

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
MIDTOWN PARK SUBDIVISION**

N45

STATE OF TEXAS *
 *
COUNTY OF BRAZORIA *

THIS DECLARATION, made on Nov. 15, 2005, hereinafter set forth by MIDTOWN PARK DEVELOPMENT, LTD., a Texas limited partnership, acting herein by and through Horizon 2003, LLC, a Texas limited liability company, its duly authorized general partner.

WITNESSETH

WHEREAS, MIDTOWN PARK DEVELOPMENT, LTD. is the owner of that certain tract of land situated in Brazoria County, Texas, which is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, MIDTOWN PARK DEVELOPMENT, LTD. desires to impose upon such property and lienholder is willing to make its liens subject to the covenants, conditions and restrictions herein set forth.

NOW THEREFORE, MIDTOWN PARK DEVELOPMENT, LTD. does hereby declare that the property described above shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with the real property, shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof and the MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC., a Texas non-profit corporation, its successors and assigns.

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY E. P. H. S.

The Association has the power to collect and disburse those maintenance assessments as described in Article IV.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to (a) that certain real property first hereinabove described, and (b) such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Subdivision" shall mean and refer to MIDTOWN PARK, SECTION ONE (1) and any additional future single-family lot Sections of MIDTOWN PARK and any other property which may hereafter be brought within the scheme of this Declaration pursuant to the provisions set forth herein and hereafter brought within the jurisdiction of the Association.

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Property with the exception of property designed thereon as "Reserves", "Common Area," or "Recreational Facilities," if any.

Section 6. "Common Area" shall mean all property owned by or under the jurisdiction of the Association for the common use and benefit of the Owners, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however to the easements, limitations, use restrictions, safety restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of prior and/or future grants or dedications. References herein to the "Common Area" shall mean and refer to Common Area as defined respectively in the Declaration and all Supplemental Declarations. "Common Area" shall also mean and refer to all existing and subsequently provided improvements upon or within the Common Area, except those as may be expressly excluded herein. Common Area may include, but not necessarily be limited to, the following: structures for recreations, swimming pools, play grounds, structures for storage or protection of equipment, sidewalks, fences, detention pond areas, landscaping, and other similar and appurtenant improvements, entry and boulevard walls and signage located on or adjacent to the property lines of:

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Block One

15' Landscape Reserve (0.0686 Ac.)

Lots 1 & 2, Block 1, Section 1 – rear of the property lines

Landscape Reserve (0.1450 Ac.)

Lot 19 & 20, Block 1, Section 1 – rear property lines

Landscape Reserve (0.0025 Ac.)

Lot 25, Block 1, Section 1 – northwest property corner

Block Two

15' Landscape Reserve (0.0359 Ac.)

Lot 1, Block 2, Section 1 – east property line

40' x 105' Drainage & Landscape Reserve (0.0964 Ac.)

Lot 21 & 22, Block 2, Section 1 – Lot 21 north side lot line & Lot 22 south – side lot line

Landscape Reserve (0.0025 Ac.)

Lot 31, Block 2, Section 1 – northeast property corner

Detention & Park Reserve (3.29 Ac.)

Lots 19 thru 25, Block 2, Section 1 – rear property line

Section 7. “Developer” shall mean and refer to not only MIDTOWN PARK DEVELOPMENT, LTD., but also its successors or assigns (whether immediate or remote), as successor developer of all or a substantial portion of the Lots in the undeveloped state, to which MIDTOWN PARK DEVELOPMENT, LTD. has assigned all of its rights as Developer in a recorded instrument, but shall not include any purchaser of one or more developed Lots. For the purposes of this Declaration, “developed Lot” shall mean a Lot with the street on which it faces being opened and improved and with utilities installed and ready to furnish utility services to such Lot, and “undeveloped Lot” is any Lot which is not a developed Lot.

Section 8. “Architectural Control Committee” shall mean and refer to the MIDTOWN PARK Architectural Control Committee, as established pursuant to Article II hereof, or any person or persons to whom the Architectural Control Committee delegates such responsibility provided for in Article II hereof.

Section 9. “Board of Directors” or “Board” shall mean the current governing Board of Directors or Board of the MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC.

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Section 10. "Association Rules" shall mean rules promulgated by the Board of Directors, in its sole discretion, concerning certain activities in the subdivision. These Association Rules may be amended from time to time by the Board of Directors, in its sole discretion.

Section 11. "Restrictions" shall mean this Declaration of Covenants, Conditions and Restrictions for MIDTOWN PARK Subdivision.

ARTICLE II

ARCHITECTURAL CONTROL

Section 1. Architectural Control. No buildings or improvements of any character shall be erected or placed or the erection thereof begun, or changes made in the design, color, materials, size or additions, remodeling, reservation or redecoration of any portion of the exterior of any improvement on a Lot during or after the original construction, until the construction plans and detailed specifications and survey showing the location of the structure or improvements have been submitted to and approved in writing by the Architectural Control Committee, or its duly authorized representative, as to compliance with these restrictions, quality, type, and color of material, harmony of external design with existing and proposed structures and as to location with respect to topography, setbacks, and finish grade elevation. All new construction shall be in accordance with this Declaration. The initial members of the Architectural Control Committee shall be appointed by Developer. If there exists at any time one or more vacancies in the Architectural Control Committee, the remaining member or members of such Committee may designate successor member(s) to fill such vacancy or vacancies provided that Developer, may from time to time, without liability of any character for so doing, remove and replace any such members of the Architectural Control Committee as it may in its sole discretion determine. Developer, the Architectural Control Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. The Association shall indemnify and hold the members of the Architectural Control Committee harmless for any claims and shall insure them under the Association Directors' and Officers' Liability insurance policy. In the event the Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Approval by Architectural Control Committee non-response shall not apply to any request which would (1) violate any setback or

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easement set out in the Declaration or recorded plat, or (2) violate any express provision of these Restrictions, all of such requests shall be deemed to be automatically disapproved. Developer, hereby retains its rights to assign the duties, powers and responsibilities of the Architectural Control Committee to the MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC. when one hundred percent (100%) of all Lots in all sections of MIDTOWN PARK are occupied by residents or at such earlier time as determined by Developer in its sole discretion, and the term, "Architectural Control Committee" herein shall include the Association, as such assignee.

Anything contained in this Paragraph or elsewhere in this Declaration to the contrary notwithstanding, the Architectural Control Committee, and its duly authorized representatives, are hereby authorized and empowered, at its sole and absolute discretion to make and permit reasonable modifications of and deviations from any of the requirements or this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Subdivision Lot of the size and location of any such building or improvement when, in the sole and final judgment and opinion of the Committee, or its duly authorized representative, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as whole.

The Architectural Control Committee may require the submission to it of such documents and items (including as examples, but without limitations, written request for and description of the construction modification or variance requested, plans, specifications, plot plans, specifications, plot plans, surveys, and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for an approval, modification, or a variance. If the Architectural Control Committee shall approve such request, the Architectural Control Committee may evidence such approval, and grant its permission, only by written instrument, addressed to the Owner of the Lot(s), expressing the decision of the Architectural Control Committee describing (when applicable) the conditions on which the application has been approved (including as examples, but without limitation, the type of alternate materials to be permitted, and alternate fence height approved or specifying the location, plans and specifications applicable to an approved out building), and signed by a majority of the then members of the Architectural Control Committee (or by the Committee's duly authorized representative).

Any request for a variance from the express provisions of these Restrictions shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice

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of disapproval from the Architectural Control Committee; or (b) failure by the Architectural Control Committee to respond to the request for variance. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning and/or the term of the Architectural Control Committee shall have expired and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this declaration shall be permitted it being the intention of Developer that no variances be available except at the discretion of the Architectural Control Committee, or if it shall have succeeded to the authority of the Architectural Control Committee in the manner provided herein, the Board of Directors of the Association. The Architectural Control Committee shall have no Authority to approve any variance except as expressly provided in this Declaration.

