ii) To conform this Declaration to the requirements of any governmental agency, including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration or Federal Housing Administration.

**SECTION 12.05. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

In WITNESS WHEREOF, the undersigned, being the sole Owner of all Lots initially subject to this Declaration have executed this Declaration to be effective upon the date of filing of this Declaration in the Real Property Records of Galveston County, Texas.

[Signature and Acknowledgement on Following Page]

DECLARANT:

Seagrass Beach, LLC, a Texas limited liability company,

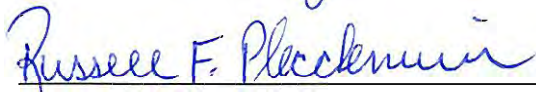
  
BY: BlueCap Investments, LLC, Manager

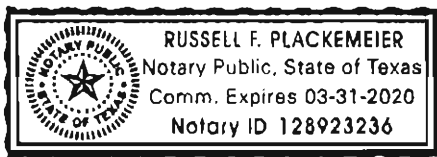
STATE OF TEXAS )

COUNTY OF GALVESTON )

On the 13<sup>th</sup> day of June, 2016, before me, the undersigned Notary Public, personally appeared **Bradley B. Ballard**, in his capacity as Manager of BlueCap Investments, LLC, a Texas limited liability company.

Given under my hand and seal of office this 13<sup>th</sup> day of June, 2016.

  
Notary Public, State of Texas  
My commission expires: 3/31/2020





# SEAGRASS

## BEACH

**ARCHITECTURAL CONTROL GUIDELINES**

JUNE 13, 2016

## TABLE OF CONTENTS

1. Overview	Page 3
2. Location Map	Page 5
3. Site Plan	Page 6
4. Subdivision Plat	Page 7
5. Design and Building Guidelines	
5.1. Site Planning	Page 8
5.1.1. Building Setbacks	Page 8
5.1.2. Orientation of Homes	Page 8
5.1.3. Elevation of Homes	Page 9
5.1.4. Height of Homes	Page 9
5.1.5. Square Foot of Conditioned Space	Page 9
5.1.6. Parking and Driveways	Page 10
5.1.7. Landscaping and Irrigation	Page 10
5.1.8. Exterior Lighting	Page 10
5.1.9. Propane Gas Tanks	Page 11
5.1.10. Antennas and Satellite Dishes	Page 11
5.1.11. Fences	Page 11
5.1.12. Exterior Furniture and Furnishings	Page 11
5.1.13. Flagpoles	Page 11
5.1.14. Swimming Pools and Hot Tubs	Page 11
5.1.15. Decorative Objects	Page 11
5.1.16. Holiday Lighting and Decorations	Page 12
5.1.17. Grading, Erosion Control and Drainage	Page 12
5.1.18. House Numbers	Page 12
5.1.19. Mailboxes	Page 12
5.1.20. Signage	Page 12
5.2. Building Components	
5.2.1. Foundations	Page 13
5.2.2. Exterior Walls	Page 13
5.2.3. Exterior Trim	Page 13
5.2.4. Columns	Page 14
5.2.5. Windows	Page 14
5.2.6. Exterior Doors	Page 14
5.2.7. Shutters	Page 14
5.2.8. Fascia, Soffits, Rafter Tails and Support Brackets	Page 15
5.2.9. Decks, Porches and Railings	Page 15
5.2.10. Exterior Stairs	Page 15
5.2.11. Roofs	Page 15
5.2.12. Parapet Walls	Page 16
5.2.13. Gutters and Downspouts	Page 16
5.2.14. Elevators and Cargo Lifts	Page 16
5.2.15. Air Conditioning Units	Page 16
5.2.16. Garage Doors	Page 16
5.2.17. Screening on Ground Floor	Page 16
5.2.18. Colors	Page 16

## 1. OVERVIEW

The design philosophy for Seagrass Beach stems from the coastal communities along Highway 30A in the Florida panhandle, such as Rosemary Beach and Alys Beach. The architectural design of the homes in this region are associated with the West Indies and Caribbean architectural design styles. The developers of Seagrass Beach seek to create a cohesive community where the homes have a sense of belonging to each other and to their environment.

