



# TEXAS GENERAL LAND OFFICE

## COASTAL EASEMENT NO. CE20010286

By virtue of the authority granted by Chapter 33 of the Texas Natural Resources Code, Title 31 of the Texas Administrative Code, all amendments thereto, all other applicable statutes, and subject to all rules and regulations promulgated pursuant thereto, the State of Texas (the "Grantor"), acting by and through the Commissioner of the General Land Office (the "GLO") as Chairman of the School Land Board (the "Board") on behalf of the Permanent School Fund (the "PSF"), hereby grants to the grantee (the "Grantee") named under the "Grantee Name" section of Attachment A, the Control Page, the right to use a tract of state-owned real property (the "Premises"), which property is described in the "Premises" section of Attachment A and further depicted in Attachment B, for the purposes described in this agreement (the "Agreement")

### ARTICLE I: INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms,
- (b) The words "hereof," "herein," "hereunder," and similar words refer to this Agreement as a whole and not to any particular provision, section, Attachment, or schedule, unless otherwise specified,
- (c) The term "including" is not limiting and means "including without limitation" and, unless otherwise expressly provided in this Agreement, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation,
- (d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement,
- (e) All attachments within this Agreement, including those referenced by incorporation, and any amendments are considered part of the terms of this Agreement,
- (f) This Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms,
- (g) Unless otherwise expressly provided, reference to any action of the Grantor or by the Grantor by way of consent, approval, or waiver shall be deemed modified by the phrase "in its/their sole discretion." Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the Grantor shall not be unreasonably withheld or delayed,
- (h) All due dates and/or deadlines referenced in this Agreement that occur on a weekend or holiday shall be considered as if occurring on the next business day,
- (i) All time periods in this Agreement shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received, and
- (j) Time is of the essence in this Agreement

### ARTICLE II: GRANTING CLAUSE

**2.01 GRANTING CLAUSE** IN CONSIDERATION OF THE PAYMENTS STATED IN ARTICLE IV OF THIS AGREEMENT AND OTHER CONSIDERATION STATED THEREIN, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND ACCORDING TO THE COVENANTS AND COMMITMENTS HEREIN AGREED TO BE KEPT AND PERFORMED BY THE GRANTEE, THE GRANTOR GRANTS TO THE GRANTEE THE RIGHT TO USE THE PREMISES FOR THE PURPOSES AND UNDER THE CONDITIONS AND OBLIGATIONS DESCRIBED IN THE FOLLOWING SECTION OF THIS AGREEMENT

**2.02 SCOPE OF GRANTING CLAUSE.** THE GRANTEE'S USE OF THE PREMISES IS SUBJECT TO COMPLIANCE WITH THE FOLLOWING COVENANTS, OBLIGATIONS, AND CONDITIONS

- (a) Use The Premises may be used by the Grantee solely for those uses specified under the "Use(s) of Premises" section of Attachment A and for no other purpose. Except as otherwise provided in this Agreement, the Premises are to remain in their current topographical and hydrologic condition during the term of the Agreement. The Grantee is specifically prohibited from modifying the Premises in any manner not authorized in this Agreement and from using, or allowing the use by others, of the Premises for any other purpose

(b) **Trash** The Grantee shall be responsible for the removal and disposal of all trash at the Premises, whether or not such trash is generated by the Grantee or its guests and invitees

(c) **Improvements**

(i) The Grantee's right to use the Premises is exclusive as to those alterations, additions, and/or improvements located, or to be located, on the Premises (collectively the "Improvements"), as more specifically described under the "Use(s) of Premises" section of **Attachment A** and further depicted on **Attachment B**, and non-exclusive as to the remainder. The location of the Improvements shall become fixed as specified under **Attachment B** and shall not be changed except by a written amendment to this Agreement. Improvements existing prior to the execution of this Agreement are and shall remain the property of the Grantor,

(ii) Except as otherwise allowed in this Agreement, no construction, land modifications or excavation, or permanent property improvements may be allowed or undertaken without the Grantor's prior express written consent. The Grantee may not maintain or allow any nuisances or public hazards on the Premises, and shall be under a duty to abate or remove any activity or property constituting or contributing to a hazard or nuisance. The Grantee may file a criminal complaint or institute civil proceedings to protect his right of possession and leasehold interest in the Premises against trespass or other infringement of the Grantee's rights by third parties. The Grantee is specifically prohibited from using or allowing the use by others of the Premises for any purpose not stated herein, including, but not limited to, mining, hauling, or otherwise removing rock, sand, gravel, aggregate, or other such materials, without the Grantor's prior express written approval,

(iii) Prior to undertaking construction or installation of Improvements on the Premises, the Grantee shall provide written notice of the terms of this Agreement to each person or entity authorized by the Grantee to perform any such activity on its behalf. If a dispute arises concerning construction or installation of the Improvements, the Grantee shall provide the Grantor with a copy of all applicable notices within ten (10) days of the Grantor's written request,

(iv) The Grantee, in its sole cost and expense, shall make, and be solely responsible for, any repairs, maintenance, or replacements to the Improvements that the Grantor considers necessary or as required by this Agreement. If the Grantee fails or refuses to honor such a request, or in case of an emergency, the Grantor may make such repairs, maintenance, renewals, or replacements. **THE GRANTEE WAIVES ANY CLAIM FOR DAMAGE CAUSED THEREBY AND IS LIABLE TO THE GRANTOR FOR ANY COSTS INCURRED;**