Section 2. Minimum Construction Standards. The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards, provided, however, that such outline will serve as a minimum guideline and the committee shall not be bound thereby.

Section 3. No Liability. Neither, the Board of Directors of the Association, the Architectural Control Committee, the Association, the Developers, nor the respective agents, employees and architects of each, shall be liable to any Owner or any other party for any loss, claim or demand asserted on account of the administration of these restrictions or the performance of the duties hereunder, or any failure or defect in such administration and performance. These restrictions can be altered or amended only as provided herein and no person is authorized to grant exceptions or make representations contrary to the intent of this Declaration. No approval of plans and specifications and no publication of minimum construction standards shall ever be construed as representing such plans, specifications or standards will, if followed, result in a properly designed residential structure. Such approvals and standards shall in no event be construed as representing or guaranteeing any residence will be built in a good, workmanlike manner. The approval or lack of disapproval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by such Committee including, without limitation, any warranty or representation relating to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. The acceptance of a deed to a residential Lot by the Owner in the subdivision shall be deemed a covenant and agreement on the part of the Owner,

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and the Owner's heirs, successors and assigns, that the Board or Directors of the Association and the Architectural Control Committee, as well as their agents, employees and architects, shall have no liability under this Declaration except for willful misdeeds.

Section 4. Single Family Residential Construction. No building shall be erected, altered or permitted to remain on any Lot other than one detached single-family residential dwelling not to exceed two and one-half (2 1/2) stories in height, a private garage for not more than three (3) cars and bona fide servants' quarters which structures shall not exceed the main dwelling in height and which structure may be occupied only by a member of the family occupying the main residence on the building site or by domestic servants employed on the premises and nor room(s) in the dwelling and no space in any other structure shall be let or rented. This shall not preclude the main residential structure from being leased or rented in its entirety as a single residence to one family or person.

Section 5. Minimum Square Footage Within Improvements. The living area on the ground floor of the main residential structure (exclusive of porches, garages and servants' quarters) shall be one thousand two hundred (1,200) square feet for one-story dwellings. The total living area for a multi-story dwelling shall be not less than one thousand six hundred (1,600) square feet. The Architectural Control Committee, at its sole discretion, is hereby permitted to approve deviations in any building area herein prescribed in instances which in its sole judgment such deviation would result in a more beneficial common use. Such approvals must be granted in writing and when given will become part of these restrictions to the extent of the particular lot involved.

Section 6. Exterior Materials. The exterior materials of the main residential structure and any attached garage and servants' quarters shall be not less than fifty percent (50%) brick, stucco or stone on the ground floor with the remainder being either brick, stucco, stone or masonry siding, unless otherwise approved by the Architectural Control committee.

Section 7. New Construction Only. No building of any kind with the exception of lawn storage or children's playhouses, shall ever be moved onto any Lot within said Subdivision, it being the intention that only new construction shall be placed and erected thereon, except with the prior written consent of the Architectural Control Committee.

Section 8. Roofs and Roofing Materials. The roofs of all buildings on the Property shall be constructed or covered with asphalt composition shingles or fiberglass composition shingles with a minimum manufacturer guarantee of twenty-five (25) years. The color of any

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composition shingles shall be subject to written approval by the Architectural Control Committee prior to installation.

The roofs of all buildings shall contain a roof pitch of not less than six inches (6") per each lateral twelve inches (12") of roof. Roofs on attached porches may have a lesser pitch as may be determined by the Architectural Control Committee.

Section 9. Location of the Improvements Upon the Lot. No building, structure, or other improvements shall be located on any Lot nearer to the front Lot line or nearer to the street sideline than the minimum building setback line shown on the recorded plat. No building, structure, or other improvement shall be located on any Lot nearer than ten (10) feet to any rear Lot line. No building shall be located nearer than five (5) feet to any Interior Lot line. For the purposes of this covenant or restriction, eaves, steps and unroofed terraces shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

Section 10. Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may consolidate such Lots or portions into one single-family residence building site, with the privilege of placing or constructing improvements on such site, in which case setback lines shall be measured from the resulting side property lines rather than from the Lot lines shown on the recorded plat. Any such proposed composite building site(s) must be approved by the Architectural Control Committee.

No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Developer, however, hereby expressly reserves the right to replat any Lot(s) owned by Developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 11. Utility Easements. Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded plat or otherwise recorded of record and no structure of any kind shall be erected upon any of said easements. Utility easements are for the distribution of electrical, telephone, gas and cable television service. In some instances, sanitary sewer lines are also placed within the utility easement. Utility easements are typically

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BY 078165

located along the rear Lot line, although, selected Lots may contain a side Lot utility easement for the purpose of completing circuits or distribution systems. Encroachment of structures upon any utility easement is prohibited. Both the recorded subdivision plat and the individual Lot survey should be consulted to determine the size and location of utility easements on a specified lot.

Developer retains the right from time to time to create other easements as are needed on any Lot without consent of any Owner as long as there is no material interference with any improvements on the Lot.

Neither Developer nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers or improvements of the Owner located on the land within or affected by said easements.

Section 11. Garages. No garage shall ever be changed, altered or otherwise converted for any purpose inconsistent with the housing of a minimum of two (2) automobiles at all times. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

Section 13. Sidewalks. Before the dwelling house is completed and occupied, the Lot builder shall construct a concrete sidewalk, and wheel chair ramp, if required, four (4) feet in width parallel to the street curb two (2) feet back from the boundary lines of the Lot into the street right-of-way and/or to street curbs in the case of corner Lots. Builders on corner Lots shall install such a sidewalk both parallel to the front Lot line and parallel to the side street Lot line. Such sidewalks shall comply with all Federal, State and County regulations respecting construction and/or specifications, if any. Locations of sidewalks are not to be varied except when required to avoid existing trees, such variance of location to be approved by the Architectural Control Committee in writing.

Section 14. Housing Plan and Elevation Repetition. The following three scenarios represent MIDTOWN PARK guidelines for determining when a plan and elevation can be repeated within a subdivision:

- (1) When building the same plan, different elevation, on the same side of the street, two (2) Lots must be skipped;
- (2) When building the same plan, same elevation, on the same side of the street, three (3) full Lots must be skipped.

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- (3) When building the same plan, same elevation, on the other side of the street, three (3) full Lots from the Lot across the street must be skipped.

Section 15. Lot Coverage. Total Lot coverage of buildings, driveways, walks and other structures shall not exceed seventy percent (70%) of the total Lot area for standard single-family residential developments. Pools, spas and decks are not considered structures for the purpose of calculating the Lot coverage.

Section 16. Landscaping. The residential Lot builder is responsible for landscaping all front yards, including the portion of the street right-of-way between the property line and the street curb. Installation of all landscaping must occur immediately upon occupancy of the house or within thirty (30) days after completion of construction, whichever occurs first. Installation of landscaping, including materials and workmanship, must be in conformance with acceptable industry standards.

FRONT YARDS - ALL LOTS

Minimum planting bed specifications include:

- a. Minimum planting bed width of four (4) feet from the house foundations. Curvilinear planting beds are encouraged;
- b. Shrubs are to be planted in a pleasing, organized design; and
- c. The number of plants utilized shall be appropriate for the size of the planting bed.

Planting bed edging is not required, but is encouraged for maintenance purposes and to define the shape of planting beds. Loose brick, plastic, concrete scallop, corrugated aluminum, wire wicket, vertical timbers, railroad ties are not in character with the desired landscape effect and are prohibited.

The use of gravel or rock in front yard planting beds is prohibited, except as a border when set in and laid horizontally as quarried or utilized of drainage purposes. Specimen boulders are permitted.