The following Architectural Control Guidelines (hereinafter referred to as the ACG's) create a framework for a consistency of architectural design while allowing room for individual creativity and expression. Following these guidelines will help ensure that the homes of Seagrass Beach will have a quality of design and construction that will enhance the enjoyment and value of this property for many years to come.

These guidelines are provided to form the basis for a common understanding of the design objectives and standards by all those involved in creating this community and most importantly by the present and future residents. These guidelines will be used by the Architectural Control Committee (hereinafter referred to as the ACC) to review plans and specifications pursuant to the provisions of the applicable Declaration of Covenants, Conditions, and Restrictions (hereinafter referred to as the CCR's) of the Seagrass Beach community. The ACC intends to be fair and objective in the design review process and impartial and understanding of individual goals, while maintaining a community-wide standard to protect property values.



The CCR's have granted the ACC discretionary powers regarding the aesthetic impact of design, construction and development including architectural style, colors, textures, materials, landscaping and overall impact on surrounding properties.

One important aspect of maintaining the integrity of a residential community is to provide the Property Owners Association (hereinafter referred to as the POA) with the right to review and approve the architectural design of homes within the community. The CCR's strictly prohibit the addition of any structure, or the alteration of any structure, on any lot, without written approval from the ACC. This prohibition is very broad, and even includes the exterior paint colors, exterior materials used, structural standards, landscaping, etc.

Because of the uniqueness of each lot within the community, including variations in size, topography and location, certain uses, improvements or modifications suitable for one lot may be inappropriate for another lot. Therefore, despite the guidelines offered by these ACG's, the ACC is authorized to apply or adopt different standards for different lots to reflect those differences.





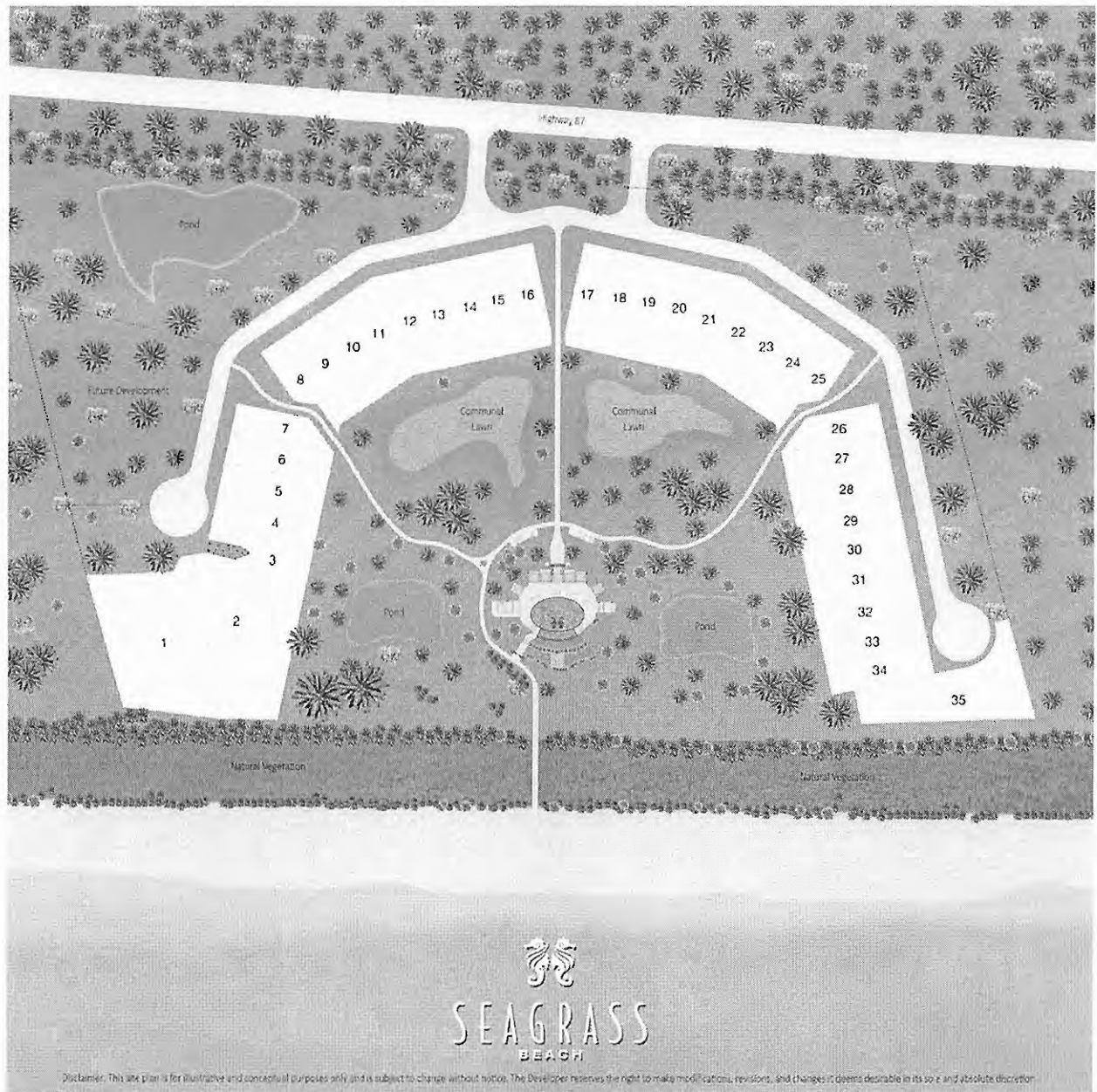
The ACG's may be altered based upon architectural merit by the ACC at any time. Variances to the ACG's may be granted on the basis of architectural merit and/or approval of the ACC. The ACG's are aesthetic in their intent. In cases of contradiction with local safety codes, the ACG's shall be overruled, with written notification provided to the ACC. The ACG's do not

