

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR AUDUBON PLACE, SECTION ONE
A SUBDIVISION IN BRAZORIA COUNTY, TEXAS

THIS DECLARATION is made on the date hereinafter set forth by Kirby Run Associates, LLC, a Texas Limited Liability Corporation, hereinafter referred to as "Declarant"

WITNESSETH

WHEREAS, Declarant is the owner of certain property located in the City of Pearland, Brazoria County, Texas, that has been platted and subdivided into a subdivision known as Audubon Place, Section One according to the plat thereof recorded in Volume 20, Pages 195 and 196 of the Land Records of Brazoria County, Texas which Plat is subject to the conditions and restrictions declared herein and recorded in the Brazoria County Official Records at 98 047501.

Declarant desires to develop certain land being all of Audubon Place, Section One, and provide for the preservation of the values of the residential community to be constructed on the Property and such other areas as may be subjected to this Declaration, and for the maintenance of any open spaces and other facilities or structures, and for the adoption of a uniform plan of development to this end does declare and publish its intent to subject the Property (as is hereinafter defined), as the same may from time to time be dedicated and subdivided into lots and open spaces and easements designated for conveyance to a homeowners association, to the covenants, restrictions, easements, conditions, charges and liens hereinafter set forth; it being intended that the easements, covenants, restrictions and conditions shall run with the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner thereof;

The Property shall include the following Lots and Reserves:

LOTS

Lots numbered Block 1 1-9 and 30-38, Block 2 1-14

RESERVES

Restricted Reserve "A"	(9000 square Ft.)
Restricted Reserve "B"	(9000 square Ft.)
Landscape Reserve "C"	(5028 square Ft.)
Landscape Reserve "D"	(5034 square Ft.)
Landscape Reserve "E"	(2179 square Ft.)
Reserve "F"	(20.0711 acres)
Landscape Reserve "G"	(14400 square Ft.)

All Reserves subject to this Declaration are, however, specifically excepted from Article VII, Use Restrictions.

Restricted Reserve "A" and Restricted Reserve "B" as shown on the plat of Audubon Place, Section One, recorded in Volume 20, Pages 195 and 196 of the Land Records of Brazoria County, Texas are retained by the Declarant and specifically excepted from the Property and this Declaration in its entirety, including assessments, conditions, covenants, easements, reservations, and restrictions.

Declarant has deemed it desirable for the efficient preservation of the values of the Property to create an Association to which shall be delegated and assigned the powers of administering and enforcing the provisions of this Declaration including levying, collecting and disbursing the assessments and charges hereinafter created.

To exercise these functions, Declarant has incorporated the Audubon Place Homeowners Association, Inc. under the laws of the State of Texas, as a non-stock non-profit corporation. The directors of the Association have established by-laws by which the Association shall be governed.

Declarant declares that the Property shall be developed, improved, sold, used, and enjoyed in accordance with and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions of this Declaration, all of which are adopted for and placed upon the Property; shall run with the Property and be binding on all parties who now or hereafter have any right, title or interest in the Property described above, or any part of the Property, and on the heirs, executors, administrators, successors and assigns of such parties, regardless of the source of or the manner in which any such right, title, or interest is or may be acquired; and shall inure to the benefit of each owner of any part of the Property.

ARTICLE I

Definitions

Section 1: "Association" shall mean and refer to Audubon Place Homeowners Association, Inc., a non-stock, non-profit corporation, its successors and assigns.

Section 2: "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 3: "Builder" shall mean and refer to any entity or person to which Declarant conveys or transfers the surface estate of any Lots for the purpose of constructing homes or other permitted structures thereon.

Section 4: "Committee" shall mean and refer to the Architectural Review Committee established and appointed pursuant to Article VI.

Section 5: "Common Open Area" and "Common Open Areas" shall mean and refer to the license granted to the Association by the Declarant for the exclusive common use and enjoyment of the Owners, members of

their families and guests over the restricted reserves "A" and "B" as shown on the Audubon Place, Section One plat.

Section 6. "Conservation Easement" shall mean and refer to an easement that the Declarant has granted to itself for purposes of preservation, maintenance and beautification. This easement is located along the back perimeter of each Lot and is twenty-five (25) feet wide. This easement has also been granted by the Declarant to itself over the side ten (10) feet of Lots 1 and 33 of the Property. Both easements are shown on the Audubon Place, Section One plat.

Section 7: "Declarant" shall mean and refer to Kirby Run Associates, LLC, a Texas Limited Liability Company, its successors and assigns.

Section 8: "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and any amendments hereto applicable to the Property recorded in the Land Records of Brazoria County, Texas.

Section 9: "Development Period" shall mean and refer to the period of time in which Declarant is the Owner of any Lot.

Section 10: "Lot" shall mean and refer to any buildable plot of land shown upon any recorded subdivision plat of the Property.

Section 11: "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation of the Association.

Section 12: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the surface estate of any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13: "Property" shall mean and refer to Audubon Place, Section One, a subdivision in The City of Pearland, Brazoria County, Texas save and except Restricted Reserves "A" and "B", any dedicated rights-of-way and any additions to Audubon Place, Section One as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Right-of-Way" shall mean and refer to that road right-of-way reserved by the Declarant at the entrance to the Property for any future widening of Magnolia Road.

Section 15: "Transfer" shall mean and refer to the transfer of the surface estate of a Lot from one legal entity to another legal entity whether or not the owner of record changes.

ARTICLE II

Reservation, Exceptions, Dedications

Section 1: Incorporation of Plat. The subdivision plat of Audubon Place, Section One, dedicates for use as such, subject to the limitations set forth therein, certain streets, rights-of-way, and easements shown thereon, and such subdivision plat further establishes certain dedications, limitations, reservations, and restrictions applicable to the Property. All dedications, limitations, restrictions, easements, rights-of-way and reservations shown on the subdivision plat, to the extent they apply to the Property, are incorporated herein and made a part hereof as if set forth fully herein, and shall be construed as being adopted in each contract, deed and conveyance executed or to be executed by or on behalf of Declarant, conveying each Lot in the Property.