Tree stakes must be made of wood, two inches (2") in diameter by six feet (6') long.

The front lawn of each completed residence shall be completely sodded with St. Augustine grass or a hybrid thereof. Seeding, and/or sprigging is prohibited.

All landscaping is required to be maintained in a healthy and attractive appearance. Proper maintenance includes:

- a. adequate irrigation, automatic irrigation systems are encouraged;
- b. appropriate fertilization;
- c. pruning;

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- d. mowing;
- e. weed control in lawns and planting beds;
- f. seasonal mulching of planting beds;
- g. insect and disease control; and
- h. replacement of diseased or dead plant materials.

In addition to the standard front yard landscaping requirements, the Lot types listed below require the following minimum landscape material and trees:

A minimum of two (2) trees must be planted in the front yards. One tree must have a minimum four inch (4") caliper when measured six inches (6") above grade and the other tree must have a minimum two and one-half inch (2-1/2") caliper when measured six inches (6") above grade. Minimum tree height is eight feet (8').

Section 17. Underground Electric Service. An underground electric distribution system will be installed in that part of MIDTOWN PARK, designated Underground Residential Subdivision, which underground service area shall embrace all Lots in MIDTOWN PARK. The Owner of each Lot in the Underground Residential Subdivision shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirement of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to tile point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line or within the utility easement of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition the Owner of each such Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 110/120 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to Developer (except for certain conduits, where applicable) upon Developer's representation that the Underground Residential Subdivision is being developed for single family dwellings of the usual and customary type, constructed upon the premises, designed to be permanently located upon the Lot where originally constructed and

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built for sale to bona fide purchasers (such category of dwelling expressly excludes, without limitation, modular homes, mobile homes and duplexes). Therefore, should the plans of Lot Owners in the Underground Residential Subdivision be changed so that dwellings of a different type will be permitted in such Subdivision, the company shall not be obligated to provide electric service to a Lot where a dwelling of a different type is located unless (a) Developer has paid to the company (1) an amount representing the excess in cost, for the entire Underground Residential Subdivision, or the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision, or (b) the Owner of such Lot, or the applicant for service, shall pay to the electric company for the additional service, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot, plus (2) the cost of rearranging and adding any electric facilities serving such Lot, which rearrangement and/or addition is determined by the company to be necessary.

Section 18. Grading and Drainage. Unless specifically indicated, each Lot shall be graded so that storm water will drain to the abutting street(s) and not across adjacent Lots. Minimum grade shall be one percent (1.0%). Exceptions will be made in those instances where existing topography dictates an alternate Lot grading plan. The Architectural Control Committee must approve all exceptions in writing.

Section 19. Driveways. The builder is required to build driveways into the street right-of-way. All driveway locations must be approved by the Architectural Control Committee in writing.

Concrete driveways are to be a minimum of four inches (4") thick over a sand base. A #6, six inch (6") by six inch (6") woven wire mesh shall be installed within the "drive-in" portion of the driveway between the curb and sidewalk. State and/or County specifications regarding driveway cuts and curb returns at driveway openings shall be adhered to.

Driveways may be paved with concrete or unit masonry although use of materials should be consistent with the architectural character of the entire neighborhood. The use of stamped or colored concrete, interlocking pavers, brick pavers and brick borders are encouraged, but must be approved by the Architectural Control Committee in writing. Asphalt paving is prohibited.

Driveways should not be constructed over inlets or manholes. In instances where this is unavoidable, compliance with State and/or County regulations, which may require inlet or manhole adjustment and/or a change in elevation, will be necessary.

Driveways shall be located no closer than two (2) feet from the side property lines.

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Driveways serving residences with attached side loaded garages and/or detached garages shall be a minimum of ten (10) feet in width.

Driveways serving attached two car garages facing the street shall be sixteen (16) feet in width. Driveway slopes should be uniform with smooth transitions between areas of varying pitch.

The use of circular drives is discouraged and will only be allowed by the Committee in instances where the width of the Lot is sufficient to accommodate such driveways while leaving a significant amount of green space. Under no circumstances may an entire front yard be paved as a driveway.

Section 20. Outdoor Lighting. All outdoor lighting must conform to the following standards and be approved by the Architectural Control Committee in writing.

Floodlighting fixtures shall be attached to the house or an architectural extension. Floodlighting shall not illuminate areas beyond the limits of the property line.

Ornamental or accent lighting is allowed but should be used in moderation and compliment the associated architectural elements.

Moonlighting or uplighting of trees is allowed, but the light source must be hidden.

Colored lenses on low voltage lights, colored light bulbs, fluorescent and neon lighting is prohibited.

Mercury vapor security lights, when the fixture is visible from public view or from other Lots, is prohibited unless approved by the Architectural Control Committee in writing. Mercury vapor lights, when used for special landscape lighting effect (such as hung in trees as up and down lights) is permissible.

Section 21. Screening. Mechanical and electrical devices, garbage containers and other similar objects visible from a public street or common area, or located on property boundaries, must be screened from view by either fences, walls, plantings, or a combination thereof. Screening with plants is to be accomplished with initial installation, not assumed growth at maturity.

Section 22. Walls, Fences and Hedges. All Lots must have side and rear fences. No wall, fence or hedge shall be erected or maintained nearer to the front Lot line than the front building line on such Lot, nor on corner lots nearer to the side Lot line than the building setback line parallel to the side street. No side or rear fence, wall or hedge shall be more than six (6) feet in height from the FHA Grading Plan for the Lot, except for street and perimeter fences which

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BY D. T. H. S.

may be erected by the Developer or the Association which may be eight (8) feet in height. All fences must be constructed of ornamental iron, cedar, wood, or masonry. No chain link fence type construction will be permitted on any Lot. Any wall, fence, hedge, subdivision perimeter wall, and/or boulevard wall erected on a Lot by Developer or its assigns and identified as Common Area, shall pass ownership with title to the Lot but it shall be the Association's right and responsibility to modify, maintain, or repair said wall, fence or hedge thereafter.

Section 23. Easement Regarding Association Fences. Developer hereby reserves for itself and for the Association a non-exclusive right-of-way and easement for the purpose of constructing, maintaining, operating, repairing, removing and re-constructing certain fencing identified herein or in any supplemental declaration or amendment as Common Area. Prior to the construction of the fence, the Developer and/or the Association shall have the right to go over and across the portions of the Lots that are adjacent to where such fencing will be constructed for the purpose of performing surveys and other such necessary pre-construction work. After the construction of the fence, Developer and/or the Association, from time to time, and at any time, shall have a right of ingress and egress over, along, across and adjacent to the location of such fencing for purposes of maintaining, operating, repairing, removing, reconstructing, and/or inspecting the fence. The Owners shall not damage, remove or alter the fence or any part thereof without first obtaining written approval from the Developer and/or the Association with respect to any such action, such approval to be at the Developer's and/or the Associations sole discretion.

However, this Section shall not apply to and the Association shall not be responsible to, install or maintain any fencing located along Lot lines which neither the Association nor the Developer installed.

Section 24. Easement for Entry. The Association shall have an easement to enter into any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board of Directors, officers, agents employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. It is intended that this right of entry shall include (and this right of entry shall include) the right of the Association to enter a Lot to cure any condition which may

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY

D. T. Baker

increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

ARTICLE III

USE RESTRICTIONS

Section 1. Prohibition of Offensive Activities. No activity, whether for profit or not, shall be conducted on any Lot which is not related to single-family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be, or may become, an annoyance or a nuisance to the neighborhood. No loud noises or obnoxious odors shall be permitted on the Property, and the Board of Directors shall have the right to determine, in its sole discretion, if any such noise, odor or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Lot Owner in the Property, shall be located, used or placed on any portion of the Property or exposed to the view of other Lot Owners without the prior written approval of the Board. No television, sound or amplification system or other such equipment shall be operated at a level that can be heard outside of the building in which it is housed. This restriction is waived in regard to the normal sales activities required to sell homes in the Subdivision and the lighting effects utilized to display the model homes.