exempt any structures from compliance to applicable codes. The ACG's are applicable as of the date recorded with the Galveston County Clerk's Office, and will be updated periodically. All subsequent changes will apply to all homes which have yet to receive approval from the ACC.

## 2. LOCATION MAP



### 3. SITE PLAN





## 5. DESIGN AND BUILDING GUIDELINES

This section addresses the planning and design criteria for homes in Seagrass Beach. All homes must also comply with the permit and construction requirements set forth by the Galveston County Building Department.

### 5.1. SITE PLANNING

#### 5.1.1. BUILDING SETBACKS

The building (including decks, balconies, arbors, pergolas and chimneys) shall not encroach into the building setbacks as indicated on the subdivision plat. The side building setback lines are 5 feet, except where noted on the subdivision plat as shown on lots 1, 2, 3 and 35. The street side building setback lines are 20 feet, except where noted on the subdivision plat as indicated on lots 1, 2, 3 and 35. The beach side building setback lines are 40 feet, except where noted on the subdivision plat as indicated on lots 1, 2 and 35. Only roof overhangs may encroach into the specified building setback, but by no more than 3 feet over the side building setback line, and by no more than 5 feet over the street side building setback line.

#### 5.1.2. ORIENTATION OF HOMES

Homes shall be positioned on each lot with the exterior walls oriented parallel to the side property lines and perpendicular to the street side property lines, except on those lots where the side property lines are not parallel to one another, i.e., lots 1, 2, 3, 11, 12, 21, 22 and 35. The exterior side walls of the homes located on lots 1, 2, 3, 11, 12, 21, 22 and 35 shall be as follows:

Lot 1 – The exterior side walls shall be oriented along a line that averages the orientation of the side property lines.

Lot 2 – The exterior side walls shall be oriented along a line that averages the orientation of the side property lines.

Lot 3 – The exterior side walls shall be oriented along a line that averages the orientation of the side property lines, or the exterior side walls shall be oriented parallel to the side property line on the north side of the lot.

Lot 11 – The exterior side walls shall be oriented parallel to the side property line on the west side of the lot.

Lot 12 – The exterior side walls shall be oriented parallel to the side property line on the east side of the lot.