(v) Prior to expiration of this Agreement or upon notice of termination, the Grantee shall remove all of the Improvements, remove any resulting debris, and pay Grantor all monies due. The grantee shall take whatever measures are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any Improvements. If the Grantee fails to comply with this provision, the Grantor shall have the right to perform the work, in which event the Grantee shall be liable to the Grantor for all cost, loss, and damage incurred by the Grantor,

(vi) Notwithstanding the preceding, pursuant to Title 31 of the Texas Administrative Code, the Grantor may waive the removal/restoration requirements in this Section if, in the Grantor's sole opinion and discretion, such waiver is in the best interest of the State. Any such waiver shall be in writing and may be conditioned upon factors including the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the State, and

(vii) Grantee shall insure that all Improvements constructed, placed, or operated by it on the Premises are visible to operators of marine craft at all times. Grantee shall further take any and all steps necessary to insure that Improvements constructed, placed, or operated by it on the Premises do not constitute a hazard to operators of marine craft. Grantee may not restrict or prevent other persons from access to navigating open, navigable waters

(d) **Adjacent Property**

(i) The Premises are located adjacent to property that is owned by the Grantee or in which the Grantee has a possessory interest (the "Adjacent Property") and is further described under the "Adjacent Property" section of **Attachment A**, and

(ii) If the Grantee is divested of its interest in the Adjacent Property, the Grantor may terminate this Agreement upon ten (10) days written notice to the Grantee

(e) **Special Conditions** The Grantee shall adhere to the special conditions, if any, listed under the "Special Conditions" section of **Attachment A**

**2.03 AS IS** THE GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS THE SAME "AS IS," IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. THE GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION OF THE GRANTOR WITH RESPECT TO THE CONDITION OF THE PREMISES, BUT IS RELYING ON THE GRANTEE'S OWN INSPECTION OF THE PREMISES. THE GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER EXPRESS OR IMPLIED WARRANTY NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS AGREEMENT IS FREE OF LIENS, ENCUMBRANCES, AND/OR PRIOR RIGHTS. THE GRANTEE IS PUT ON

NOTICE THAT OTHER GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD, AND THE GRANTEE IS ADVISED TO EXAMINE THE RECORDS IN THE ARCHIVES AND RECORDS DIVISION OF THE GLO AND RECORDS OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED.

**2.04 RESERVATIONS: THE GRANTOR RESERVES THE FULL USE OF THE PREMISES AND ALL RIGHTS WITH RESPECT TO ITS SURFACE AND SUBSURFACE FOR ANY AND ALL PURPOSES EXCEPT FOR THOSE GRANTED TO THE GRANTEE. THE AFOREMENTIONED RESERVED FULL USE OF THE PREMISES BY THE GRANTOR INCLUDES THE RIGHT OF INGRESS, EGRESS, AND USE OF THE PREMISES BY THE GRANTOR, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, AND OTHER AUTHORIZED USERS FOR ANY AUTHORIZED PURPOSE**

**2.05 RIGHT OF ENTRY**

- (a) In any circumstances where the Grantor is granted a right of entry on the Premises during the term of the Agreement, no such entry shall constitute an eviction or disturbance of the Grantee's use and possession of the Premises, a breach by the Grantor of any of its obligations hereunder, render the Grantor liable for damages for loss of business or otherwise, entitle the Grantee to be relieved from any of its obligations hereunder, grant the Grantee any right of off-set or recoupment, or other remedy
- (b) In exercising any right of entry, the Grantor agrees to exercise its right of entry only at reasonable times (except in an emergency) for purposes of inspection, repair, and as necessary to protect the State's interests, and the Grantor agrees not to unreasonably interfere with the Grantee's authorized use of the Premises. The Grantee shall provide the Grantor with keys or combinations to all locks that may limit access to the Premises
- (c) Further, the Grantee authorizes the State, its officers, agents, representatives, and employees to access the Premises over and across Grantee's Adjacent Property. Grantor agrees to use the Adjacent Property only to the extent and for the length of time necessary to provide access to and from the Premises. The foregoing authorization creates a license only, and does not create an easement over the Adjacent Property
- (d) Grantee acknowledges that Grantor's right of ingress and egress shall remain in effect as long as any improvements placed on the Premises by Grantee remain on the Premises and/or as necessary for Grantor to confirm the removal (in whole or in part) of those improvements
- (e) Any aforementioned right of entry shall survive the termination of this Contract

**2.06 DAMAGE OR DESTRUCTION OF PREMISES AND/OR IMPROVEMENTS** NO DAMAGE TO THE PREMISES, OR DAMAGE TO OR DESTRUCTION OF ANY IMPROVEMENTS, SHALL IN ANY WAY ALTER, AFFECT, OR MODIFY THE GRANTEE'S OBLIGATIONS UNDER THIS AGREEMENT. IN THE EVENT ANY SUCH DAMAGE OR DESTRUCTION EXCEEDS THE COST LISTED UNDER THE "COST OF DAMAGE" SECTION OF ATTACHMENT A PER EVENT TO REPAIR, THE GRANTEE SHALL GIVE WRITTEN NOTICE TO GRANTOR WITHIN SEVEN (7) CALENDAR DAYS OF THE DAMAGE OR DESTRUCTION, INCLUDING A DESCRIPTION OF THE DAMAGE OR DESTRUCTION AND, AS FAR AS KNOWN TO THE GRANTEE, THE CAUSE OF THE DAMAGE OR DESTRUCTION. THE GRANTEE SHALL IMMEDIATELY REMOVE ALL DEBRIS RESULTING FROM SUCH DAMAGE OR DESTRUCTION AND TAKE SUCH ACTION AS IS NECESSARY TO PLACE THE PREMISES IN A NEAT, SAFE CONDITION. WITHIN 90 DAYS OF THE EVENT CAUSING THE DAMAGE OR DESTRUCTION, THE GRANTEE MUST EITHER REPAIR OR REPLACE THE IMPROVEMENTS, IF PERMITTED BY LAW, OR RETURN THE PREMISES TO THEIR NATURAL CONDITION. THE GRANTOR MAY MAKE REPAIRS OR REPLACEMENTS PURSUANT TO THIS SECTION, WHEREUPON THE GRANTEE SHALL BE LIABLE TO PAY THE GRANTOR, UPON DEMAND, THE COST AND EXPENSE INCURRED IN ACCOMPLISHING SUCH ACTION. ANY FAILURE BY THE GRANTEE TO MAKE SUCH PAYMENT TO THE GRANTOR MAY BE TREATED BY THE GRANTOR AS AN EVENT OF DEFAULT

