

When Recorded Return To:  
Cape Shores Property Owners Association  
P O Box 465  
Paulden, AZ 86334


**Coastal Title Company**  
**108 West Main**  
**Edna, Texas 77957**

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**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**CAPE SHORES**  
Jackson County, Texas

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Barbara Earl - Jackson County, TX



**CAPE SHORES**  
**Jackson County, Texas**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by Cape Shores Land, LLC a Delaware limited liability company, hereinafter referred to as "Developer" or "Declarant".

WITNESSETH:

WHEREAS, Developer is the owner of that certain tract of land known as "Cape Shores" being a Subdivision of being a 152.06 acre tract of land situated partially in the William J. Wickman Survey, Abstract No. 273 and partially in the George Trapnell Survey, Abstract No. 263, Jackson County, Texas, as described in the plat Cape Shores Subdivision, recorded in the office of the County Clerk of Jackson County, Texas on the 20<sup>th</sup> day of April, 2016, after having been approved as provided by law, and being recorded in Slide 215-222, of the County Deed Records of Jackson County, Texas (herein referred to as the "property" or the "Subdivision"), and;

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservation (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Lots in said Subdivision;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon the Subdivision, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof, except that no part of this Declaration of the Restrictions shall be deemed to apply in any manner to the areas identified or platted as a Reserve or Unrestricted Reserve on the Plat or to any area not included in the boundaries of said Plat. Developer also declares that this Subdivision shall be subject to the jurisdiction of the "Property Owners Association" (as hereinafter defined).

## 1. RESTRICTIONS APPLICABLE TO ALL LOTS

**1.1 Permitted Uses:** The property described above, together with any tracts subsequently added by the Developer as aforesaid, are intended for one single family dwelling unit per "Lot" and their use is restricted to that purpose. "Lot" shall mean and refer to any plot of land identified as a Lot or Tract on the Plat of the Subdivision. For the Purposes of this instrument, "Lot" shall not be deemed to include any portion of any "Common Areas", (defined herein as any Common Areas shown on the Plat) in the Subdivision, regardless of the use made of such area. No Lot may be subdivided. Occupancy of a Lot shall be limited to one (1) family, which shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or no more than two (2) persons who are not so related living together as a single household unit. It is not the intent of the Developer to exclude any individual from a dwelling who is authorized to so remain by any state or federal law. If it is found that this section, or any other section, of the Restrictions are in violation of any law, then the prohibited section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law. No commercial enterprise of any sort shall be situated on any tract included therein. Except however Declarant reserves the right to own, maintain, or lease an office upon any portion of the described property for the purpose of promoting or closing future land sales or administering the business of the Declarant, and may permit prospective purchasers of property within the boundaries of the Property, who are not Owners or Members of the Association, to use any Common Area at reasonable times and in reasonable numbers; and may refer to the services offered by the Association in connection with the development, promotion and marketing of the Property. Further, the Developer or the Board of Directors of the Association following the Transition Date (as such terms are defined below) may establish "Rules and Regulations" for the use of any Common Areas in the Subdivision.

**1.2 Maintenance of Lots:** All tracts shall be kept in a clean and orderly condition at all times, and all trash, garbage and other waste shall be kept in sanitary containers. Such maintenance includes, but is not limited to the following:

- a. Prompt removal of all litter, trash, refuse and wastes, which shall be kept in covered containers and screened from view from adjacent Lots.
- b. Lawn mowing (outside of the natural vegetation areas).
- c. Tree and shrub pruning (outside of the natural vegetation areas).
- d. Keeping exterior lighting and mechanical facilities in working order.
- e. Keeping lawn and garden areas alive, free of weeds and attractive.
- f. Keeping parking areas, walkways and driveways in good repair.
- g. Complying with all government health and policy requirements.
- h. Repainting of improvements.
- i. Repair of exterior damage to improvements.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Builder or any occupants of the Lot in trespass or otherwise, enter upon (and/or authorize one or more others to 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 and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of



such Lot for the cost of such work and associated materials, plus a fee of \$25.00 for each instance. Payment thereof shall be collected as an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

**1.3 No Junk yards, Auto Repair, Second-Hand Business, Material Storage:** No junk yards, auto repair, second-hand businesses or other commercial uses including those not specifically defined in section 1.3, that create a negative visual impact, excessive noise or congestion from traffic or parking shall be conducted on any Lot. No storage of trucks, cars, buses, machinery, equipment or building materials shall be stored on any Lot unless enclosed in a proper structure so as not to be visible from an adjoining Lot or any roadway. Automotive vehicles not in running condition shall not remain on the property more than thirty (30) days.