Lot 21 – The exterior side walls shall be oriented parallel to the side property line on the west side of the lot.

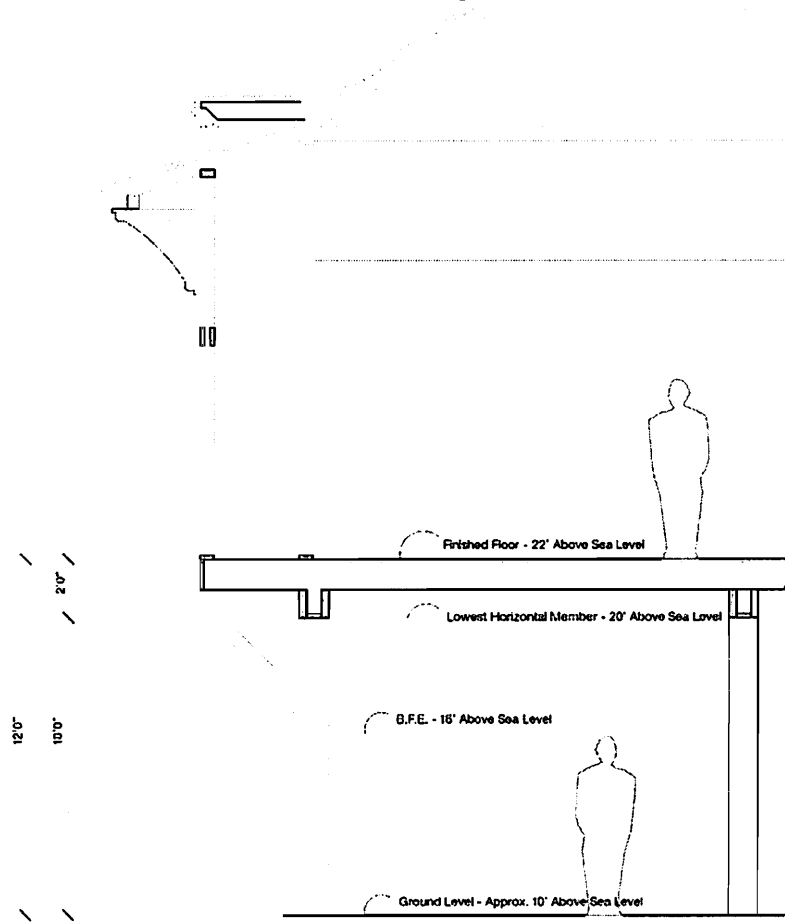
Lot 22 – The exterior side walls shall be oriented parallel to the side property line on the east side of the lot.

Lot 35 – The exterior side walls shall be approximately parallel to the east and west property lines and perpendicular to the street and beach side property lines, so that the rear of the home faces the street.

Variations from these guidelines will be considered and granted based upon architectural merit.

### 5.1.3. ELEVATION OF HOMES

Existing grades of the lots throughout the development are approximately 10 feet above sea level. To establish architectural appeal throughout the development, we require consistency with respect to the elevation of the finished floor heights of the homes, i.e., we don't want large variances in the heights of the finished floors of the 1<sup>st</sup> floor of conditioned space of the homes. All homes shall be elevated so that the finished floor elevation is between 22 and 23 feet above sea level. All homes shall be constructed so that the lowest horizontal structural member is approximately 20 to 21 feet above sea level. Variances from these requirements will be considered on a case by case basis and will be granted based upon architectural merit.



### 5.1.4. HEIGHT OF HOMES

Homes may be 1, 2 or 3 stories in height. The typical first floor ceiling height of the conditioned space above the ground floor shall be a minimum of 10 feet in height. All floor to floor heights must be a minimum of 10 feet. No homes shall exceed 55 feet in overall height as measured from natural ground to the highest point of the home.

### 5.1.5. SQUARE FOOTAGE OF CONDITIONED SPACE

All homes shall have a minimum of 1,500 square feet of conditioned space, except that lots 1, 2, 3 and 35 must have a minimum of 2,000 square feet of conditioned space.