**ARTICLE III: TERM**

The effective date and termination date of this Agreement are specified under the "Effective and Termination Dates" section of Attachment A, unless renewed or earlier terminated as provided herein. Unless otherwise specified herein, renewal of this Agreement is at the sole discretion of the Grantor

**ARTICLE IV: CONSIDERATION**

**4.01 CONSIDERATION** THE GRANTEE SHALL PAY, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, THE PAYMENT(S) AND/OR FEE(S) LISTED UNDER THE "PAYMENT(S) AND/OR FEE(S)" SECTION OF ATTACHMENT A ON OR BEFORE THE DUE DATE

**4.02 PAST DUE CONSIDERATION.** ALL CONSIDERATION AND ANY OTHER PAYMENTS HEREUNDER TO BE PAID BY THE GRANTEE SHALL BE DEEMED TO BE "RENT" AND DUE AND PAYABLE BY THE GRANTEE WITHOUT DEMAND, DEDUCTION, ABATEMENT, OR OFF-SET. PAST DUE CONSIDERATION AND OTHER PAST DUE PAYMENTS SHALL BEAR INTEREST FROM MATURITY AT THE RATE OF TEN PERCENT (10%) PER ANNUM FROM THE DATE WHEN DUE UNTIL ACTUALLY PAID. FAILURE OF THE GRANTEE TO MAKE A PAYMENT ON OR BEFORE THE DATE THE SAME BECOMES DUE SHALL, AT THE OPTION OF THE GRANTOR, MAKE ALL PAYMENTS DUE AND PAYABLE IMMEDIATELY. THE GRANTOR AND THE GRANTEE AGREE THAT THE FOREGOING REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE EXPENSES THAT THE GRANTOR MAY INCUR BY REASON OF SUCH LATE PAYMENT BY THE GRANTEE. ACCEPTANCE OF SUCH LATE PAYMENTS BY THE GRANTOR SHALL NOT CONSTITUTE A WAIVER OF THE GRANTEE'S

DEFAULT WITH RESPECT TO ANY SUCH PAST DUE AMOUNTS, NOR PREVENT THE GRANTOR FROM EXERCISING ANY OTHER RIGHTS AND REMEDIES GRANTED TO THE GRANTOR UNDER THIS AGREEMENT, AT LAW, OR IN EQUITY

**4.03 HOLDOVER:** IF THE GRANTEE CONTINUES IN POSSESSION OF THE PREMISES AFTER EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT, THE GRANTEE WILL BE DEEMED TO BE OCCUPYING THE PREMISES ON THE BASIS OF A MONTH-TO-MONTH TENANCY SUBJECT TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, EXCEPT THAT, AS LIQUIDATED DAMAGES BY REASON OF SUCH HOLDING OVER, THE AMOUNTS PAYABLE BY THE GRANTEE UNDER THIS AGREEMENT SHALL BE INCREASED SUCH THAT THE CONSIDERATION AND ANY OTHER SUMS PAYABLE HEREUNDER SHALL BE 200% OF THE AMOUNT PAYABLE TO THE GRANTOR BY THE GRANTEE FOR THE APPLICABLE PERIOD IMMEDIATELY PRECEDING THE FIRST DAY OF THE HOLDOVER PERIOD. THE GRANTEE ACKNOWLEDGES THAT IN THE EVENT IT HOLDS OVER, THE GRANTOR'S ACTUAL DAMAGES WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, AND THE LIQUIDATED DAMAGES HEREIN AGREED TO BE PAID ARE REASONABLE IN AMOUNT AND ARE PAYABLE IN LIEU OF ACTUAL DAMAGES AND ARE NOT A PENALTY. THE GRANTEE FURTHER ACKNOWLEDGES THAT ACCEPTANCE OF CONSIDERATION UNDER THIS PROVISION DOES NOT IMPLY THE GRANTOR CONSENTED TO HOLD OVER. THIS MONTH-TO-MONTH TENANCY MAY BE TERMINATED BY EITHER PARTY UPON 30 DAYS' WRITTEN NOTICE TO THE OTHER.