**1.4 No Camping:** No camping allowed on unimproved lot.

**1.5 No Hunting:** Hunting is prohibited anywhere within the Subdivision.

**1.6 No Farm Animals:** No farm animals or livestock are allowed. Commercial raising or feeding of animals or poultry is prohibited.

**1.7 Composite Building Sites:** Any owner of one or more adjoining Lots (or portions thereof) may with prior written approval of the Architectural Control Committee (as defined in Section 2.3 below, consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting composite site, in which case the side set-back lines along the common lot lines shall be eliminated and said set-back lines shall thereupon be measured from the resulting side property lines rather than from the center adjacent Lot lines as indicated on the Plat (a "Composite Building Site"). Further, any Utility Easements along said common lot lines shall be eliminated and abandoned upon approval of a Composite Building Site provided such easement are not then being used for utility purposes. Drainage easements cannot be abandoned on a composite lot. Any such Composite Building Site must have a front building set-back line of not less than the minimum front building set-back line of all Lots within that area, and such Composite Building Site will still be considered as individual Lots for purposes of the Maintenance Charge set forth within.

**1.8 No Mobile Homes:** No Mobile, prefabricated or factory built home, garage or shed shall be situated on any Lot, permanently or otherwise.

**1.9 Docks, Piers and Boat Houses:** Docks, piers and boathouses are permitted for Bayfront Lots only. Buyer must obtain all permits required by State, Local and/or Federal authorities before installation of any dock, pier and/or boathouse or making any change for improvement within the Perpetual Easement or in the area of the Bay. On Bayfront Lots, bulkheading shall be erected as approved in writing by the Architectural Control Committee based upon standards and of materials established by the Architectural Control Committee, and piers, docks and/or boathouses shall be constructed of treated wood or similar material and must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property.

**1.10 Easements:** The areas designated as "Easements" thereto on the Plat are the designated easement locations for the purposes indicated on the Plat and as further provided herein. Developer shall have and hereby reserves the right, without the consent of any other Owners or the Association, to grant or create additional temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements ("Utility Easements"). Furthermore, Developer has the right to grant or assign to the Association any or a portion of any



right, title and interest in any real property contained within the Subdivision to the Association for the benefit of the Association, including but not limited to any Easements. Developer, subject to the provisions for Composite Building Sites, reserves for public use the Utility Easements shown on the plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Jackson County, Texas. For the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. All Utility Easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Common Area and/or Lots. The Property Owners Association, the Developer and its assigns, further expressly reserves the right to enter upon any Lot for the purpose of improving, constructing or maintaining any natural drainage pattern, area or easement. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any utility provider serving the Subdivision shall have the right to enter upon any Utility Easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility provider, water district, political Subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements. No building, swimming pool or other structure shall be located over, under, upon or across any portion of any Utility Easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, walkways, fences and similar improvements across any Utility Easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, walkways, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the utility provider or any public utility in the course of installing, operating, maintaining, repairing or removing its facilities located within the Utility Easements. The Owner of each Lot shall indemnify and hold harmless Developer, and utility provider having facilities located over, on, across or under Utility Easements from any loss, expense, suit or demand resulting from death, injuries to persons or damage to property in any way occurring, incident to, arising out of or in connection with said Owner's installation, maintenance, repair or removal of any permitted improvements located within Utility Easements, including where such death, injury or damage is caused or alleged to be caused by the negligence of such public utility or the Developer, their employees, officers, contractors or agents.

**1.11 Signs:** No "for sale" signs shall be placed on unimproved Lots, until after the Transition Date. Address signs that identify the address and/or the Owner of the Lot, are allowed, however signs shall not exceed 4 square feet. All signs are to be in strict conformance with the laws and ordinances set forth by Jackson County. Permits may be required. Developer or the Association reserves the right to remove any and all signs that are in violation of the provisions in this Declaration. None of the sign restrictions in this Declaration apply to the Developer or its assigns

or successors for the purpose of selling Lots, including advertising, locational, directional, or street signs.

**1.12 Water:** All Lots are to be serviced by a private central water system designated by the Developer. The Owner shall be responsible for any and all costs associated therewith including any tap fee and ongoing fees for water use.

**1.13 No Outside Toilets:** No outside, open or pit type toilets are permitted in the Subdivision.

**1.14 Utility Lines:** All utility lines running to any residence, outbuilding, machinery, pump, etc., must be placed underground beginning at the point where it enters the Parcel UNLESS prior written approval is received from the Developer or the Committee to allow lines to be constructed above ground due to topographic or surface constraints.