Section 2. Reservation of Minerals and Waiver. The Property, and any future land made subject to this Declaration, are hereby subjected to the following reservation and exception: All oil, gas and other minerals in, on and under the hereinabove described Property are hereby excepted or reserved by predecessors in title of Declarant and which exception is made in favor of present owner or owners of such minerals as their interests may appear of record. The right to use the surface of the Property for exploring, drilling for, producing and mining oil, gas, and other minerals is subject to the rules and regulations of the City of Pearland.

Section 3. Future Incorporations. Declarant reserves the right to add to and subject additional Property adjacent or near to the Property subject to this Declaration by an amendment of the Declaration.

ARTICLE III

Property Rights

Section 1. Owner's Easements of Enjoyment. Every Lot owner who resides on the Property shall be granted an easement of enjoyment in and to the Common Open Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to grant or dedicate easements in, on, or under or the Common Open Areas or any part thereof to any public or governmental agency or authority or to any utility company or any other organization for any service to the Property or any part thereof;
- (b) the right of the Association to prevent an Owner from planting, placing, fixing, installing or constructing any vegetation, hedge, tree, shrub, fence, wall, structure or improvement or store any personal property on the Common Open Areas. The Association shall have the right to remove anything placed on the Common Open Areas

in violation of the provisions of this subsection and to assess the cost of such removal against the Owner responsible;

- (c) the right of the Declarant (and its sales agents and representatives) to the nonexclusive use of the Common Open Areas and the facilities thereof, for display and exhibit purposes in connection with the sale of Lots within the Property, which right the Declarant hereby reserves; provided, however, that no such use by the Declarant or its sales agents or representatives shall otherwise unreasonably restrict the members in their use and enjoyment of the Common Open Areas;
- (d) the right of the Association to limit the number of guests of Owners utilizing the recreational facilities and improvements owned by the Association and provided on the Common Areas;
- (e) the right of the Association to establish uniform rules and regulations and to charge reasonable admission and other fees pertaining to the use of any recreational facilities owned by the Association; and
- (f) the right of the Association to suspend the voting rights of an Owner and the Owner's right to use any recreational facility of the Association during the period the Owner is in default in excess of thirty (30) days in the payment of any maintenance charge against a Lot and to suspend such rights for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. The aforesaid rights of the Association shall not be exclusive but shall be cumulative of and in addition to all other rights and remedies which the Association may have by virtue of this Declaration or its By-laws or at law or in equity on account of any such default or infraction.
- (g) The Declarant reserves the right to use restricted reserves "A" and "B" for access and drainage purposes in a manner that it deems necessary.

Section 2. Delegation of Use. Owners subject to an easement of enjoyment in and to the Common Open Areas may delegate, in accordance with the By-laws, their right to or enjoyment of the Common Open Areas to members of their families, tenants or contract purchasers who reside in Owners' residential dwelling on a Lot in the Property.

Section 3. Waiver of Use. No Owner may be exempt from personal liability for assessments duly levied by the Association, nor release a Lot owned from the liens and charges hereof, by waiver of the use and enjoyment of the Common Open Areas thereon or by abandonment of Owner's Lot.

ARTICLE IV

Membership and Voting Rights

Section 1: Membership. Every record Owner of a Lot that 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 that is subject to assessment.

Section 2: Voting Classes. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant, and the Declarant shall be entitled to five (5) votes for each Lot owned.

ARTICLE V

Covenant for Maintenance Assessments

Section 1: Creation of the lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, 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 covenant and agrees to pay to the Association:

- (1) annual assessments or charges, and
- (2) special assessments, which are to be established and collected as hereinafter, provided.
- (3) Other assessments as required under this Article V

The annual and special assessments, together with penalty, interest, costs, and reasonable attorneys' fees, shall be a charge on the land (including all improvements thereon), and shall be a continuing and contractual lien upon the Property against which each such assessment is made, provided that the Association shall record a memorandum of lien among the land records within six months of the date such assessment became due and payable, or within such period of time as may be required by the laws of the State of Texas. Written notice of such lien shall be sent by certified mail to the owner of any such lot at his last known address at least ten days before such memorandum of lien shall be recorded. Each such assessment, together with penalty, interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment became due. The personal obligation for

delinquent assessments shall pass to his successors in title unless expressly assumed by them.

Section 2: Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, and welfare of the Members of the Association and for the improvement and maintenance of the Common Open Areas, esplanades, streets, ditches and the landscaping reserves including the improvements and landscaping thereon.

Section 3: Establishment of Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot by the Declarant to an Owner, the maximum annual assessment shall be \$440 per Lot.

Section 4: Maximum Annual Assessments.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot by the Declarant, the maximum annual assessment may be increased by the Board of Directors of the Association, without a vote of the membership, by an amount equal to twenty percent (20%) of the maximum annual assessment for the preceding year plus the amount by which any ad valorem real estate taxes and insurance premium payable by the Association have increased over amounts payable for the same or similar items for the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot by the Declarant and all subsequent years, the maximum annual assessment may be increased above twenty (20%) percent specified in this section 4, paragraph (a) by vote of at least two-thirds of all votes entitled to be cast by the members who are voting, in person or by proxy, at the annual meeting or a meeting duly called for this purpose.

(c) The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum.

Section 5: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, in any assessment year, the Board of Directors may levy a special assessment applicable only to that year for necessary purposes of the Association such as the cost of any construction, reconstruction, repair or replacement of a capital improvement including fixtures and personal property related thereto:

(a) in the Common Areas, on Common or Conservation Easements, streets, ditches or

(c) any other material, irrigation systems, security gates, lighting fixtures and the like, or counsel fees or the fees of other retained experts provided that any such assessment must have the approval of a majority vote of the members attending a meeting of the membership convened in accordance with the by-laws of the Association within sixty days of the receipt of the notice of such assessment.

Section 6. Other Assessments. In the event that the Association incurs costs or expenses of any kind for maintenance, repair of damages or other activities that are caused by the negligence or failure to act

of a member, then the HOA is entitled to full and prompt reimbursement by that member for all such costs incurred. In the event that the member does not pay, then the Association shall be able to take those actions and use those remedies outlined in this Article V.