#### **ARTICLE V: EVENTS OF DEFAULT**

**5.01 EVENTS OF DEFAULT:** WITH RESPECT TO THE GRANTEE, IT SHALL BE AN EVENT OF DEFAULT HEREUNDER ("EVENT OF DEFAULT") IF

- (a) the Grantee fails or refuses to timely pay Consideration or any other payments required by this Agreement after it becomes due,
- (b) the Grantee fails or refuses to comply, timely perform, or observe any of the covenants, duties, obligations, and/or conditions under this Agreement,
- (c) the Grantee abandons or vacates the Improvements, the Premises, or any significant portion thereof,
- (d) there is an entry of a court order requiring the dissolution, winding up, or termination of the Grantee's business affairs, or
- (e) the Grantee fails to materially comply with rules and regulations in the Texas Administrative Code, the Texas Natural Resources Code, or any other rules or regulations promulgated by any state or federal governmental entity with proper jurisdiction over any of the uses permitted under this Agreement, unless such a failure to comply is redressed through an enforcement action by an applicable state agency with proper jurisdiction

**5.02 - NOTICE AND CURE:** THERE SHALL BE NO CONSEQUENCES FOR AN EVENT OF DEFAULT UNDER THIS AGREEMENT, UNLESS THE DEFAULTING PARTY RECEIVES WRITTEN NOTICE OF THE EVENT OF DEFAULT AND SUCH EVENT OF DEFAULT CONTINUES FOR A PERIOD OF 30 DAYS AFTER THE DEFAULTING PARTY RECEIVES THE NOTICE. A NOTICE OF EVENT OF DEFAULT SHALL SPECIFY THE EVENT OR EVENTS CONSTITUTING THE DEFAULT. THIS 30 DAY PERIOD SHALL BE EXTENDED IF THE ACT, EVENT, OR CONDITION IS ONE THAT BY ITS NATURE OR CIRCUMSTANCES REASONABLY REQUIRES MORE THAN 30 DAYS TO CURE, PROVIDED, HOWEVER, THE DEFAULTING PARTY SHALL PROMPTLY AND IN GOOD FAITH INITIATE AND DILIGENTLY PURSUE MEASURES THAT ARE EXPECTED TO CURE OR ELIMINATE THE EVENT OF DEFAULT IN A REASONABLE PERIOD OF TIME. IF EITHER PARTY FAILS TO CURE AN EVENT OF DEFAULT, THE NON-DEFAULTING PARTY SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE. THIS NOTICE AND CURE PROVISION DOES NOT APPLY TO AN EVENT OF DEFAULT UNDER PROVISION 5.01(A) OR ANY EMERGENCY SITUATIONS THAT AFFECT PUBLIC HEALTH OR SAFETY.

**5.03 CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER:** IF AN EVENT OF DEFAULT OCCURS AND THE GRANTEE FAILS TO CURE WITHIN THE PERIOD PROVIDED ABOVE, THE GRANTOR MAY, AT ITS OPTION, DO ANY ONE OR MORE OF THE FOLLOWING

- (a) terminate this Agreement by sending written notice of such termination, in which event the Grantee shall immediately surrender possession of the Premises to the Grantor (such termination shall not prejudice the rights of the Grantor for any claim of payments due),
- (b) enter upon and take possession of the Premises and expel or remove the Grantee and any other occupant, with or without having terminated the Agreement, or
- (c) alter locks and other security devices, if any, at the Premises

The failure of either the Grantee or the Grantor to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any other right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the Grantee or the Grantor may be exercised from time-to-time and as often as may be deemed expedient by the Grantee or the Grantor, as the case may be. In an Event of Default, the Grantor shall have the option, but not the obligation, to mitigate its damages.

## ARTICLE VI: GENERAL TERMS, CONDITIONS, AND EXCEPTIONS

**6.01 ASSIGNMENT:** THE GRANTEE SHALL NOT ASSIGN OR OTHERWISE DISPOSE OF AN INTEREST IN THIS AGREEMENT OR THE PREMISES WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE GRANTOR, AND ANY ATTEMPT TO ASSIGN OR OTHERWISE DISPOSE WITHOUT CONSENT SHALL BE VOID AND OF NO EFFECT. THIS PROHIBITION AGAINST ASSIGNING OR DISPOSITION SHALL BE CONSTRUED TO INCLUDE A PROHIBITION AGAINST ANY ASSIGNMENT OR DISPOSITION BY OPERATION OF LAW. IF THIS AGREEMENT IS ASSIGNED, OR IF AN INTEREST IN THIS AGREEMENT OR THE PREMISES IS DISPOSED OF, THE GRANTOR MAY NEVERTHELESS COLLECT CONSIDERATION FROM THE ASSIGNEE AND APPLY THE NET AMOUNT COLLECTED TO THE CONSIDERATION PAYABLE HEREUNDER. NO SUCH TRANSACTION OR COLLECTION OF CONSIDERATION SHALL RELEASE THE GRANTEE FROM THE FURTHER PERFORMANCE OF ITS COVENANTS, DUTIES, AND OBLIGATIONS.

**6.02 INDEMNITY:** EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE GRANTOR, THE GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS THE GRANTOR AND THE GRANTOR'S OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- THIS AGREEMENT,
- THE USE OR OCCUPANCY OF THE PREMISES;
- ANY NEGLIGENCE, ACT, OMISSION, NEGLIGENCE, OR MISCONDUCT OCCURRING IN, ON, OR ABOUT THE PREMISES; OR
- ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.

THE GRANTEE ASSUMES RESPONSIBILITY FOR THE CONDITION OF THE PREMISES. THE GRANTEE EXPRESSLY AGREES TO USE AND OCCUPY THE PREMISES AND PLACE ANY IMPROVEMENTS ON THE PREMISES AT ITS OWN RISK. THE GRANTEE SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE GRANTOR.

### **6.03 PROTECTION OF NATURAL AND HISTORICAL RESOURCES**

(a) **Unauthorized Discharge:** The Grantee shall use the highest degree of care and all appropriate safeguards to prevent pollution of air, ground, or water in, on, or about the Premises through an unauthorized discharge, and to protect and preserve natural resources and wildlife habitat. In the event of such discharge or damage to natural resources in, on, or about the Premises that is the result of an act or omission of the Grantee, its officers, employees, agents, representatives, contractors, and/or invitees, the Grantee shall immediately notify appropriate agencies of the State of Texas and the Grantor and undertake all required and appropriate action to remedy the same. The Grantee shall be liable for all damages to the Premises, public lands, and waters as a result of such act or omission and for mitigation of any such damages.