Section 2. Use of Temporary Structures or Outbuildings. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, with the exception of lawn storage or children's playhouses which have received Architectural Control Committee approval, except that sales trailers and construction trailers are permitted during the initial construction phase and sales phase of the Subdivision's development.

Provided the express written consent of the Architectural Control Committee is secured prior to installation and placement on a Lot, one (1) lawn storage building and/or one (1) children's playhouse, each limited in maximum height to eight (8) feet from ground to highest point of structure, may be placed on a Lot behind the main residential structure. Additionally, no outbuilding structure of any type is permitted unless the entire backyard of the specific Lot

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY D. Toller

involved is completely enclosed by fencing. Otherwise, no outbuilding or temporary structure of any kind shall ever be moved onto or erected on any Lot. It is intended hereby that, unless otherwise specifically approved, only new construction shall be placed and erected on any Lot within the Property.

Section 3. Automobiles, Boats, Trailers, Recreational Vehicles and Other Vehicles. No motor vehicle may be parked or stored on any part or any Lot, easement, street right-of-way or Common Area or in the street adjacent to any Lot, easement, right-of-way or Common Area unless:

1. Such vehicle does not exceed either six feet six inches in height, and/or seven feet six inches in width and/or twenty-one feet in length; and
2. Such vehicle is concealed from public view inside a garage or other approved enclosure (on the Owner's Lot);
3. Only passenger automobiles, passenger vans (the term "passenger vans" specifically excludes motor homes and recreation vehicles), motorcycles, pick-up trucks, or pick-up trucks with attached-bed covers are permitted that are:
 - a. in operation condition,
 - b. have current license plates and inspection stickers,
 - c. are in daily use as motor vehicles on the streets and highways of the State of Texas, and
 - d. which do not exceed either six feet six inches in height, and/or seven feet six inches in width and/or twenty-one feet in length.

No non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, street right-of-way, or Common Area or in the street adjacent to such Lot, easement, street right-of-way, or Common Area unless such object is concealed from public view inside a garage or other approved enclosure (on the Owner's Lot). The phrase "approved enclosure" as used in this paragraph shall mean any fence, structure or other improvement approved by the Architectural Control Committee. No one shall park, store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck, tractor or tractor trailer, and any other vehicle equipment, mobile or otherwise, deemed to be a nuisance by the Board of Directors), or any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle deemed to be a nuisance by the Board).

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BY

DTG/bk

No one shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any street, driveway, or Lot except for repairs to the personal vehicles of the residents conducted exclusively in the enclosed garage (and provided such personal vehicle repairs do not cause excessive noise or disturb the neighbors at unreasonable hours of the night).

This restriction shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair or maintenance of a house or housed in the immediate vicinity.

No vehicle shall be parked on streets or driveways so as to obstruct ingress or egress by other Owners, their families, guests and invitees or the general public using the streets for ingress and egress in the Subdivision. The Association shall have the authority to tow any vehicle parked or situated in violation of these restrictions or the Association Rules, the cost to be at the vehicle Owner's expense.

Section 4. Advertisement and Garage Sales. The Board of Directors shall have the right to make Association Rules governing and limiting the advertisement of and holding of garage sales.

Section 5. Air Conditioners. No window or wall type air conditioner shall be installed, erected, placed, or maintained on or in any building without prior written permission of the Architectural Control Committee.

Section 6. Window and Door Coverings. No aluminum foil shall be used over doors or windows.

Section 7. Unsightly Objects. No unsightly objects which might reasonably be considered to give annoyance to neighbors or ordinary sensibility shall be placed or allowed to remain on any structure, yard, street or driveway. The Association shall have the sole and exclusive discretion to determine what constitutes an unsightly object.

Section 8. Pools and Playground Equipment. Above ground pools are permitted only in rear of homes out of view. Playhouse or fort style structures or pool ancillary structures are limited to a maximum overall height or eight (8) feet and an above ground grade deck maximum height of thirty-six (36) inches. The intent of this provision is to offer optimum private enjoyment of adjacent properties. Additionally, playground equipment of any type or amenity structures of any type are permitted only when the entire backyard of the specific Lot involved is completely enclosed by fences.

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BY

DTB/bs

Section 9. Mineral Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot or Common Areas, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot or Common Area. No derrick or other structures designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or Common Area.

Section 10. Animal Husbandry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No Owner shall keep more than four (4) common household pets on any Lot. No Owner shall allow any pets to become a nuisance by virtue of noise, odor, dangerous proclivities, excessive pet debris or unreasonable numbers of animals. If common household pets are kept, they must be confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from Lot, pets must be on a leash at all times. It is the pet owner's responsibility to keep the Lot clean and free of pet debris and to keep pets from making noise which disturbs neighbors. Pet owners shall not permit their pets to defecate on other Owners' Lots, on the Common Areas, recreational areas or on the streets, curbs, or sidewalks.

Section 11. Visual Obstruction at the Intersection of Public Streets. No object or thing which obstructs site lines at elevations between two (2) feet and six (6) feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty five (25) feet from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner Lots.

Section 12. Lot and Building Maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner, edge curbs, sidewalks, and driveways, and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. All fences and buildings (including but not limited to the main residence and garage if any) which have been erected on any Lot shall be maintained in good repair and condition, by Owner or occupant, and Owner or occupant shall promptly repair or replace the same in the event of partial or total destruction or ordinary deterioration, wear and tear. Each Owner or occupant shall maintain in good condition and repair all structures on the Lot including, but not limited to, all windows, doors, garage doors, roofs, siding, brickwork, stucco, masonry, concrete, driveways and walks, fences, trim, plumbing, gas and electrical. By

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way of example, not of limitation, wood rot, damaged brick, fading, peeling or aged paint or stain, mildew, broken doors or windows, rotting or falling fences shall be considered violations of these Restrictions, which the Owner of a Lot shall repair or replace upon Association demand. The outdoor drying of clothes is prohibited. All walks, driveways, carports and other areas shall be kept clean and free of debris, oil or other unsightly matter. The Board of Directors shall be the final authority of the need for maintenance or repair. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Containers for the storage of trash, garbage and other waste materials must be stored out of public view except on trash collection days when they may be placed at the curb not earlier than 6:00 p.m. of the night prior to the day of scheduled collections. No Lot shall be used or maintained as a dumping ground for trash, nor will the accumulation of garbage, trash or rubbish of any kind thereon be permitted. Burning of trash, garbage, leaves, grass or anything else will not be permitted. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition and shall be stored out of public view.

New building materials used in the construction of improvements, erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them, such default continuing for ten (10) days after Association has mailed written notice thereof, being placed in the U. S. Mail without the requirement of certification, then the Association, by and through its duly authorized agent may, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cut the weeds and grass, edge the lawn around the curb and sidewalks and driveways, cause to be removed garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions so as to place said Lot in a neat, attractive, healthful and sanitary condition. The Association may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of a Lot to pay for such work immediately upon receipt of a statement thereof. In the event of failure by the Owner or occupant to pay such statement within fifteen (15) days from the date mailed, the amount

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thereof may be added to the annual maintenance charge and shall be governed by Article VI of these Restrictions. The Board of Directors has the right to create and assess late fees and interest charges for delinquent maintenance charges.