Section 7. Rate of Assessment. All Lots within the Property shall commence to bear their applicable assessments simultaneously, and improved Lots of the Declarant are not exempt from assessment. Lots owned by or transferred to a Builder or which are occupied by residents and Lots with a residential structure owned by the Declarant shall each be subject to an annual assessment as determined by the Board of Directors pursuant to the terms of this Declaration. Vacant Lots owned by the Declarant shall be assessed at the rate of one sixteenth (1/16) of the annual assessment; however, said assessment on Declarant's vacant Lots shall be made only in the event and then only to the extent that assessments from the Lots owned by other than the Declarant are not sufficient to meet the operating budget of the Association. As used herein, the term improved Lot means a Lot on which a residential structure is located and is ready for occupancy as evidenced by the issuance of a Certificate of Occupancy by the City of Pearland, Texas.

If there is a deficit in the annual operating budget of the Association for a given calendar year, after assessment of Declarant's vacant Lots and funds are not available to the Association from prior year budget surpluses, then it is the responsibility of the Board of Directors to make up the difference through a special assessment.

Section 8. Date of Commencement of Annual Assessment. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to an Owner or a transfer of a Lot by Declarant to a Builder. 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 sent to each Owner subject thereto. The due 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 or not the assessments on a specified Lot have been paid.

Section 9: Notice and Quorum for any Action Authorized Under Section: 3, 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under section 3, 4 or 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast thirty-seven percent (37%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10: Uniform Rate of Assessment. Except as otherwise provided in sections 3 and 6 of this Article III, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected in advance on an annual basis.

Section 11: Effect of Non-Payment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be subject to a late fee of ten per cent (10%) of the assessment, or twenty Dollars (\$20.00), whichever is greater or such other amount as shall be determined by the Board. Further, the unpaid assessment shall bear interest from the due date at the maximum legal rate of interest allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot (and all improvements thereon). No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 12: Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 13: Reserves for Replacements. The Association may establish and maintain a reserve fund for the replacement of the improvements in the Common Areas and the structures for which the Association has maintenance responsibilities, by the allocation and payment annually to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the association and may be deposited in any banking institution, the accounts of which are insured by any State or by an agency of the United States of America or may, at the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements of the improvements to the Common Areas and the structures for which the Association has maintenance responsibilities, may be expended only for the purpose of effecting the replacement of lighting, and landscaping, irrigation system and other improvements constructed or installed in the Common Areas or the structures for which the Association has maintenance responsibilities, major repairs to any such improvements, and for expenses and operating contingencies of a non-recurring nature relating to the Common Areas and the structures for which the Association has maintenance responsibilities. The Association may establish such other

reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 14: Exempt Property. Any portion of the Property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all portions dedicated to and accepted by a local public authority, or owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas
- (b) the Common Open Areas.

However, no land or improvements devoted to dwelling use shall be exempt from said assessment.

ARTICLE VI

Architectural Control

Section 1: Architectural Approval. The Property is a gated subdivision located next to the City of Pearland's Southwest Environmental Center. The overall plan for the development of the subdivision contemplates centralization of architectural review to enhance, insure and protect the attractiveness, beauty and desirability of the area while at the same time permitting compatible distinctiveness of homes in the subdivision. This plan also applies to the plant, landscaping and water control to promote and establish wildlife habitats and sources of food that will be in harmony with the whole subdivision and a complement to the adjoining park and environmental center. Further, it is the objective of the Declarant to give special consideration to plans, designs and building methods that promote energy and resource conservation such as but not limited to the use of solar energy whether passive or active. Declarant hereby reserves and retains the right of architectural, landscaping and site review to itself or its assignee as hereinafter provided in order to ensure that the overall plan for development is followed and fulfilled.

Declarant shall initially appoint an Architectural Review Committee, consisting of not less than three (3) members, who need not be members of the Association, and who by majority vote may designate a representative to act for them. Any vacancy shall be filled by a successor appointed by the Declarant; until such successor(s) shall have been appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plot plans submitted or to designate a representative with like authority. Declarant retains the exclusive right to review and approve or disapprove all plans and specifications for original construction on the Property.

It is accordingly covenanted and agreed that no building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or

alteration therein be made (including change in color) nor shall any substantial alteration in landscaping, grading or planting on any lot be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall be submitted to and approved in writing as to adherence to the overall plan, harmony of external design and location in relation to surrounding structures, topography, and landscape design, by the Board of Directors of the Association, or by the Architectural Review Committee. The Board may determine to provide reasonable compensation to a member of the Architectural Review Committee.

In the event the Board, or its designated Committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to the Committee or the Board, approval will not be required and this Article will be deemed to have been fully complied with.

All plans and specifications shall be submitted in writing over the signature of the Owner of the Lot or the Owner's authorized agent. The Committee shall have the right to require any Owner to remove or alter any structure that has not received approval or is built other than in accordance with the approved plans. Approval of plans as complying with the applicable Minimum Construction Standards adopted and promulgated from time to time for the Property by Declarant or its assigns or representatives, shall be only for such purposes and shall not serve as approval for any other purpose.

Declarant hereby reserves and retains the right at its option to assign its rights hereinabove set forth to an architectural Review Committee appointed by the Association. In the event Declarant elects to assign such rights of approval, such assignment shall be evidenced by an instrument in writing and acknowledged by the proper officers of Declarant and placed of record in the Land Records of Brazoria County, Texas.

Section 2: No Liability. Neither Declarant, the Association, its Board of Directors, nor the Architectural Review Committee or the members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of a Lot affected by these restrictions by reason of mistake in judgement, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Committee for approval agrees by submission of such plans and specifications, and every Owner agree, that no action or suit for damage will be brought against Declarant, the Association, its Board of Directors, the Architectural Review Committee or the members thereof.

Section 3: Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date of issuance of a building permit by municipal or other governmental authority for any improvement, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article VI unless actual notice of such noncompliance or noncompletion, executed by the Committee, or its designated representative, shall appear of record in the Land Records

of Brazoria County, Texas, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 4: Rules and Regulations. The Architectural Review Committee may from time to time, in its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of this Article VI.

Section 5: Variances. The Architectural Review Committee, by the vote or written consent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of such committee pursuant to this Article VI, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property.

Section 6: Appeals. Any approval or disapproval of uses other than the permitted uses set forth above may be based on purely aesthetic grounds and shall be at the discretion of the Committee. An Owner or the Declarant may appeal a decision of the Architectural Review Committee by submitting in writing to the Board of Directors a detailed report explaining why they feel that the decision of the Architectural Review Committee was not correct. The Board of Directors, at its sole discretion, shall review the report and advise the Owner of its reversal or support of the Architectural Review Committee's decision. This report must be submitted no later than thirty (30) days after receipt by the Owner of the ruling of the Architectural Review Committee that is being appealed. If not offered within this period, there will be no further appeal available to the Owner.