Measurements are taken to the outside face of the wall and include stair areas at both the 1<sup>st</sup> and 2<sup>nd</sup> floors of conditioned space.

#### 5.1.6. PARKING AND DRIVEWAYS

Each lot shall provide parking for a minimum of 4 vehicles within the driveway between the home and the street. Additional parking can be located under the home. Driveways shall not be wider than reasonably required for access and parking. Driveways shall be located at least 5 feet from a common property line in order to provide a minimum of 10 foot wide landscape buffer between properties, except on lots 1, 2 and 3, where exceptions may be allowed due to site specific reasons.

Driveways must be constructed in accordance with the "Driveway Design Specs" which may be requested from the ACC by emailing [Info@SeagrassBeach.com](mailto:Info@SeagrassBeach.com).

#### 5.1.7. LANDSCAPING AND IRRIGATION

The goal of the ACC is to promote the natural beauty of the development by incorporating native vegetation in natural and informal ways. The landscape budget should be approximately 5% of the total cost of the home, or more. No artificial trees, plants, flowers or turf are allowed.

Homeowners must install sod in the yard areas. All sod must be Zoysia JaMur, in order to provide a unified look throughout the development. Small street side lawns, as extensions of the existing landscaping along the street, are encouraged and will further enhance the streetscape and identity of the neighborhood. Zoysia JaMur is available for purchase directly from Doguet's Turf Farm, which is located in Nome and China, Texas. The website address for Doguet's Turf Farm is [www.doguets.com/turf-farm.htm](http://www.doguets.com/turf-farm.htm)

The installation of an underground, automatic, zoned irrigation system to all landscaped areas is required of each property. A drip irrigation system to the bedding plants, shrubs and trees is highly recommended, in lieu of using spray heads or rotors.

All landscape plans must be submitted to the ACC for approval. The installation of all landscaping shall be completed within 30 calendar days of receiving the certificate of occupancy from the Galveston County Building Department.

#### 5.1.8. EXTERIOR LIGHTING

All exterior light fixtures shall be shielded to prevent light pollution through the top and sides of the fixtures, so that light does not shine on neighboring homes. Down lighting is encouraged to light pathways and driveways. Colored lights and floodlights are prohibited. All exterior light fixtures and their locations must be approved by the ACC.

Each homeowner is required to install and maintain a minimum of 2 sconces or wall mounted fixtures on the street side of the home, preferably above or on either side of the garage area. Such fixtures must be on a photocell so that they are lit during the dark hours of each day and provide ambient lighting to the streetscape area of the development.

To maintain consistency throughout the development, all light fixtures shall have a Kelvin Temperature of approximately 3000K.

#### 5.1.9. PROPANE GAS TANKS

If an owner desires to use propane gas as a heating or cooking source for their home, all tanks and piping must be installed underground in the portion of the lot that is opposite of the street. Above ground propane tanks are strictly prohibited. Any above ground components of the propane system must be screened or landscaped so they are not visible from the common areas of the development. All propane tanks must be installed to meet the local building requirements.

#### 5.1.10. ANTENNAS AND SATELLITE DISHES

Antennas and satellite dishes that are used to receive signals that are customary to residential use such as television and internet service, are allowed, so long as they are not more than 3 feet in diameter. All permissible antennas and satellite dishes shall be installed in the least visible location that provides clear reception. Antennas or satellite dishes that are not used for residential purposes are prohibited.

#### 5.1.11. FENCES

Fences must be built in accordance with the Fence Guidelines which are available upon request from the ACC. All fences must be 48" in height and shall be painted or stained.

#### 5.1.12. EXTERIOR FURNISHINGS AND FURNITURE

All exterior furniture and furnishings shall be constructed of wood, masonry, wrought iron, metal, or high quality composite materials that resemble wood. No inexpensive plastic lawn chairs or benches will be allowed.

#### 5.1.13. FLAGPOLES

In-ground flagpoles are not permissible. Flags shall not exceed 36" x 60" in size. All flags must be mounted on the exterior façade of the home at a location approved by the ACC. The only flags permissible in the subdivision are the United States flag, the Texas flag, or a flag representing a division of the United States Armed Forces.