Section 13. Signs, Advertising, Billboards. Except for signs owned by builders advertising their model homes and available Lots during the period of original construction and home sales, no sign, poster, advertisement or billboard or advertising structure of any kind other than a normal "For Sale" sign, not to exceed five (5) square feet in total size may be erected or maintained on any Lot in said Subdivision. Owner shall also have the right to maintain on their Lot not more than two (2) signs not to exceed (5) square feet each advertising a political candidate in any local, state, or Federal election. These political advertisement signs may be maintained for three (3) weeks prior to the election and must be removed within two (2) days after the election. The Association, after ten (10) days of written notice to the owner to remove the sign, will have the right to remove any sign, advertisement, billboard, or advertising structure that does not comply with the above, and in so doing, shall not be subject to any liability of trespass or other sort in connection therewith or arising with such removal.

Section 14. No Business or Commercial Use. Subject to the provisions of this Declaration and the Association By-Laws, no part of the Property may be used for purposes other than single-family residential housing and the related common purposes for which the Property was designed. Each Lot and structure thereon shall be used for single-family residential purposes or such other uses permitted by this Declaration, and for no other purposes. No Lot or structure thereon shall be used or occupied for any business, commercial trade or professional purpose or as a church, synagogue, mosque or place of religious worship either apart from or in connection with, the use thereof as a residence, whether for profit or not. The foregoing restrictions as to residence shall not however, be construed in such manner as to prohibit an Owner from:

- (1) Maintaining a personal professional library;
- (2) Keeping personal business or professional records or accounts; or
- (3) Handling personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use not in violation of said restrictions.

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY DTB

Section 15. Holiday Decorations. Exterior Thanksgiving decorations may be installed on or after November 10 of each year and must be removed by December 1 of each year. Exterior Christmas decorations may be installed on or after the day after Thanksgiving each year and must be removed by January 5 of the new year. Any other holiday decorations must be installed no sooner than two (2) weeks before the holiday and removed no later than two (2) weeks after the holiday.

Section 16. Visual Screening on Lots. All yard equipment, woodpiles or storage piles shall be kept screened by a service yard or other similar facility so as to conceal them from view of neighboring Lots, streets or other property.

Section 17. Antennas and Satellite Dishes.

(a) No antenna or satellite dish which exceeds one meter (39 inches) in diameter is permitted on any Lot.

(b) An antenna or satellite dish of one meter (39 inches) or less, and other antennas and related masts are permitted to be placed on a Lot provided any such item must comply with all of the below set forth minimum conditions. Further, the Association must receive written notification as its then current address from the Owner of the applicable Lot, on or before the installation of any antenna, satellite dish and related mast provided for in this Section. Such notification must include the type and color of antenna, satellite dish, and any related mast to be installed, and the method, manner, and site of installation. The site must be shown in a plot plan.

If the Owner of a Lot proposes to install an antenna, satellite dish and any related mast provided for in this Section in any manner whatsoever which does not strictly comply with the below set forth minimum conditions, such Owner must submit an application to the Architectural Control Committee and obtain the written approval of the Architectural Control Committee prior to commencing such installation. In connection with the Architectural Control Committee's decision, the Architectural Control Committee shall consider such factors as it deems appropriate, in its reasonable discretion. The application to the Architectural Control Committee must be made on a form approved by the Architectural Control Committee and contain such information as may be required by the Architectural Control Committee, including a statement which specifically describes the manner in which it is proposed that such antenna, satellite dish and related mast will vary from such minimum conditions. The Architectural Control Committee shall endeavor to make its decision regarding the proposed antenna, satellite

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BY



dish and any related mast on an expedited basis within seven (7) days after receipt by the Architectural Control Committee of the completed application and all information required therein. The granting of a variance from such minimum conditions shall in no way affect the Owner's obligation to comply with all governmental laws and regulations and other regulations affecting the Lot concerned.

(c) Minimum Conditions. In addition to the foregoing requirements, no antenna, satellite dish, any related mast shall be erected, constructed, placed, permitted to remain on any Lot unless such installation strictly complies with the following minimum conditions (however, each minimum condition shall not apply if it unreasonably delays installation of the applicable antennae, satellite dish, and any related mast or unreasonably increases the cost of such items or their installation, or precludes reception of an acceptable quality signal):

(i) The antenna, satellite dish and any mast must be located to the rear one-half (½) of the Lot and must serve only improvements on the particular Lot in which it is located.

(ii) To the extent feasible, the antenna, satellite dish and any mast, including its base and anchoring structure, shall not extend above the roofline of the residence and shall not be visible from the frontage street or any adjoining street.

(iii) To the extent feasible, no antenna, satellite dish or mast shall be constructed or placed or permitted to remain on any utility easement or other easement or right-of-way located on any Lot.

(iv) The antenna, satellite dish and any mast be securely mounted to a base, so as to be able to withstand the effects of high winds or other extraordinary weather conditions; however no guy wires or similar mounting apparatus will be allowed.

(v) No advertising slogans, logos, banners, signs or any other printing or illustration whatsoever shall be permitted upon or be attached to an antenna, satellite dish or mast.

(vi) No satellite or antenna shall ever be used for the transmission of any signal whatsoever and said antenna or satellite dish shall be for the purpose of receiving only normal signals through airwaves for television viewing purposes only.

(vii) No antenna or satellite dish shall be permitted to cause any distortion or interference whatsoever with respect to any other electronic device in the Property.

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY

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(viii) The antenna or satellite dish shall be one solid color only, either white or black or shades of either brown, gray, tan or natural metal.

(ix) Each Lot shall be permitted to have no more than one antenna or satellite dish and any related mast, as applicable, for each category of the following categories of video programming providers, to-wit: direct broadcast satellites, multi-channel multi-point distribution (wireless cable) providers, and television broadcast stations.

(x) Any antenna, satellite dish, or related mast installed hereunder shall be installed in a manner that complies with all applicable laws and regulations and manufacturer's instructions.

(xi) If any provision of the guidelines in this Section 17 is ruled invalid, the remainder of such guidelines shall remain in full force and effect.

Section 18. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstruction or debris shall be placed in these areas. No person other than Developer may obstruct or rechannel the drainage flows after location and installation of drainage swells, storm sewers, or storm drains. Developer hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow, provided, the exercise of such easement shall not materially diminish the value or interfere with the use of any Lot or adjacent property without the consent of the owner thereof. Septic tanks and drain fields, other than those installed by or with the consent of the Developer, are prohibited within the Property. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any drainage ditch, storm sewer or storm drain within the Property.

Section 19. Firearms. The discharge of firearms within the Property is prohibited. The terms "firearms" includes B-B guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

Section 20. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that up to five (5) gallons of fuel may be stored on each unit for emergency purposes and operation of lawn mowers and similar tools or equipment and outdoor grills, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generator and similar equipment.

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY

D. Tolles

Section 21. Party Fences.

(a) General Rules of Law to Apply. Each fence built which shall serve and separate any two (2) adjoining residences shall constitute a party fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party fence shall be shared by the Owners who make use of the fence in equal proportions.

(c) Damage and Destruction. If a party fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and therefore not repaired out of the proceeds of insurance, any Owner who has used the fence may restore it, and if the other Owner or Owners thereafter make use of the fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, subject to the right of any such Owners to call for a large contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with Land. The right of any Owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successor-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof located in Brazoria County, Texas.

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY D. B. 10/16/05

ARTICLE IV

MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC.

Section 1. Purpose. The purpose of the MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC. shall be to provide for maintenance, preservation and architectural control of the residential Lots within the Subdivision and the Common Area, if any.

Section 2. Membership and Voting Rights. Every Owner of a Lot in MIDTOWN PARK whose Lot is subject to a maintenance charge assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot owned.

Section 3. Non-Profit Corporation. MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC., a non-profit corporation, has been organized; and it shall be governed by the Articles of Incorporation of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 4. Bylaws. The Association may make whatever rules or Bylaws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof. Should the situation arise where the Association Bylaws and this Declaration shall conflict, then this Declaration shall control.