ARTICLE VII

Use Restrictions

The Audubon Place Subdivision is limited to traditional style homes constructed entirely of high quality materials. To this end, for example, a wall made of materials such as aluminum or vinyl siding is strictly prohibited. Prefabricated or modular homes are also strictly prohibited. In addition to all other covenants contained herein, the use of the property and each Lot therein is subject to the following:

Section 1: Single Family Residential Construction. The Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a single family dwelling, except that a professional office may be maintained in a dwelling, and provided that such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. As used in this Section, the term "professional office" shall mean rooms used for office purposes by a member of any recognized profession, including

doctors, dentists, lawyers, architects and the like, but not including medical or dental clinics or a law office. Further, an Owner of one or more adjacent Lots may consolidate his or her Lots under Section 8 of this Article VII and then submit a plan as required under Article VI of this Declaration. In this case, his or her consolidated Lot is considered as one (1) Lot for purposes of this Article VII. Nothing contained in this Article VII or elsewhere in this Declaration shall be construed to prohibit the Declarant or a participating Builder from the use of any Lot or dwelling, or improvement thereon, for promotional or display purposes, or as "model homes", a sales office, a construction office, or the like.

Section 2: Improvements. No structure shall be erected, altered, placed or permitted to remain on any Lot, other than one detached single family primary dwelling, with private swimming pool, tennis court or other recreational facilities, garden or storage sheds, barn and private garages for not more than four cars. The approval for the construction or alteration of any building or structure, including fences, shall be obtained from the Architectural Review Committee pursuant to Article VI of this Declaration.

Section 3: Minimum Square Footage. All residential structures shall have a finished living area, exclusive of porches, patios, balconies, terraces, decks, pools, breezeways, and garages, of not less than 2800 square feet, unless specifically authorized otherwise by the Architectural Review Committee and the Board of Directors.

Section 4: Prohibition of Offensive or Commercial Use. Except as may be permitted by Section 1 of this Article VII, no part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, except Declarant or a Participating Builder may use the Property for model home sites, and display and sales offices, and construction offices during the construction and sales period.

Section 5: Building and Roofing and Landscaping Materials. Except as otherwise permitted in this Article:

- (a) The predominant exterior materials of the main residential structure, the garage and any other secondary structures whether attached or detached, shall be masonry, stucco, stone or wood or a similar quality material approved by the Architectural Review Committee. No single family construction, private garage or any other structure located on the Property shall be permitted to have a heating or cooling device located in a window or any other opening which can be viewed from any portion of the Property. Heating and cooling devices may be used in windows or other openings of any structure used by Declarant or a Builder during the completion and sale of all construction of this subdivision.
- (b) Roofing materials may include composition shingles having a minimum weight classification of 320 pounds per square, slate, clay or concrete tiles. Composition shingle roofs may be comparable in color to weather wood shingles and comparable in surface textural

appearance to wood shingles. Colors for slate, clay or concrete tile roofs shall be approved individually by Declarant or its assignee. Any other type of roofing material shall be permitted at the sole discretion of the Declarant or its assigns upon written request.

- (c) In as much as possible, native and indigenous plants shall be used in landscaping and plantings throughout the Property with emphasis on plants and trees that provide food and shelter to wildlife.

Section 6: Location of Improvements upon Lots. No building shall be located on any Lot nearer to the front line nor nearer to the adjacent side Lot lines than the minimum building setback lines shown on the recorded plats and set forth in these Covenants and Owners' Guides.

Building setbacks from interior side lot lines shall be subject to the following provisions:

(a) Subject to the provisions of Article VI, Sections 1 and 5 and section 7 of this Article, no building shall be located nearer to side lot lines than shown on the Plat or specified in the Owners' Guide. For the purpose of this provision, eaves, steps, box-type windows and unroofed ground level terraces shall not be considered as part of a building, provided, however, that this shall not be construed to permit any improvement within the specified side or rear lot line setbacks or upon another Lot.

(b) Lot lines adjacent to reserve areas are to be considered as interior lot lines and are subject to the same provisions and set backs as interior lot lines.

Section 7: Deviations. Declarant at its sole discretion, is hereby permitted to approve deviations in these restrictions on building area, location of improvements on Lots and building materials in instances where in its judgement, such deviations will not adversely affect the development of the property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions.

Section 8: Composite Building Sites and Re-Subdividing. Any Owner of one or more adjoining Lots may consolidate such Lots into one (1) building site, with the privilege of placing or constructing improvements on such resulting site, in which event setback lines shall be measured from the resulting side property lines rather than from the lot lines as indicated on the recorded plat. Any such composite building site must have a frontage at the building setback line of not less than the minimum frontage of lots on the recorded plat of Audubon Place, Section One. Any revision of lot sizes may be made only with written approval of Declarant. Subdividing or re-subdividing of any Lot, including a consolidated Lot, is not allowed without the prior written approval of the Declarant.

Section 9: Utility Easements. Easements for installation and maintenance of utilities are reserved as shown on the recorded plat, and no structure shall be erected on any of such easements. Neither

Declarant nor any utility or other company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or contractors to shrubbery, trees, flowers or improvements located on the land covered by such easements.

Section 10: Encroachments. The Owner of each Lot within the Property is hereby declared to have a Universal Easement, and the same is hereby granted to the Declarant, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners.

Section 11: Maintenance Easements. All Lots shall hereby be conveyed subject to a three (3) foot wide easement adjacent to any wall, fence, hedge or other structure on any Lot the maintenance of which is the responsibility of the Association. The right to create, grant and reserve such easements is hereby reserved by Declarant for itself and its successors and assigns in interest. The following rules prescribe the terms, conditions and uses of such easements, both by the Owner of the easement (the dominant tenement) and the Owner of the land under the easement (the servient tenement).