(b) **Natural Historical Preservation Act and Antiquities Code of Texas:** THE GRANTEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 AND THE ANTIQUITIES CODE OF TEXAS. IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT, OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS AGREEMENT, THE GRANTEE SHALL IMMEDIATELY CEASE SUCH ACTIVITIES AND SHALL IMMEDIATELY NOTIFY THE GRANTOR AND THE TEXAS HISTORICAL COMMISSION, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.

**6.04 COMPLIANCE WITH OTHER LAWS; NUISANCE:** THE GRANTEE, AT ITS OWN EXPENSE, WILL COMPLY WITH ALL FEDERAL, STATE, MUNICIPAL, AND OTHER LAWS, CODES, ORDINANCES, RULES, AND REGULATIONS APPLICABLE TO THE PREMISES, AND WILL INSTALL, REMOVE, AND ALTER SUCH EQUIPMENT AND FACILITIES IN, AND MAKE SUCH ALTERATIONS TO, THE PREMISES AS MAY BE NECESSARY TO COMPLY. THE GRANTEE WILL NOT MAKE ANY UNLAWFUL USE OF THE PREMISES OR PERMIT ANY UNLAWFUL USE THEREOF, AND WILL NOT COMMIT, OR PERMIT ANYONE ELSE TO COMMIT, ANY ACT THAT IS A NUISANCE OR ANNOYANCE TO THE GRANTOR OR ADJACENT PROPERTY OWNERS OR TENANTS, OR WHICH MIGHT, IN THE EXCLUSIVE JUDGMENT OF THE GRANTOR, DAMAGE THE GRANTOR'S GOODWILL OR REPUTATION, OR TEND TO INJURE OR DEPRECIATE THE VALUE OF THE PREMISES AND/OR ANY IMPROVEMENTS LOCATED THEREON. THE OBLIGATIONS OF THE GRANTEE UNDER THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

### **6.05 NOTICE**

(a) The Grantee shall provide written notice to the Grantor of any change in the Grantee's name, address, corporate structure, legal status or any other information relevant to this Agreement. The Grantee shall provide to the Grantor any other information reasonably requested by the Grantor in writing within 30 days following such request.

(b) Any payments and required written notices under this Agreement shall be delivered by hand, facsimile, or United States Registered or Certified Mail, adequate postage prepaid, to the address(es) listed under the "Address(es) for Notification" section.

of **Attachment A** A party may change its address by giving notice as provided above No change of address shall be binding until notice of such change of address is given as required

**6.06 SEVERABILITY** IF ANY PROVISION CONTAINED IN THIS AGREEMENT IS HELD TO BE UNENFORCEABLE BY A COURT OF LAW OR EQUITY, THIS AGREEMENT SHALL BE CONSTRUED AS IF SUCH PROVISION DID NOT EXIST AND THE NON-ENFORCEABILITY OF SUCH PROVISION SHALL NOT BE HELD TO RENDER ANY OTHER PROVISION OR PROVISIONS OF THIS AGREEMENT UNENFORCEABLE

**6.07 ENTIRE AGREEMENT** THIS AGREEMENT AND ITS ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES AND SUCH ARE INTENDED AS A COMPLETE AND EXCLUSIVE STATEMENT OF THE PROMISES, REPRESENTATIONS, NEGOTIATIONS, DISCUSSIONS, AND OTHER AGREEMENTS THAT MAY HAVE BEEN MADE IN CONNECTION WITH THE SUBJECT MATTER HEREOF UNLESS AN ATTACHMENT TO THIS AGREEMENT SPECIFICALLY DISPLAYS A MUTUAL INTENT TO AMEND A PARTICULAR PART OF THIS AGREEMENT, GENERAL CONFLICTS IN LANGUAGE BETWEEN ANY SUCH ATTACHMENT AND THIS AGREEMENT SHALL BE CONSTRUED CONSISTENTLY WITH THE TERMS OF THIS AGREEMENT UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY THE TERMS OF THIS AGREEMENT, NO MODIFICATION, RENEWAL, EXTENSION, OR AMENDMENT TO THIS AGREEMENT SHALL BE BINDING UPON THE PARTIES UNLESS THE SAME IS IN WRITING AND SIGNED BY THE RESPECTIVE PARTIES HERETO

**6.08 TAXES:** THE GRANTEE SHALL, AS FURTHER CONSIDERATION FOR THIS AGREEMENT, PAY AND DISCHARGE ALL "TAXES" (AS HEREINAFTER DEFINED) PROPERLY ASSESSED IN ANY CALENDAR YEAR (OR PORTION THEREOF) DURING THE TERM OF THIS AGREEMENT FOR THE PURPOSES OF THIS AGREEMENT, THE TERM "TAXES" MEANS ALL TAXES, ASSESSMENTS, IMPOSITIONS, LEVIES, CHARGES, EXCISES, FEES, LICENSES, AND OTHER SUMS (WHETHER NOW EXISTING OR HEREAFTER ARISING, WHETHER FORESEEN OR UNFORESEEN, AND WHETHER UNDER THE PRESENT SYSTEM OF TAXATION OR SOME OTHER SYSTEM), THAT DURING THE TERM OF THIS AGREEMENT MAY BE LEVIED, ASSESSED, CHARGED, OR IMPOSED BY ANY GOVERNMENTAL AUTHORITY OR OTHER TAXING AUTHORITY OR ACCRUE ON THE PREMISES AND ANY IMPROVEMENTS OR OTHER PROPERTY THEREON, WHETHER BELONGING TO THE GRANTOR OR THE GRANTEE, OR TO WHICH EITHER OF THEM MAY BECOME LIABLE IN RELATION THERETO THE TERM "TAXES" SHALL ALSO INCLUDE ALL PENALTIES, INTEREST, AND OTHER CHARGES PAYABLE BY REASON OF ANY DELAY OR FAILURE OR REFUSAL OF THE GRANTEE TO MAKE TIMELY PAYMENTS AS REQUIRED PURSUANT TO THIS PROVISION **THE GRANTEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE GRANTOR HARMLESS FROM LIABILITY FOR ANY AND ALL TAXES, TOGETHER WITH ANY INTEREST, PENALTIES, OR OTHER SUMS IMPOSED, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF**