Section 5. Ownership Information. The property Owner is required at all times to provide the Association with written notice of proper mailing information should it differ from the property address relative to ownership. Further, when an alternate address exists, Owner is required to render notice of tenant with name and telephone number, if any, of agency, if any, involved in the management of said Property. The Owner is required and obligated to maintain current information with the Association or its designated management company at all times.

Section 6. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours, in accordance with the requirements of the Texas Non-Profit Corporation Act.

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY D. Tolbert

ARTICLE V

MIDTOWN PARK PROPERTY OWNERS ASSOCIATION, INC. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership;

Class A. Class A members shall be all Owners, with the exception of Developer and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Holders of future interests not entitled to present possession shall not be considered as Owners for the purposes of voting hereunder.

Class B. The Class B member(s) shall be Developer or its successors or assigns and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier to happen of either of the following events (or earlier in the sole discretion of the Developer with Developer having given written notice to the Association):

(1) when seventy-five percent (75%) of the Lots planned for development in MIDTOWN PARK are deeded to homeowners;

(2) on December 31, 2015;

(3) At such time that additional property is annexed into the Association, if such annexation occurs, the Class B Membership of the Developer, shall, if it had previously ceased due to one of the conditions listed above in (1) or (2) be reinstated and shall apply to all Lots owned by Declarant in the newly annexed portion of the Property, as well as to all Lots owned by Declarant in all other areas of the Property. Such reinstatement is subject to further cessation in accordance with the limitation set forth in the preceding paragraph (1) or (2) of this Section, whichever occurs first. However, upon reinstatement due to annexation of additional property into the Property, the period of time set forth in the preceding paragraph (ii) of this Article shall be extended to the extent necessary such that in all circumstances it extends for a period no shorter than ten (10) years from the date of each such recorded annexation (i.e. Supplemental Declaration).

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY



ARTICLE VI

MAINTENANCE ASSESSMENTS

Section 1. Maintenance Fund, Association. All funds collected as hereinafter provided for the benefit of the Association from the regular and/or special maintenance charges, for capital improvements, shall constitute and be known as the "Maintenance Fund." The assessments levied by the Association shall be used exclusively for purposes herein set forth and for the improvement and maintenance and acquisition of Common Areas. The responsibilities of the Association may include, by way of example, but without limitation, at its sole discretion, any and all of the following: maintaining, repairing or replacing Association perimeter fence identified as Common Areas, esplanades, maintaining, repair or replacing of the entry signs and landscaping if any; maintaining rights-of-way, easements, esplanades and other public areas, if any; construction, installation, and operations of street lights; purchase and/or operating expenses of recreation areas, pools, playgrounds, clubhouses, and parks, if any, collecting garbage, insecticide services; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Property to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employing CPA's and property management firms, attorneys, porters, lifeguards, or any other thing necessary or desirable in the opinion of the Association to keep the properties in the subdivision neat and in good order, or to which is considered of general benefit to the Owners or occupants of the Property. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith. There are hereby reserved to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities in this Declaration.

The Board of Directors shall also annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required reserve budget amount in an amount sufficient to permit meeting the projected needs of the Association as shown on the budget. The reserve budget amount required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments.

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY

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Section 2. Creation of the Lien and Personal Obligation of Assessments. Each Lot in the Property is hereby subjected to the annual maintenance charges as set out in Article VI, Section 1, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) maintenance assessments or charges; (2) special assessments for such assessments to be established and collected as hereinafter provided, and (3) any chargeback for costs, fees and expenses, attorney's or other charges incurred or anticipated to be incurred by the Association in connection with enforcement of these Declarations, the Association Bylaws, or Association Rules. The maintenance assessments and special assessments and charge backs, together with accrued interest costs, late charges, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which such assessments are made. All such assessments as to a particular property, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed and paid by them.

Section 3. Assessments. The maintenance assessments shall be paid by the Owner or Owners of each Lot in the Association, in annual installments or such other manner as the Board may determine. The annual periods for which maintenance assessments shall be levied shall be January 1 through December 31, with payment being due by January 31 of each year. The rate at which each Lot shall be assessed as to the maintenance assessment shall be determined annually by the Board of Directors, shall be billed in advance, shall be due and payable in advance and may be adjusted from year to year by the Board of Directors of the Association as the needs of the Subdivision may, in the judgment of the Board of Directors of the Association, require; provided that such assessment shall be uniform as to all Lots, unless provided otherwise herein. The Association's assessments, annual and special herein above described may be increased by majority vote of its members at a meeting duly called for that purpose as set forth below.

Section 4. Maximum Annual Assessment. Association Maintenance Fund. Until December 31, 2010, the maximum annual Association maintenance assessment shall be Two Hundred Fifty and 00/100 Dollars (\$250.00) per Lot, per annum. From and after December 31, 2010, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

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BY

D. T. H. S.

The Association may, at its discretion, accumulate and assess the increase in later year(s). The maximum annual assessment may be increased above the ten percent (10%) increase described above only by approval of two-thirds (2/3) of each class of the members in the Association present and voting in person or by proxy, at a meeting duly called for this purpose at which a quorum is present. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments. In addition to the annual maintenance assessments authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to the current year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, sidewalks, recreational facilities, including fixtures and personal property related thereto, or for any other purpose approved by the membership, provided, any such assessment shall have the approval of two-thirds (2/3) of the votes of those members of each class who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (unless otherwise provided herein).

Section 6. Notice and Quorum. Written notice of any membership meeting called for the purpose of assessing a special assessment, shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting, the presence of members or of proxies entitled to cast at least sixty-six and two thirds percent (66 2/3%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any such meeting, the meeting shall be adjourned but another meeting may be called subject to the same notice requirement.

Section 7. Rate of Assessment. All developed Lots in MIDTOWN PARK shall commence to bear their applicable maintenance fund assessment simultaneously and Lots in MIDTOWN PARK, owned by Developer are not exempt from assessment. Lots which are occupied by occupants shall be subject to the annual assessment determined by the Board of Directors in accordance with the provisions hereof. Developed Lots in MIDTOWN PARK which are not occupied by an occupant and which are owned by a builder or a building company for the business purpose of constructing a residential dwelling on the Lot for resale, shall be assessed at the rate of one-half (1/2) of the annual assessment above. The rate of assessment for an individual Lot, within a calendar year, can change as the character of ownership and the status of occupancy by a resident changes, and the applicable assessment for such Lot shall be prorated

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BY

D. T. H. S.

according to the rate required during each type of ownership.

Section 8. Effect of Nonpayment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the original due date at the rate of ten percent (10%) per annum to the date paid. The Association may in addition charge a late charge for assessments paid more than fifteen (15) days after the due date. The Association may bring an action at law against the Owner personally obligated to pay same, or foreclose the liens against the Lot. Interest, costs, late charges and attorneys fees incurred in any such collection action shall be added to the amount of such assessment or charge. An Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association and its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for enforcement of such liens, including, specifically, non judicial foreclosure pursuant to Article 51.002 of the Texas Property Code (or any amendment or successor statute) and each such Owner expressly grants to the Association a Power of Sale in connection with said lien. The Association shall have the right and power to appoint a Trustee(s) to act for and in behalf of the Association to enforce the lien. The lien provided for in this section shall be in favor of the Association for the benefit of all Lot Owners. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Brazoria County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association, or in accordance with such other notice requirements as are then applicable. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Brazoria County, Texas. Out of the proceeds of such sale, there

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shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default including interest and late charges; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

The Association shall also have the right to maintain a deficiency suit in the event the sale proceeds are less than the amount of assessments, interest, late fees, attorney's fees, and costs incurred by or owed to the Association.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through the Board, upon ten (10) days' prior written notice thereof to such nonpaying Owner or occupant, in addition to all other rights and remedies available at law or otherwise, restrict the right of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Brazoria County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided herein by non use of the facilities or services provided by the Association or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. To secure the payment to the Maintenance Fund of all annual and special assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each Deed (whether specifically stated therein or not) a Vendor's Lien and a Contract Lien for benefit of the Association, said liens to be enforceable as set forth in Article VI hereof by the Association on behalf of such beneficiary;

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provided however, that each such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the request of the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or the construction of improvements on any such Lot to the extent of any such maintenance fund assessment or annual or special assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer, but shall not absolve Owner of any liability for such debt, Mortgagees are not required to collect assessments. Failure to pay assessments does not constitute a default under an insured mortgage.