- (a) The Declarant Owner of the easement, except as otherwise provided for in this Section, shall have the use of the surface of the easement for the sole and only purpose of the maintenance, painting, repairing, rebuilding of any wall or structure or the trimming, planting or landscaping of any plantings that are situated adjacent and abutting to the easement area and are the maintenance responsibility of the Association.
- (b) The Owner of the land under the easement (the servient tenement), shall have the right at all reasonable times to enter upon the easement area for normal residential use including maintaining the lawn and/or trees located within such easement area, the maintenance of which shall be the obligation of the servient tenement.
- (c) The Owner of the servient tenement shall have the right of surface drainage over, along and upon the easement area for water resulting from the normal use of the servient tenement and the dominant tenement shall not use the easement area in such a manner as will interfere with such drainage.
- (d) No structure shall be constructed or placed upon the easement by either the Owners of the dominant or servient tenement.
- (e) The Owner of the dominant tenement as a condition to the exercise of the right of access provided for, shall indemnify and hold harmless the Owner of the servient tenement from damage to shrubs, plants, flowers, trees, lawn, sprinklers, hose bibs, and other landscaping directly resulting from the exercise of such right.
- (f) The Owner of the servient tenement shall indemnify and hold harmless the Owner of the dominant tenement from damage to the wall, plantings and/or buildings or other property located on the

dominant tenement which damage is caused by any use of the easement area by the servient tenement.

The aforesaid maintenance easements will continue so long as completed dwellings or dwellings under construction remain on any Lots.

Section 12: Electrical Distribution Service. An underground electrical distribution service will be installed in the Property, in a service area that will embrace all of the lots that are platted on the Property. The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's installed transformers or energized secondary junction boxes, the point of attachment to be made available by the electric company at a point designated by such company at or within the property line of each lot.

Declarant has either by designation on the plat or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electrical distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. For so long as this service is maintained in the Property, the electric service to each dwelling shall be underground.

Easements for the underground service may be crossed by driveways and walkways provided the Lot Owner makes prior arrangements with the utility company furnishing any utility service occupying the easement and provides and installs the necessary conduit of an approved type and size under such driveway or walkways prior to construction thereof.

Such easement for the underground service shall be kept clear of any other improvements, including buildings, patios or other paving, and neither the Declarant nor the 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 other improvements (other than crossing driveways or walkways providing conduit has been installed as outlined above) of the Lot located on the land covered by such easements.

Section 13: Drainage Easements. A drainage easement of twenty (20) feet has been granted on each lot to each adjacent lot. The side lot line shall be the centerline of this easement. This easement and the conditions related to it are shown in the general notes at 4, 5 and 10 on the Plat of Audubon Place, Section One, as recorded in the land records of Brazoria County.

Section 14: Audio and Video Communications Service. In the event that audio, video or other communications and information services and facilities are made available to any Lot by means of an underground coaxial, fiber or other type of underground cable system, there is

hereby reserved to the company furnishing such services and facilities a two (2) foot wide easement along and centered on the underground wire or cable when and as installed by the company furnishing the service in a location parallel to the utility easement closest to the point of connection on the permanent improvement or structure constructed, or to be constructed, upon the Lot but within the indicated utility easement at the front of all Lots as shown on the plat of the Audubon Place, Section One, subdivision as recorded in the Land Records of Brazoria County, Texas.

Section 15: Signage. No sign, advertisement or billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot, except one (1) sign for each building site, of not more than twenty-eight (28) inches by thirty-eight (38) inches, advertising property for sale or rent, except signs used by the Declarant or a Participating Builder to advertise the Property during the construction and sales period. The Declarant and the Association shall have the right to remove any signs, advertisements or billboards or structure which is placed on said Lot or Property in violation of this Section and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

Section 16: Offensive Activities. No noxious or offensive activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way unreasonably interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.

Section 17: Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence either temporarily or permanently, except for Declarant's construction purposes, or a Participating Builder upon written approval from Declarant or the Board of Directors. Such structures shall be inconspicuous and attractive and shall be removed at completion and sale of all construction of this subdivision. Outbuildings or structures, whether temporary or permanent, used for accessory, playhouse, animal shelter, storage or other purposes shall be approved in accordance with Article VI, Section 1 of this Declaration.

Section 18: Parking and Storage of Automobiles, Boats, Trailers, other Vehicles and Equipment. No commercial vehicle, unlicensed vehicle or vehicle with expired tags shall be permitted to remain upon any Lot within the Property unless fully enclosed within a garage or similar fully enclosed structure. Except in connection with construction activities, no automobiles, boats, trailers, campers, trucks, trailers, recreational vehicles, boats, buses, inoperative vehicles of any kind, camp rigs off truck, or boat rigging and other large vehicles, including grounds maintenance equipment, may be parked or stored permanently or semi-permanently on any portion of the Common Open Areas, any public or private street right-of-way, or any portion of a Lot in front of the front plane of the house on the Lot in question.

Parking of all such vehicles shall be in garages or screened enclosures approved by the Architectural Review Committee. For the purposes of these restrictions, the words "semi-permanent" shall be defined as remaining in the same location without movement for forty-eight (48) or more consecutive hours. No eighteen wheel vehicles and other similar large van or flat-bed type vehicles may be parked on any public or private street right-of-way, front yard area or on driveways except to deliver or pick up merchandise or other materials to and from residents or construction sites. The Board of Directors shall have the right to tow any vehicles(s) at owner's expense; the keeping or parking of which violates this Declaration upon forty-eight (48) hours' notice.

Section 19: Junk Vehicles. No junk vehicle or other vehicle on which current registration plates are not displayed, shall be kept within any Lot nor shall the repair or extraordinary maintenance of automobiles or other vehicles or equipment be carried out on any of the Lots unless within a garage or enclosed structure approved by the Architectural Review Committee.

Section 20: Animals. Animals other than dogs, cats or other household pets may be kept on a Lot subject to any city and County regulations and to such rules and regulations as may be adopted from time to time by the Association and provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the Property, which result in an annoyance or are obnoxious to residents in the vicinity. Animals are not permitted to roam the Property and must be controlled on a leash other means if they are not on a Lot. Any animal owner must also provide proper structures to control the activities of and provide adequate shelter for any and all animals. Such structures are subject to all of the requirements of Article VI of this Declaration.

Section 21: Exterior Lights. No exterior lighting shall be directed at a neighbor's house or Lot.