#### 5.1.14. SWIMMING POOLS AND HOT TUBS

Swimming pools and hot tubs are allowed, so long as they comply with all local, state and FEMA guidelines. All plans for swimming pools or hot tubs must be submitted to the ACC for approval. All swimming pools and hot tubs must be installed in the portion of the lot opposite of the street and the homeowner must submit a site plan showing the proposed location of the swimming pool or hot tub to the ACC for approval. Above-ground swimming pools and bubble covers for in-ground swimming pools are prohibited. Swimming pools and hot tubs may be subject to additional landscaping and screening requirements as deemed necessary by the ACC.

#### 5.1.15. DECORATIVE OBJECTS

No decorative objects, such as sculptures or lawn ornaments, may be placed in the yard of any home without the written consent of the ACC. Decorative planters may be placed around the home, however, the size, number and type of planters is subject to ACC approval.



#### 5.1.16. HOLIDAY LIGHTING AND DECORATIONS

Holiday lighting and decorations are permissible, and may be displayed on a lot up to 30 days in advance of the publicly observed or religious holiday, and up to 15 days after the day of the holiday.

#### 5.1.17. GRADING, EROSION CONTROL AND DRAINAGE

All lots must be graded in accordance with the engineered grading plans for the Seagrass Beach development. Drainage shall not flow onto adjacent lots. Measures shall be taken to prevent erosion and owners shall be responsible for repairing any erosion that occurs on their lot during or after the construction period.

#### 5.1.18. HOUSE NUMBERS

House numbers should be placed on the street side of the home where they are easily visible. The maximum height of the house numbers is 6 inches and the minimum height is 3 inches. House numbers should conform to the overall architectural design of the development. The ACC reserves the right to select a house numbering product or material that all homes will be required to use.

#### 5.1.19. MAILBOXES

The USPS does not deliver mail to individual homes on the Bolivar Peninsula, therefore, no mailboxes shall be installed anywhere on the lots, unless the USPS begins delivering mail to individual homes in the future.

#### 5.1.20. SIGNAGE

All homes must comply with the current Seagrass Beach Sign Guidelines; a copy of these guidelines may be requested from the ACC. No offensive signage is permissible.

### 5.2. BUILDING COMPONENTS

#### 5.2.1. FOUNDATIONS

All piers or pilings under the conditioned space of the home must be a minimum of 12" x 12". All piers or pilings used to support the decks or porches must be a minimum of 8" x 8". Piers and pilings must be made of pressure treated wood or concrete. Other materials such as carbon fiber or fiberglass pilings will be considered on a case by case basis and must receive approval from the ACC prior to installation.

All support piers and pilings under the conditioned space of the home must be installed at least 14 feet into the ground or driven to resistance, unless a structural engineer advises otherwise and proper documentation is provided to the ACC prior to installation of the pilings.

All support piers and pilings under the conditioned space of the home on the front, rear and sides of the home must be covered by the exterior walls, so that they are not exposed and/or visible from the street.

Each home shall be constructed with a monolithic concrete slab on grade foundation that is poured no less than 6" around the exterior support pilings under the conditioned space of the home.

### 5.2.2. EXTERIOR WALLS

Exterior walls shall be a minimum of 2x6 wood-frame construction with a structural exterior sheathing substrate, preferably ZIP System Sheathing in the 1/2" or 5/8" sized material, which is manufactured by Huber Engineered Woods, or a comparable product that meets or exceeds the engineering requirements. ZIP System Sheathing can be found online at [www.huberwood.com/zipsystem/products/zip-system-roof](http://www.huberwood.com/zipsystem/products/zip-system-roof)

Exterior walls may also be constructed of masonry products and other non-traditional construction methods that meet the local building codes. However, such methods and products must be approved by the ACC in writing.