Section 10. Date of Commencement of Annual Assessments Due Date. The annual assessments provided for herein shall commence as to all developed Lots in MIDTOWN PARK, on the first day of January 2007. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed (by U.S. first class mail) to every Owner subject thereto. The payment dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket "all risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Association shall have no insurance responsibility for any part of any Lot.

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The Board shall also obtain a public liability policy covering the Common Area, insuring the Association and its members for all damage or injury caused by the negligence of the Association or any person for whose acts the Association is held responsible. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, at least a Two Million (2,000,000.00) Dollar limit per occurrence, if reasonably available, and at least a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit.

Insurance policies may contain a reasonable deductible as determined by the Board of Directors in its sole discretion, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total. All insurance coverage obtained by the Board of Directors shall be governed by the following provisions:

(a) All policies shall be written with a company, authorized to do business in Texas which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by AM Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(b) All policies on the Common Area shall be for the benefit of the Association and its members and shall be written in the name of the Association.

(c) Exclusive authority to adjust losses under policies obtained on the Common Area shall be vested in the Association's Board of Directors.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(e) All property insurance policies shall have an inflation guard endorsement, if reasonable available, and, if the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Brazoria County, Texas area.

(f) The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

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- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees and manager, the Owner and occupants of Lots and their respective tenants, servants agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- (iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;
- (iv) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;
- (v) a statement that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and
- (vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board may obtain, as a Common Expense, directors' and officers' liability coverage, and flood insurance, if reasonably available.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry homeowners insurance on the Lot(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of loss or damage to the structures comprising his Lot, the Owner shall either: (a) proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Architectural Control Committee; or (b) clear the Lot of all damaged structures, debris and ruins and thereafter maintain the Lot in a neat and attractive, landscaped condition consistent with the requirements of the Architectural Control Committee and the Association Board of Directors.

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Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustments of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the voting members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however such extension shall not exceed sixty (60) additional days. Except as expressly provided herein, no mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or common property of the Association shall be repaired or reconstructed.

(c) In the event that should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized then and in that event the affected portion of the Property shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive landscaped condition.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds shall be retained by and for the benefit of the Association.

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BY

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Section 5. Repair and Reconstruction. The damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against the Owners of Lots sufficient to raise the additional funds necessary to restore the Common Area. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE VIII

NO PARTITION

Except as is permitted in this Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration nor acquiring nor conveying Common Area, in its sole discretion.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. The invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Texas Property Code. The Association shall have all of the rights provided under Texas Property Code, Section 204.010 or any amended or successor statute.

Section 4. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass

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with the title to every Lot subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations.

(c) The right of the Association or the Developer to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members.

(d) The right of the Association to collect and disburse those funds as set forth in Article VI.

Section 5. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the MIDTOWN PARK OWNERS ASSOCIATION, INC., his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended unilaterally by the Declarant at any time and from time to time prior to the end of the Class B membership of the Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is required by an institutional or governmental lender or purchaser, of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the property subject to this Declaration; (c) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the property subject to this Declaration; or (d) in connection with any future annexation of all or part of the property described on Exhibit "B"; (e) for any other purpose, provided that the amendment has no material adverse effect upon any right of any Owner or that the Owner or Owners so affected have consented thereto. In addition to the amendments described above, this

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BY OTB/LS

Declaration may be amended during the first twenty (20) year period by an instrument signed by those Owners owning not less than ninety (90%) percent of the Lots within MIDTOWN PARK, and thereafter by an instrument signed by those Owners owning not less than seventy-five (75%) percent of the Lots within MIDTOWN PARK. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the official Public Records of Real Property of Brazoria County, Texas.

Section 7. Dissolution. If the Association is dissolved, the assets shall be dedicated to a public body or conveyed to a non-profit organization with similar purposes.

Section 8. Common Area Mortgages or Conveyance. More than one acre of the Common Area cannot be mortgaged or conveyed without the consent of seventy-five percent (75%) of the Lot Owners (excluding the Developer).

If the ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such area shall be subject to the Lot Owner's easement.

Section 9. ANNEXATION. ADDITIONAL PROPERTY AND COMMON AREA MAY BE ANNEXED TO THE PROPERTY OR INCORPORATED INTO THE ASSOCIATION: (i) WITH THE CONSENT OF MIDTOWN PARK OWNERS ASSOCIATION, INC. BOARD OF DIRECTORS OR (ii) BY DEVELOPER, IN EITHER EVENT WITHOUT APPROVAL BY THE MEMBERSHIP. The Developer intends, and has the unqualified right to, but is not obligated to, annex the property described in Exhibit "___" hereto into the Property or Subdivision. Developer shall have the unilateral right to develop a portion of the real property described on Exhibit "___" for commercial uses. If Developer does so, Developer shall further have the right to amend certain portions of this Declaration at the time of such annexation so as to provide for such commercial tracts. Developer makes no warranty or representation as to the final configuration of and uses of land in MIDTOWN PARK and has the right to revise its general land plan for MIDTOWN PARK at any time and from time to time.

Developer reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to this Section 9, without prior notice and without the consent of any person, for the purpose of removing certain portions of the Property then owned by Developer or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Developer, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property and

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BY



provided no above ground, vertical improvements have been started on the portion of the Property being withdrawn.

Section 10. Books and Records. The books, records and papers of the Association shall, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation, Bylaws of the Association, and this Declaration shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

Section 11. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 12. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

Section 13. Lienholder. Lienholder joins herein solely for the purpose of subordinating the liens held by it of record upon the Property to the covenants, conditions and restrictions hereby imposed by Developer with, however, the stipulation that such subordination does not extend to any lien or charge imposed by or provided for in this Declaration.

Section 14. Additional Requirements. So long as required by the Federal Housing Administration, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first mortgagees or Owners representing at least sixty-seven (67%) percent of the total Association vote entitled to be cast thereon consent, the Association shall NOT:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the

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Board or provisions of any declaration subsequently recorded on any portion of the Property regarding assessments on annexed property or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this declaration.);

(c) by act or omission change, waive, or abandon any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property, or to add to reserves.

Section 15. No Priority. No provision of this Declaration or the Association Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the ease of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 16. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 17. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 18. Applicability of Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or Texas Law for any of the acts set out in this Article.

Section 19. Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request, **PROVIDED** such request is delivered to the mortgagee by certified or registered mail, return receipt requested.

STATE OF TEXAS COUNTY OF BRAZORIA
I certify that the above and foregoing is a full, true and correct
photographic copy of the original record on file in my office including
redactions, if any, of social security numbers. Given under my hand
and seal of the court in my lawful custody and possession.
JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY 07/16/05

Section 20. FHA/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration or the Veterans Administration, if either such agency is insuring or guaranteeing the mortgage on any Lot: annexation of additional property other than that described on Exhibit "B", dedication of Common Area, mortgaging of Common Area, dissolution and amendment of the Articles of Incorporation of the Association, mergers and consolidations of the Association, or material amendment of this Declaration.