Section 22: Trash Collection. All rubbish, trash and garbage shall be kept in sanitary refuse containers with tightly fitting lids and shall be regularly removed from the lots and not be allowed to accumulate thereon. All clotheslines, refuse containers, storage areas and machinery and equipment shall be prohibited upon any Lot, unless obscured from view of adjoining Lots and streets by a fence or appropriate screen approved by the Architectural Review Committee, or unless fully enclosed within a garage or similar fully enclosed structure.

Section 23: Abiding by Rules and Regulations. All Owners and occupants shall abide by the By-laws and any rules and regulations adopted by the Association.

Section 24: Rental Leases. Any lease agreement between a Lot Owner and a lessee shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, the Bylaws, and any rules and regulations of the of the Association, and that any failure by the lessee to comply

with the terms of such documents shall be a default under the lease. All such leases shall be in writing and shall have attached to them the pertinent rules and regulations of the Association. No rental agreement shall be for a period of less than six (6) months unless part of an earnest money purchase contract agreement.

Section 25: Walls, Fences and Hedges. The intent of this section is to minimize the obstruction of overviews within the Property while at the same time providing for the privacy of Owners and Members of the community in areas where such privacy is desired. All walls, fences, planters and hedges shall be controlled strictly for compliance with the general intent and the specific requirements of this Declaration and the architectural standards established by the Declarant or the Architectural Review Committee. Any line fence shall be of an open construction and no more than the specified height and shall not interfere with any easements such as drainage easements granted under section 13 of this Article. Any hedge, tree line or combination structure planted within twenty-five (25) feet of any lot line shall not be allowed to grow to a height over five feet. It is the responsibility of the Owner of the Lot to maintain any such hedge, tree line or combination structure at the appropriate height of five feet.

No chain link fence shall be erected on any lot, except for the purpose of enclosing a tennis court or other use for which a municipality or governmental authority requires chain link fencing and unless approved by the Architectural Review Committee. Taller fencing or privacy walls are allowed closer to the main residences and other structures to provide the necessary privacy. Such structures are subject to the requirements of Article VI, Section 1 of this Declaration. Owners shall abide by the guidelines, rules and regulations issued from time to time by the Architectural Review Committee when planning for any type of blocking structure.

All fencing shall be maintained to a fence standard equivalent to original construction and all fencing must be consistent with this Declaration and the architectural standards established by the Declarant or the Architectural Review Committee.

Section 26: Antennae. Subject to Section 13 of this Article, no electronic, radio, television or any other type of transmitting type of antenna or device for receiving or transmitting signals of any type shall be constructed, erected, placed or permitted to be remain on any Lot or any residential dwelling, outbuilding or any other structure unless it is located at the rear of the residential dwelling or to the rear of the roof line, gable or center line of the dwelling or structure so as to be completely hidden from sight when viewed from either the fronting or siding streets or areas on corner Lots. No electronic, radio, television or any other type of transmitting or receiving device or antenna shall be constructed, erected, placed or permitted to remain on any Audubon Place, Section One Lot unless such antenna or device is placed in such a manner that from a street, adjacent lot or from any portion of the Property, no portion is visible from a height of six (6) feet. No ham radio or oversized satellite communications equipment shall be placed or maintained anywhere within

the Audubon Place Subdivision. This does not prohibit the Declarant from erecting structures in utility easements or other areas as required for purposes of communications and other services, as the Declarant may deem necessary.

Section 27: Visual Screening. All clotheslines, equipment, garbage cans, service yards, woodpiles, refuse containers, or storage piles and household projects such as equipment repair and construction projects shall be screened by adequate planting or fencing so as to conceal them from view of neighboring lots, streets, parks and public areas. Nothing herein shall be deemed to apply to the storage on the Property by Declarant or a Participating Builder of building materials during, and for use in, the construction of the improvements on the Property.

Section 28: Removal of Soil and Trees and Conservation Easement. The digging of soil or the removal of soil from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on said Lots and then, only according to approved grading and landscaping plans. No trees shall be cut except to provide room for construction of improvements or to remove dead or unsightly trees and then only following the obtaining of written approval for such cutting or removal by the Declarant or the Association, given in their sole discretion. The Declarant has expressly reserved a conservation easement across the back twenty-five (25) feet of all Perimeter Lots in the Property. No plant removal or planting may occur within this easement area without the written approval of the Declarant or the Association, given in their sole discretion.

Section 29: Enforcement. In the event of default on the part of the Owner or occupant of any Lot in the Property in observing any or all of the requirements herein set forth, such default continuing after ten (10) days written notice thereof, the Declarant or the Association may, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot to cut, or cause to be cut, such weeds and grass, and remove or cause to be removed, such garbage, trash 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. All costs related to such correction, repair or restoration shall be charged to the Owner or occupant. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's and continuing contractual lien shall be retained by Declarant and collected at the time of conveyance of each Lot in favor of Declarant or the Association. Such vendor's and contractual lien shall be applicable and effective whether mentioned specifically or omitted in each conveyance of a Lot. Any such lien shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect such lien. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish any such lien as to payments that became due prior to any such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter

becoming due or from the lien thereof. No amendment to this Article VII shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby) recorded prior to the recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 30: Sales and Marketing Exemption. None of the foregoing restrictions shall be applicable to the activities of the Declarant, its officers, employees, agents or assigns, in their development, marketing and sale of Lots or other parcels within the Property or to a Participating Builder during the construction of a residence on a Lot located on the Property.

Section 31: Upon direction by the Board, regarding specific concerns and during reasonable hours, the Declarant, any member of the Architectural Review Committee, or member of the Board of Directors, or any other representative of any of them, shall have the right to enter upon and inspect any Lot for the purpose of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

ARTICLE VIII

Exterior Maintenance

Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. Any areas that are established as natural habitats are exempt from any mowing requirements. Such areas must, however, be kept neat and clear of any debris or dead plant materials.

ARTICLE IX

Duties and Management of the Association

Section 1: Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and By-laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain and otherwise manage all Common Open Areas, conservation easements and all facilities, streets, improvements and landscaping thereon, and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against Common Open Areas.
- (c) Have the authority to obtain, for the benefit of all of the Common Open Areas, landscaping reserves and esplanades, all water, gas and electric services and refuse collection.