Exterior walls shall be constructed of stucco, fiber-cement board lap siding, brick, or woods such as cedar or cypress. All stucco shall be finished with a fine dash or fine sand finish. No more than 20% of the exterior shall be clad with brick. Encouragement is given to designs reflecting masonry and/or stucco used on the ground floor, with the floors above being wood framed with complimentary exterior finishes. All homes must utilize two or more complimentary exterior wall materials, and no one material may cover more than 75% of the exterior walls. For example, see the rendering of the home above that shows stucco on the ground level and portion of the first floor, and horizontal fiber-cement JamesHardie Artisan lap siding on a portion of the first floor, and wood louvers on the ground floor. All exterior walls shall be painted or stained, unless they are brick, which may be left natural.

Utilizing non-traditional, upgraded fiber cement products such as JamesHardie Artisan is encouraged, versus using the basic lap siding that is typical on nearly every other home on the Texas coast. Board and batten siding is not permissible. Exposed corner joints are encouraged and shall be mitered. Siding shall be horizontal with maximum exposure of 8". Any variations from these guidelines must be approved by the ACC.

All walls on the ground floor of the home must be constructed to be of breakaway design per the local building code.

### 5.2.3. EXTERIOR TRIM

All exterior trim must be made of fiber-cement, composite, or pressure treated wood, or a wood species that is rot resistant. All trim must be fastened with stainless steel nails or screws. All trim must be painted or stained.

#### 5.2.4. COLUMNS

Columns shall be square or rectangular and may be tapered or straight. Columns shall have a width proportional to their height and shall be no less than 6" in diameter. Round columns are not permissible unless approved on a case by case basis by the ACC.

Columns shall be constructed of wood (pressure treated pine, cedar or cypress), concrete, or a preapproved synthetic material. All exposed wood shall be painted or stained, and all concrete columns shall be finished with stucco.

Columns may be single or paired and may include a wood or masonry pedestal base. They may have chamfered edges.

#### 5.2.5. WINDOWS

Only high quality, energy efficient windows are permitted. All window glass must be impact resistant and must meet the minimum current windstorm requirements that apply to coastal construction in Texas. Window glass shall be clear or lightly tinted. Dark or reflective tinting is prohibited.

Casement type windows are highly encouraged. High quality and visually appealing single and double hung windows are permissible. Inexpensive, builder grade windows are not permissible. All windows must be approved by the ACC. Windows may have divided lites, so long as the window panes are vertically proportioned.

#### 5.2.6. EXTERIOR DOORS

All exterior doors must be of wood, vinyl clad wood, molded fiberglass, or aluminum clad wood and must meet the local building codes. All glass in the doors must meet the minimum current windstorm requirements for coastal construction in Texas.

All exterior doors must be painted or stained. Doors must be proportionate to the adjacent windows and the ceiling heights of porches and/or rooms of the home. If a door has divided lights, the panes must be taller than they are wide, or at a minimum they must be square. Sliding doors are discouraged, but may be used in areas not facing the street with approval from the ACC.

All exterior doors on the ground floor and the 1<sup>st</sup> floor of conditioned space are encouraged to be 8 foot tall. Storm and screen doors are not permitted unless they have the appearance of a typical exterior door.

#### 5.2.7. SHUTTERS

All shutters should be constructed of wood or a synthetic material that has the appearance of wood. Shutters should be operable and shall be proportional to the size and shape of the windows.

Hurricane shutters must be removable or Bahamas type shutters. Roll down hurricane shutters are prohibited unless they are concealed and remain open at all times, unless there is an approaching, named storm in the Gulf of Mexico.

#### 5.2.8. FASCIA, SOFFITS, RAFTER TAILS AND SUPPORT BRACKETS

Fascia and soffits must be constructed using wood, cement fiberboard, or an equivalent material. Exposed rafter tails are encouraged. Support brackets under the decks, roofs and areas where the home is bumped out are encouraged. Rafter tails and brackets shall be constructed of wood, or a material that provides the appearance of wood.

#### 5.2.9. DECKS, PORCHES AND RAILINGS

Porches are required on the side of the home that is opposite of the street. Porches must be a minimum of 6 feet in depth, and must be a minimum of two-thirds of the width of the side of the home that is opposite of the street. Porch materials must match or compliment the style of the home. Decking must be pressure treated wood, or a wood species that is rot resistant, or a composite material that has the appearance of wood. All decking must be fastened with stainless steel nails or screws. Decking may be left natural, or it may be stained or painted with a color that is on the approved color palette.