**6.09 ENCUMBRANCE OF INTEREST** THE GRANTEE MAY NOT MORTGAGE, HYPOTHECATE, ENCUMBER, OR GRANT ANY DEED OF TRUST OR SECURITY INTEREST THAT ENCUMBERS THE PREMISES FURTHER, THE GRANTEE MAY NOT COLLATERALLY ASSIGN ANY RENT OR OTHER INCOME GENERATED FROM THE PREMISES PRIOR TO EXPIRATION OR TERMINATION OF THIS AGREEMENT, THE GRANTEE WILL PROVIDE THE GRANTOR WITH DOCUMENTATION SUFFICIENT TO EVIDENCE THE GRANTOR'S OWNERSHIP OF THE IMPROVEMENTS NOT REQUIRED TO BE REMOVED PER ARTICLE II

**6.10 CONDEMNATION** IN THE EVENT OF A CONDEMNATION PROCEEDING THAT AFFECTS ALL OR PART OF THE PREMISES, THE GRANTOR WILL HAVE THE EXCLUSIVE AUTHORITY TO NEGOTIATE WITH THE CONDEMNATING AUTHORITY IN THE EVENT OF A TOTAL CONDEMNATION, THIS AGREEMENT SHALL TERMINATE IN THE EVENT OF A PARTIAL CONDEMNATION, THE GRANTOR MAY DECIDE WHETHER OR NOT TO TERMINATE THIS AGREEMENT, BUT, IF THE GRANTOR ELECTS TO CONTINUE THE AGREEMENT, THE CONSIDERATION SHALL BE PROPORTIONATELY REDUCED ALL CONDEMNATION PROCEEDS, EXCEPT FOR THOSE ALLOCATED TO THE IMPROVEMENTS BELONGING TO THE GRANTEE, SHALL BE PAYABLE TO THE GRANTOR

**6.11 BANKRUPTCY** IF THE GRANTEE EVER BECOMES THE SUBJECT OF A VOLUNTARY OR INVOLUNTARY BANKRUPTCY OR OTHER SIMILAR TYPE PROCEEDING UNDER THE FEDERAL BANKRUPTCY LAWS, THEN "ADEQUATE PROTECTION" OF THE GRANTOR'S INTEREST IN THE PREMISES PURSUANT TO THE PROVISIONS OF SECTIONS 361 AND 363 OF THE U S BANKRUPTCY CODE PRIOR TO ASSUMPTION AND/OR ASSIGNMENT OF ANY INTEREST UNDER THE AGREEMENT BY THE GRANTEE SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING

- (a) the continued payment by the Grantee of all Consideration and all other sums due and owing under this Agreement, and
- (b) the furnishing of a security deposit by the Grantee in an amount equal to three (3) times the Consideration payable during the immediately preceding year

"Adequate assurance of future performance" by the Grantee and/or any assignee of the Grantee pursuant to the U S Bankruptcy Code Section 365 will include payment of a security deposit in an amount equal to three (3) times the Consideration paid during the immediately preceding Anniversary Year If this Agreement is assigned to any person or entity pursuant to the provisions of the U S Bankruptcy Code, any and all Consideration payable, or otherwise to be delivered in connection with such assignment, shall be paid or delivered to the Grantor, shall be and remain the exclusive property of the Grantor, and shall not constitute property of the Grantee or the estate of the Grantee within the meaning of the U S Bankruptcy Code Any and all Consideration constituting the Grantor's property under the preceding sentence not immediately paid or delivered to the Grantor shall be held in trust by the Grantee for the benefit of the Grantor

**6.12 UTILITIES:** THE GRANTEE SHALL, AT ITS OWN COST AND EXPENSE, PAY ALL CHARGES FOR CONNECTION, DELIVERY, AND USE OF ALL UTILITIES USED ON THE PREMISES DIRECTLY TO THE UTILITY COMPANY OR MUNICIPALITY FURNISHING THE SAME BEFORE THE CHARGES SHALL BECOME DELINQUENT. NO INTERRUPTION OR MALFUNCTION OF ANY UTILITY SERVICE SHALL CONSTITUTE A BREACH BY THE GRANTOR OF ANY OF ITS OBLIGATIONS HEREUNDER OR RELIEVE THE GRANTEE FROM ANY OF ITS OBLIGATIONS HEREUNDER.

**6.13 PROPER AUTHORITY:** EACH PARTY HERETO REPRESENTS AND WARRANTS THAT THE PERSON EXECUTING THIS AGREEMENT ON ITS BEHALF HAS FULL POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT.