- (d) Maintain such policy or policies of insurance as the Board of Directors of the Association may deem necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.
- (e) Have the authority to employ for the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing. In the event any management agreement is entered into by the Association, it shall provide, inter alia, that such agreement may be terminated for cause by either party upon thirty (30) days written notice thereof to the other party and without cause upon ninety (90) days written notice to the other party and without any termination fee. The term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.
- (f) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association.
- (g) Have a duty to landscape, mow and maintain the landscaping upon the Common Open Areas, conservation easements, landscaping reserves, streets and esplanades and the duty to maintain perimeter walls, landscaping, lighting and gates at the entrance to the Property, including rights of way, greenbelt buffers and perimeter hedges.
- (h) Have a duty to keep clean and in good repair all streets, curbs and related structures.

Section 2: Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas, streets or from Structures for which the Association is responsible or has a responsibility to maintain, or from any wire, pipe, drain, conduit or the like. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or from structures for which the Association is responsible or has a responsibility to maintain, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE X

Utility Bills, Taxes and Insurance

Section 1: Obligation of Owners.

- (a) Each Owner shall have separate electric, gas, and water meters and shall directly pay for all electricity, gas, water, sanitary sewer service, telephone service, security systems,

cable television and other utilities used or consumed by the Owner.

- (b) Each Owner may directly render for taxation Owner's Lot or Lots and improvements thereon, and shall at Owner's expense directly pay all taxes levied or assessed against or upon Owner's Lot or Lots.

Section 2: Obligation of the Association.

- (a) The Association shall pay as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Open Areas, esplanades, conservation easements, rights of way and landscaping reserves and the improvements and the property pertaining thereto.
- (b) The Association may render for taxation and, as part of the expenses of all Owners, shall pay all taxes levied or assessed against or upon the Common Open Areas, esplanades, conservation easements, rights of way and landscaping reserves and the improvements and the property pertaining thereto.
- (c) The Association shall have the authority to obtain and continue in effect as a common expense to all Owners, a blanket property insurance policy or policies to insure the structures and facilities upon the Common Open Areas, esplanades, conservation easements and rights of way and the contents thereof and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such amounts as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such amounts as it may deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Open Areas, esplanades, conservation easements, rights of way and landscaping reserves. The Association shall also have the power to purchase any other type of insurance that it deems prudent to take out to protect the welfare of the Association, its Board of Directors and Members.
- (d) All Costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid as common expense of all Owners and shall be paid out of the assessments.

ARTICLE XI

Mortgagee Protection; Management Agreements;
Reserve Funds

Section 1: Notice to First Mortgagees. Upon written request to the Association at the address of the Association's registered agent filed

with the Secretary of State for the State of Texas, all holders of first mortgage liens on Lots, hereinafter called "First Mortgagees" shall be entitled to:

- (a) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year;
- (b) upon request, receive notice of any default in the performance by the First Mortgagee's mortgagor of any obligation under this Declaration, the By-laws or Articles of Incorporation of the Association which is not cured within sixty (60) days;
- (c) receive any notice of any abandonment or termination of the development; and
- (d) receive notice of any material amendment to this Declaration, or to the By-laws or Articles of Incorporation of the Association

Section 2: Management Agreements. Any management agreement will be terminable by the Association without payment of a termination fee with cause upon thirty (30) days written notice, or without cause by either party on ninety (90) days written notice. The terms of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

General Provisions

Section 1: Enforcement. The Association, or any owner, or any mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or Bylaws of the Association. Failure by the Association or by any Owner or by any mortgagee of any Lot to enforce any covenant or restrictions herein contained or any provision of the By-laws or the Articles of Incorporation of the Association shall in no way be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the terms and conditions within the covenants or restrictions or any provision of the By-laws or Articles of Incorporation of the Association cannot be adequately remedied by action at law or exclusively by recovery of damages. The Board of Directors of the Association shall have the power to seek injunctive relief from the appropriate court with jurisdiction against any member for any violation of the Declaration or the rules and regulations for which the Member or his family members, tenants, guests or other invitees are responsible. Before such injunctive relief is sought, the Member shall be given an opportunity to be heard and to be represented by counsel before the Board of Directors. Notice of a hearing shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the Member at the address of record with the Association at least fourteen days prior to the hearing. The Board of Directors may ask the court for the attorney's fees and costs associated with their action to enforce this section.

Section 2: Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no manner affect any other provisions, which shall remain in full force and effect.

Section 3: Duration. Except where permanent easements or other permanent rights or interests are herein created, the Covenants and Restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years each.

Section 4: Amendments.

(a) Subject to the other limitations set forth in this Declaration, prior to the lapse of all of the Class B memberships in the Association, as in Article III provided, this Declaration may be amended only by an instrument executed and acknowledged by two-thirds (2/3) of the votes in the Association, which instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Subject to the other limitations set forth in this Declaration. Following the lapse of all the Class B memberships in the Association, as in Article II provided, this Declaration may be amended by an instrument executed and acknowledged by not less than fifty per cent (50%) of the votes in the Association, which instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording; provided, however, that no amendment shall be effective unless it is executed by at least one Class A member.

Deeds of conveyance of Lots may contain the above restrictive covenants by reference to this document, but whether or not such reference is made, each and all of such restrictive covenants shall be valid and binding on the respective grantees.

(b) The Declarant reserves the right during the Development Period, without joinder or consent of any Owner or mortgagee, to amend this Declaration or the By-laws by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with any governmental agency or municipality, provided that no such amendment shall change the vested property rights of any Owner, except as otherwise provided herein.

Section 5: Annexation. Additional property immediately adjacent may be annexed to the property described herein by the Declarant acting alone without the consent of the Class A members of the Association.

Any annexations made pursuant to this Section, or otherwise, shall be made by recording a Supplementary Declaration of Covenants and Restrictions among the Land Records for the jurisdiction in which this Declaration is recorded, which Declaration shall extend the scheme within the Declaration of Covenants and Restrictions to such annexed

property, or by the recordation of a deed of dedication or deed of subdivision for such additional property or any portion thereof which shall by its terms subject such additional property to the operation of the provisions of this Declaration. For so long as there shall be a Class B member, no annexation shall be accomplished without the consent of the Class B member. Following such time as the Class B member shall cease to own any Lots in the Subdivision, annexations to the Property shall require the consent of two-thirds (2/3) of the Class A members.