All railing designs must be approved by the ACC. All materials used to construct the railings must be pressure treated wood, or a wood species that is rot resistant, or a composite material that has the appearance of wood. All railings must be assembled and fastened with stainless steel hardware. All railings must be painted or stained.

#### 5.2.10. EXTERIOR STAIRS

All exterior stairs shall match the architectural design of the home and be constructed of pressure treated wood, or a wood species that is rot resistant, or a composite material that has the appearance of wood. All stairs must be painted or stained. All step boards and railings must be fastened with stainless steel screws or nails. Step boards may remain natural. Stairs may extend over the building setback line on the side of the home that is opposite of the street, with approval from the ACC.

#### 5.2.11. ROOFS

All roofs shall be standing seam metal, or composite or aluminum shake shingles. All standing seam metal roofs must have a Kynar 500 coating, or a comparable coating that prevents corrosion. Standard composition shingle roofs are prohibited. Roof color, materials, pitch and details must be approved by the ACC.

Principal roofs may be a symmetrical hip with a slope of 6:12 to 9:12 if single sloped; if double sloped at eaves, that slope shall be between 3:12 and 4:12 at low side and 6:12 to 9:12 at steep side. Ancillary Roofs (attached to walls or roofs) may be shed roofs with slopes no less than 3:12.

#### 5.2.12. PARAPET WALLS

Parapet walls on the roofs on the homes are highly encouraged to reflect the overall design of the development. Parapets shall be constructed using the same materials included in the "Exterior Walls" section of this document.



#### 5.2.13. GUTTERS AND DOWNSPOUTS

Gutters shall be half-round and downspouts shall be round. Gutters and downspouts must be constructed of materials that resist corrosion. Gutters and downspouts must be painted to match the home. Downspouts shall be placed at the corners of the buildings if possible, or in the least visible locations from the street.

#### 5.2.14. ELEVATORS AND CARGO LIFTS

Homes with elevators or homes that are elevator ready, are encouraged. All elevators shall be internal to the home and shall not be exposed on the outer walls of the home. Cargo lifts are permissible, so long as they are installed inside the building envelope and are not exposed on the outside of the home.

#### 5.2.15. AIR CONDITIONING UNITS

All air conditioning units must be installed on the sides of the home not facing the street or the pool area. All air conditioning units must be screened with materials complimentary to the home design. Window units are strictly prohibited.

#### 5.2.16. GARAGE DOORS

Garage doors are required and must meet all applicable building codes. Garage doors that are clad in a rot free wood such as cedar or cypress are preferred. All garage doors must be painted or stained. All garage doors must be approved by the ACC prior to being installed.

#### 5.2.17. SCREENING ON GROUND FLOOR

The ground floor of the home must be enclosed entirely with walls, doors, garage doors, or approved screening materials. Pilings under the home must not be visible from the exterior of the home when all of the doors are closed. Large doors on the side of the home that faces the pool area are preferred, so that guests can open them for circulation purposes while the ground floor of the home is in use. When guests are not present, the ground floor of the home shall be closed or screened entirely to prevent others from being able to see into the ground floor area of the home.

#### 5.2.18. COLORS

All exterior colors must be selected from the preapproved color palette that is available from the ACC. All exterior components and accessories of the home must be painted or stained to complement the design of the home. The placement of all colors must be

shown on the elevations of the home when the construction plans are presented to the ACC for approval.

## FILED AND RECORDED

Instrument Number: *2016035182*

Recording Fee: 238.00

Number Of Pages: 55

Filing and Recording Date: 06/13/2016 5:12PM

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Galveston County, Texas.



*Dwight D. Sullivan*

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Dwight D. Sullivan, County Clerk  
Galveston County, Texas

NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or instrument with the clerk.

**DO NOT DESTROY** - *Warning, this document is part of the Official Public Record.*