**6.14 RELATIONSHIP OF THE PARTIES:** NOTHING CONTAINED IN THIS CONTRACT SHALL BE DEEMED OR CONSTRUED TO CREATE A PARTNERSHIP OR JOINT VENTURE, TO CREATE RELATIONSHIPS OF AN EMPLOYER-EMPLOYEE OR PRINCIPAL-AGENT, OR TO OTHERWISE CREATE FOR THE GRANTOR ANY LIABILITY WHATSOEVER WITH RESPECT TO THE INDEBTEDNESS, LIABILITIES, AND OBLIGATIONS OF THE GRANTEE OR ANY OTHER PARTY.

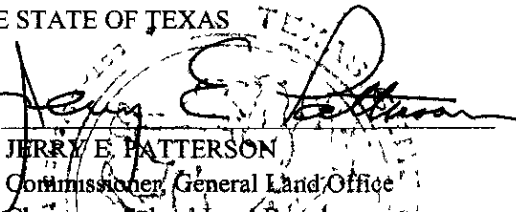
**6.15 GRANTEE'S WAIVER OF CERTAIN RIGHTS AND ASSERTIONS:** THE GRANTEE WAIVES AND RELINQUISHES ALL RIGHTS THAT THE GRANTEE MIGHT HAVE TO CLAIM ANY NATURE OF LIEN AGAINST THE GRANTOR AND THE PREMISES, OR WITHHOLD OR DEDUCT FROM OR OFFSET AGAINST ANY CONSIDERATION OR OTHER SUMS PROVIDED HEREUNDER TO BE PAID TO THE GRANTOR BY THE GRANTEE. THE GRANTEE WAIVES AND RELINQUISHES ANY RIGHT, EITHER AS A CLAIM OR AS A DEFENSE, THAT THE GRANTOR IS BOUND TO PERFORM OR IS LIABLE FOR THE NONPERFORMANCE OF ANY IMPLIED COVENANT OR IMPLIED DUTY OF THE GRANTOR NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office

**GRANTOR:**

THE STATE OF TEXAS

By

  
JERRY E. PATTERSON  
Commissioner, General Land Office  
Chairman, School Land Board

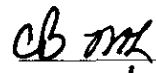
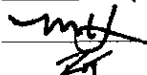


**APPROVED**

Contents

Legal

Deputy

Executive

Date

  
11/1/01

Coastal Easement: CE20010286

**GRANTEE:**

Association of Edwards Landing, Inc

By

W B Craig  
(Signature)

William B. Craig  
(Printed Name)

VP  
(Title)

Date

3/6/12



**ATTACHMENT A: CONTROL PAGE**  
**COASTAL EASEMENT CE 20010286**

**GRANTEE'S NAME**

Association of Edwards Landing, Inc , a Texas corporation

**PREMISES**

A portion of State Tract Number 354, Dickinson Bay, Galveston County, Texas (the "Premises") The Premises are further described and depicted on **Attachment B** attached hereto and incorporated herein by reference

**USE(S) OF PREMISES**

Authorized Use(s) of the Premises A residential category II project consisting of a 1' x 1' mooring piling comprising an encumbrance of 1 square foot, a 1' x 140' and a 1' x 80' wooden groin comprising an encumbrance of 220 square feet, a 4' x 140' and a 5' x 80' band of no-fee concrete rubble rip-rap comprising an encumbrance of 960 square feet, and a 65' x 200' dredged area comprising an encumbrance of 13,000 square feet, for a total project encumbrance of 14,181 square feet of coastal public land

**ADJACENT PROPERTY**

Block 51, San Leon Farm Home Tracts, Amos Edwards League as shown on plat of record in Volume 5, Page 51 of the Plat Records of Galveston County, Texas, as recorded in the real property records of Galveston County, Texas

**SPECIAL CONDITIONS**

- 1 Within 60 days of the execution of this Agreement, the Grantee shall file a memorandum of this Agreement for record in the office of the County Clerk in any county in which all or any part of the Premises are located, and file stamped copies thereof must be filed in the GLO The memorandum must be signed and acknowledged by the Grantee before it is filed in the county records Similar to Chapter 9 of the Tex Bus & Com Code, such a filing provides a security interest in favor of the Grantor, which is perfected automatically without the filing of a financing statement In the event the Grantee fails to timely file the memorandum, the Grantor may execute a memorandum setting forth the terms and provisions of the Agreement and record the same at the Grantee's cost and expense
- 2 Grantee shall notify the General Land Office, La Porte Field Office in writing at least two (2) weeks prior to commencing dredging operations and within one (1) week following completion of the work
- 3 All maintenance dredging activities are to be confined within the limits of the authorized excavation areas
- 4 Depth of the dredged area authorized herein shall not exceed six (6 0) feet below Mean Low Water Over-dredging for advance maintenance is specifically prohibited
- 5 All dredged material (spoil) authorized by this instrument shall be placed and contained on private property above the limits of mean high water, and Grantee waives any right to claim ownership of Coastal Public Land as a result of artificial accretion caused by deposition of dredged material
- 6 If the existing groin is ever destroyed or damaged in excess of fifty percent (50%), no rebuilding of the structure will be allowed
- 7 If the General Land Office determines that unnatural buildup has occurred as a result of the presence of the groin, at a rate which exceeds the then current General Land Office/School Land Board guidelines, such structure shall be removed and the shoreline restored according to the written instructions provided by the General Land Office
- 8 If any structure authorized herein, the size, configuration or location of which is otherwise governed by a specific General Land Office (GLO)/School Land Board (SLB) guideline or rule, or if the structures authorized herein, considered as a whole, are destroyed or damaged in excess of 50% of the existing square footage during the term of this instrument, reconstruction of the structure, or structures as a whole, shall be limited to the size, configuration, and location allowed by GLO/SLB guidelines or rules in effect at the time of the damage or destruction Written approval must be obtained from the GLO before the structure can be rebuilt (if destroyed completely) or repaired (if 50% or more of the structure is damaged) **FAILURE TO OBTAIN WRITTEN PERMISSION FROM THE GLO PRIOR TO REBUILDING OR REPAIR SUBJECTS THIS INSTRUMENT TO TERMINATION**
- 9 Rip-rap shall consist of approved material such as concrete block, interlocking brick, sack crete, rock large enough not to be displaced by storms, or concrete rubble which is free of protruding rebar The use of tires, automobile bodies or parts, appliances, trash, debris, asphalt, tree limbs, and other unconsolidated material is not acceptable and shall not be used