Section 6: Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matter to the end that inspection of the books and records by any Member will not become burdensome to or constitute harassment of the Association. The Declaration, the Articles of Incorporation and By-laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 7: Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person or entity who appears as Owner on the records of the Association at the time of such mailing.

Section 8: Good Faith Lender's clause. Any violation of these covenants, conditions or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot, which liens may be enforced in due course, subject to the terms of this Declaration.

Section 9: Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation. The surviving or consolidated association shall administer the covenants, conditions and restrictions contained in this Declaration, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

ARTICLE XII

Easements, Etc.

This section is included to outline and list those easements granted or reserved in these Covenants.

Section 1: General Easement. The Declarant reserves the right and easement to the use of all areas owned or to be owned by the Association, and any Lot or any portion thereof, as may be needed for repair, maintenance or construction on such Lot or any Lot or any Common Area.

Section 2: Crossover Easement. If the Owner (including the Declarant and any Participating Builder) of any Lot must, in order to make responsible repairs or improvements to a building on his Lot, enter or cross any area owned or to be owned by the Association, or a Lot of another Owner, such Owner shall have an easement to do so, providing that said Owner shall use the most direct, feasible route in entering and crossing over such an area and shall restore the surface so entered or crossed to its original condition, at the expense of said Owner, and further provided that such easement shall not exist on the land of any other Lot Owner if the purpose for such entrance or crossing is one requiring, by virtue of Article IV of this Declaration, approval of either the Board of Directors or the Architectural Review Committee of the Association, unless such approval has been given.

Section 3: Blanket easement. An easement is hereby retained in favor of Declarant, any Participating Builder and the Association over Lots and any area owned or to be owned by the Association for the construction of a common cable television system, a common sprinkler, or any other item for the common enjoyment and/or benefit of the owners. An easement is further granted for the purpose of the repair and maintenance of any item so constructed. Any entry upon any Lot or any area owned or to be owned by the Association to effectuate the foregoing purposes shall not be deemed trespass. Each Owner covenants not to damage or destroy any portion of an item so constructed and shall hold the Association and/or Declarant and/or Participating Builder harmless from the cost of repairing or replacing any portion damaged or destroyed by such owner, his family, his guests or invitees.

Section 4: Sanitary, Storm Sewer and Water Easements. For so long as Declarant is the Owner of any Lot, Declarant reserves to itself the right to grant to any other governmental body or agency thereof, sanitary, storm sewer, storm drainage, water line, fire hydrant and other easements as may be required or requested by such governmental body or agency thereof on any Lot.

Section 5: Easement and Right of Entry of Law Enforcement Officials, Etc. An easement and right of entry through and upon the Property is hereby granted to law enforcement officers, rescue squad personnel, fire fighting and other emergency personnel of the jurisdiction in which the Property is located, and to vehicles operated by said personnel while in the pursuit of their duties. Said emergency personnel shall also have the right of enforcement of cleared emergency vehicle access on roadways and driveways on the Property.

Section 6: Utility Easements. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, roof drains and other drainage systems connected directly to storm sewer, drainage and sanitary sewer lines and facilities and the like as well as other service providers are hereby reserved by Declarant, together with the right to grant and transfer the same. Declarant also reserves the right to enter onto all Common Areas for the purpose of completing improvements thereon, and on the Lots, and for the further purpose of carrying out the repair of any defects in workmanship or materials in the Property or the improvements thereon.

The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities in favor of the Association shall be governed by the following:

(a) Whenever water, sanitary sewer, roof drains connected directly to storm sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property, the Owner of any Lot, or the Association shall have the right, and are hereby granted an easement to the extent necessary therefore, to enter upon or have a utility company enter upon any portion of the Property in which said installation lie, to repair, replace and generally maintain said installations.

(b) The right granted in subparagraph (a), above, shall be only to the extent necessary to entitle the Owner or the Association serviced by said installation to its full and reasonable use and enjoyment provided further that any one exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

Section 7: Drainage Easement. Each Owner covenants to provide such easements for drainage and water flow as the contours of the Property and the arrangement of buildings by Declarant thereon require. Declarant reserves an easement over all Lots and Common Areas for the purpose of correcting any drainage deficiency. In addition, Declarant has granted drainage easements along all side lot lines as indicated in general note ten (10) on the Audubon Place, Section One Plat as recorded in the land records of Brazoria County.

Section 8: Common Open Area Access Easement, Easement of Enjoyment. Each Lot Owner within the Property is hereby granted an access easement to the Common Areas of the Property subject to the Articles and By-laws of the Audubon Place Homeowners Association, the Declaration of Covenants, Conditions and Restrictions as declared herein and the rules and regulations of the Audubon Place Homeowners Association as established by the Board of Directors of the Audubon Place Homeowners Association.

Section 9: Encroachment Easement (Universal Easement). Each Lot within the Property is hereby declared to have an easement, not exceeding one foot (1 ft) in width, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, driveways, architectural or other appendages, draining of rainwater from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said

encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they exist.

Section 10: Conservation Easement. A conservation easement has been granted to and reserved by the Declarant along the back twenty-five (25) feet of all lots in the subdivision. No member or builder is allowed to erect any structure, plant or remove any plantings within this easement area without the express written approval of the Declarant. The Declarant has reserved this easement area to preserve existing plants and vegetation and to establish a buffer or privacy zone for the subdivision. The Declarant further reserves the option of establishing paths and walkways within this conservation easement that are consistent with the overall plans of the community and the subdivision.

ARTICLE XIII

Dissolution of the Association

The owners of Lots shall not dissolve or disband the Association, nor shall the Association dispose of any common open space by sales, or otherwise, except as provided for under Article IX, section 6, without first offering to dedicate the same to the jurisdiction in which the Property is located, or such other appropriate governmental agency.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on the ____ day of _____, 1998.

Kirby Run Associates, LLC

By: _____
Pierre L. Nys
Manager

ACKNOWLEDGMENTS

I, the undersigned authority, a Notary Public in and for the State of Texas, do hereby certify that on the ____th day of _____, 1998 personally appeared Pierre L. Nys and who being by me each first duly sworn, each declared that he is one of the persons who signed the foregoing instrument as the manager of the Kirby Run Associates, LLC, the Declarant and that the statements therein are true.

Notary Public in and for
The State of Texas