Section 21. Non-Liability. Neither the Association nor Developer (nor any partner nor parent nor subsidiary nor related entity of any of them) shall in any way or manner be held liable or responsible for any violation of this Declaration by any other person or entity. Neither Developer nor the Association (nor any partner nor parent nor subsidiary nor related entity of any of them) make any representations whatsoever as to the security of the Common Area or Lots or residences, or the effectiveness of any gate, access system or medical alert system. The Association and each Owner does hereby hold Developer, and the Association, (and any partner, parent, subsidiary or related entity of any of them) harmless from any loss or claim arising from the occurrence of any crime or other act. Neither the Association nor the Developer (nor any partner nor parent nor subsidiary nor related entity of any of them) shall in any way be considered insurers or guarantors of security within the Common Area, Lots or residences or the effectiveness of any such system. All Owners specifically acknowledge that the Property may have a perimeter boundary system, such as fences, walls, hedges, gated entries or the like. Neither the Association nor the Developer (nor any partner nor parent nor subsidiary nor related entity of any of them) shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken. All Owners and occupants of any Lots and/or residences, tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association, their respective Boards and officers, Developer, any successor Developer, or their nominees or assigns, do not represent or warrant that any fire protection system, gate access system, burglar alarm system, medical alert system, or other system designated by or installed according to guidelines established may not be compromised or circumvented, that any fire protection or burglar alarm systems, gate access system, medical alert system or other systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, nor that fire protection or burglar alarm systems or other systems will in all cases provide the detection or protection for which the system is designed or intended.

STATE OF TEXAS COUNTY OF BRAZORIA

I certify that the above and foregoing is a full, true and correct photographic copy of the original record on file in my office including redactions, if any, of social security numbers. Given under my hand and seal of the court in my lawful custody and possession.

JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY

D. T. B. 165

Section 22. Ordinances. Notice is hereby given that the Property is also subject to all rules, regulations and ordinances of the City of Alvin, County of Brazoria and the State of Texas, as well as any other municipal authorities with jurisdiction over the Property.

DEVELOPER:

MIDTOWN PARK DEVELOPMENT, LTD.,
a Texas limited partnership

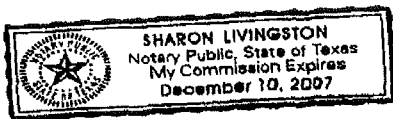
By: HORIZON 2003, LLC,
a Texas limited liability company,
its General Partner

By: Paul J. Young
Name: Paul T. Young
Title: PRESIDENT

STATE OF TEXAS *
COUNTY OF Harris *

BEFORE ME, the undersigned authority, on this day personally appeared PAUL T. YOUNG, President of HORIZON 2003, LLC, general partner of MIDTOWN PARK DEVELOPMENT, LTD., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of said entities and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28 of Nov, 2005.



Sharon Livingston
Notary Public, State of Texas

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STATE OF TEXAS COUNTY OF BRAZORIA
I certify that the above and foregoing is a full, true and correct photographic copy of the original record on file in my office including redactions, if any, of social security numbers. Given under my hand and seal of the court in my lawful custody and possession.
JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY DTB/lw

LIENHOLDER:

WELLS FARGO

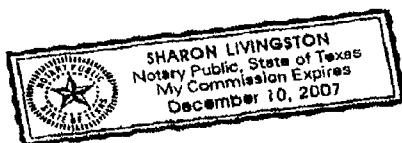
a national banking association

By: Barry W. Bara
Name: Barry W. Bara
Title: SR Relationship Manager

STATE OF TEXAS *
 *
COUNTY OF Harris *

BEFORE ME, the undersigned authority, on this day personally appeared Barry Bara, SR Relationship Mgr of WELLS FARGO, a national banking association, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of said entities and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28 of Nov, 2005.



Sharon Livingston
Notary Public, State of Texas

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STATE OF TEXAS COUNTY OF BRAZORIA

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY JTH

EXHIBIT "A"

Property Description

STATE OF TEXAS COUNTY OF BRAZORIA

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JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY



METES AND BOUNDS

A METES AND BOUNDS DESCRIPTION OF A 24.57 ACRE TRACT OF LAND BEING OUT OF A CALLED 57.9559 ACRE TRACT AS DESCRIBED IN VOLUME 1221, PAGE 86, DEED RECORD, BRAZORIA COUNTY, TEXAS (DRBCT), LOCATED IN THE HOOPER AND WADE SURVEY, ABSTRACT 485, HOOPER AND WADE SURVEY, ABSTRACT 420 AND THE HOOPER AND WADE SURVEY, ABSTRACT 421, BRAZORIA COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (Bearings based on Monumentation of the North line said 57.9559 acre tract);

BEGINNING at a point for corner being the Southwest corner of said 57.9559 acre tract and the Southwest corner of a 30 foot road easement recorded in Volume 896, Pg. 92 DRBCT, located on the East right-of-way line of the G.C. & S.F.R.R. 100 feet wide;

THENCE North 13°02'24" West, along the said G.C. & S.F.R.R. right-of-way passing at 30.86 feet a 1/2 inch iron rod found for the Northwest corner of said 30 foot road easement, in all a distance of 304.45 feet to a 1/2 inch iron rod with cap stamped "COASTAL SURVEYING" set on the arc of a curve to the right;

THENCE in a northeasterly direction along the arc of said curve to the right having a central angle of 06°24'00", a Radius of 1000.00 feet, an Arc length of .111.70 feet and a Chord bearing of North 51°19'12" East, a distance of 111.64 feet;

THENCE North 54°31'12" East, a distance of 1159.89 feet to a 1/2 inch iron rod with cap stamped "COASTAL SURVEYING" set for the beginning of an arc to the right;

THENCE in a northeasterly direction along the arc of said curve to the left having a central angle of 21°13'35", a Radius of 725.00 feet, an Arc length of 268.59 feet, and a Chord bearing of North 65°07'59" East, a distance of 267.06 feet to a 1/2 inch iron rod set on the east line of said 57.9559 acre tract;

THENCE South 00°00'50" East, along the East line of said 57.9559 acre tract a distance of 759.30 feet to a 1/2 inch iron rod found for a interior corner, being on the North line of said Hooper and Wade Survey Abstract 421;

THENCE South 89°19'21" East, along the North line of said Hooper and Wade Survey Abstract 421 a distance of 278.70 feet to a 1/2 inch iron rod found on the West right-of-way line of State Highway No. 35 (width varies), being the Northwest corner of a tract of land described to the State of Texas recorded in Vol. 816, Pg. 690 DRBCT;

THENCE South 00°30'43" East, along said West right-of-way line of State Highway No. 35 a distance of 160.00 feet to a 1/2 inch iron rod found for the Northwest corner of a tract of land described in deed to State of Texas recorded in Vol. 816, Pg. 688 DRBCT;

THENCE South 00°44'40" West, continuing along said West right-of-way line of State Highway No. 35 passing at 213.60 feet a 1/2 inch iron rod set on the North line of said 30 foot road easement in all a distance of 243.60 feet to a point for corner;

THENCE North 89°26'54" West, along the South line of said 30 foot road easement a distance of 1482.48 feet to the POINT OF BEGINNING.

Doc# 2005072043

Pages 45
12/22/2005 9:07AM
Official Records of
BRAZORIA COUNTY
JOYCE HUDMAN
COUNTY CLERK
Fees \$192.00

JOYCE HUDMAN

STATE OF TEXAS COUNTY OF BRAZORIA

I certify that the above and foregoing is a full, true and correct photographic copy of the original record on file in my office including redactions, if any, of social security numbers. Given under my hand and seal of the court in my lawful custody and possession.

JOYCE HUDMAN, BRAZORIA COUNTY CLERK

BY *D. Tolles*