**COST OF DAMAGE**

One Thousand and No/100 Dollars (\$1,000) per event

**EFFECTIVE AND TERMINATION DATES**

This Agreement is for a total period of ten (10) years, effective on October 1, 2011, and terminating on September 30, 2021

**PAYMENT(S) AND/OR FEE(S)**

As consideration for the granting of this Agreement, Grantee agrees to pay Grantor as consideration ("Rent"), the total sum of **One Thousand Three Hundred Forty And 00/100 Dollars (\$1,404.00)**. This Rent is payable on or before the first day of each "Agreement Year" (as such phrase is defined herein), in ten (10) annual installments of **One Hundred Thirty-Four And 00/100 Dollars (\$140.40)**. For the purposes of this Agreement, the phrase "Agreement Year" means the period from January 1 of one year through December 31 of the following year, with the first Agreement Year commencing on January 1, 2012

**ADDRESS(ES) FOR NOTIFICATION**

**Grantor's Contact Information**

Name Texas General Land Office  
Title Deputy Commissioner, Professional Services  
Address 1700 N Congress Ave  
Address Austin, Texas 78701-1495

**Grantee's Contact Information**

Name Association of Edwards Landing, Inc  
Address 1219 23 rd Street  
Address San Leon, TX 77539-8603

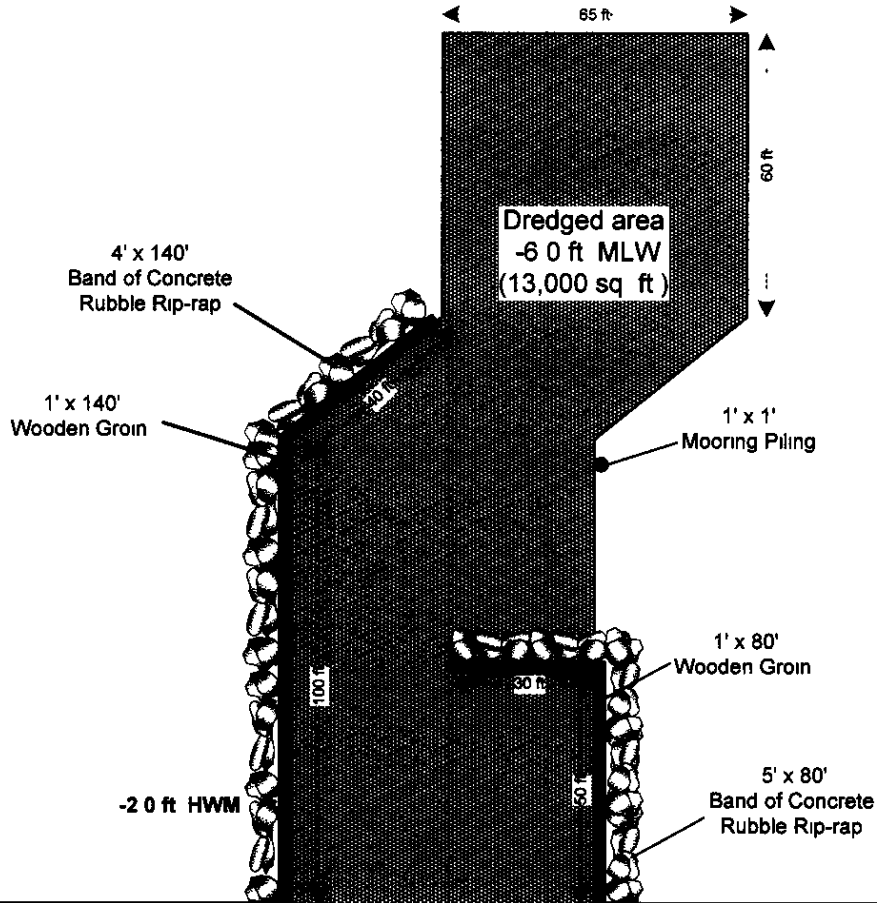


# DICKINSON BAY

State Tract 354  
Galveston County

Tide Level = -1 0' HWM

Unvegetated  
Submerged



Wood Bulkhead / Approx  
State Boundary

Lot 24

Approx State Boundary  
-65 ft

(Excavated Private Canal)

Block 51, San Leon Farm  
Home Tracts, Amos  
Edwards League as  
shown on plat of record in  
Volume 5, Page 51 of the  
Plat Records of Galveston  
County, Texas

+3 0 ft HWM

Wood Bulkhead / Approx  
State Boundary

Lot 25 & 26

Title: Association of Edwards Landing, Inc. / CE20010286

Date of Inspection: 04/27/2011

Company: Texas General Land Office

Modified By: MPowell

Scale: 1 in. Equals 40 ft.

Attachment B

**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

*Dwight D. Sullivan* 2013004329

January 22, 2013 11 35 41 AM

FEE. \$56 00

Dwight D Sullivan, County Clerk  
Galveston County, TEXAS