**1.15 Storage, Parking and Repairs:** No campers, camping trailers, boats, boat trailers, travel trailers, motor homes, recreational vehicles, or any other sporting or camping equipment or unlicensed or unregistered vehicle may be stored on any Parcel unless stored in a garage or outbuilding that has been approved by the Committee. No repairs, rebuilding or maintenance work shall be performed on any of the above or any other piece of equipment within 100 feet of the Parcel boundary lines, nor adjacent to roadways and every effort shall be made to perform such work in an outbuilding or within a screened area.

**1.16 Antennas and Generators:** The placement location of antennas, satellite dishes and power generators must have approval from the Committee prior to installation and must not be installed in such a way as to disturb the owners of adjacent Parcels. If there is a dispute over the placement, the Committee shall have the final decision on what affect the placement has on adjacent Parcel owners. Turbine wind generators are prohibited.

**1.17 Common Area Maintenance:** The Association shall be responsible for maintaining all Common Areas and regulating their uses.

**1.18 Mineral Extractions:** In no event shall any Owner or lessee use or cause to be used any portion of the Property, including his or her own Lot, for the purposes of drilling, exploring, mining, or otherwise developing any deposits of oil, minerals, or other natural resources lying above, on, or under said Property. Nothing in this Section shall prohibit Developer from excavating Property still owned by Declarant for purposes of building or improving roadways within the Project.

**1.19 No Medical Facilities:** Hospitals, clinics, and other facilities for the treatment or care of the physically or mentally ill or disabled are prohibited.

**1.20 Churches / Clubs:** or other institutions organized for religious worship or discussion are prohibited as are buildings used primarily as clubhouses or meeting facilities.

**1.21 Nuisance Activities:** The unusual, unnecessary, prolonged, or indiscriminate creation of noise, dust, fumes, odors or any other offensive activity is prohibited, including but not limited to road racing, loud music, and gunfire. ATV use is limited to the specific parcel owned by user. ATV use is not allowed on vacant or unoccupied lots.

## **2. PROPERTY OWNERS ASSOCIATION, ASSESSMENTS AND LIEN**

**2.1 Property Owners' Association:** A "Property Owners Association" is hereby created to be made up of the Owners of property within the hereinbefore described together with the owners of subdivision (the "Association"). Prior to the Transition Date, as stated in Section 2.10, the Association may form and be operated as a non-profit corporation and governed by its Articles of Incorporation and Bylaws upon incorporation, provided that such incorporation documentation is



not in conflict with the terms and provisions hereof. Every person or entity who is a record owner of any Lot which is subject to the Maintenance Charge and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, upon the Transition Date, the Directors of the Association must be Members of the Association (as more particularly described in the Bylaws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in this Declaration and in the Bylaws of the Association. The initial Board of Directors of the Association shall be designated by the Developer or Declarant. Upon the Transition Date, Owners may elect five (5), with a minimum of three (3), member Board of Directors to the Property Owners Association, with three (3) alternates (the "Board of Directors").

**2.2 Board of Directors:** Through its Board of Directors, the Property Owners Association shall have the authority to:

a. **Declaration of Maintenance Charge:** Declare and collect an assessment per year per Lot from each Property Owner. Such assessment shall be made for the purpose of maintaining roads and other areas of common use and benefit to subdivision owners. The exact amount of the Maintenance Charge applicable to each Lot will be determined by the Developer/Declarant until the Transition Date, and thereafter by the Board of Directors of the Association during the month preceding the due date of the Maintenance Charge. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provision hereof. The initial assessment shall be \$295.00 per year ("Maintenance Charge"), and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot (or residential building site) to the Association annually, in advance, on or before the tenth day of February of each calendar year, or on such other date or basis (monthly, quarterly or semi-annually) as the Developer or the Board of Directors may designate in its sole discretion. The Maintenance Charge will be assessed as of the date of recordation of the Deed wherein the Owner acquired legal title to the Lot. The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by the Developer or the Association.

b. **Failure to pay Maintenance Charge:** Any Maintenance Charge not paid on or before the due date shall bear a late fee of 15%. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot. Where the holder of a First Deed of Trust, other than Declarant, obtains title to the Parcel as a result of trustee's sale, or deed in lieu of foreclosure, of said First Deed of Trust, such acquirer of title, its successors and assigns, shall not be liable for the share of the assessments by the Association chargeable to such Parcel which became due prior to the acquisition of title to such Parcel by such acquirer. Such acquirer shall be responsible, as any Owner, for assessments charged subsequent to the acquisition. Neither Declarant nor



Developer shall be responsible for paying Regular or Special Assessments for any Parcel owned before or after the Transition Date.

c. **Use of Maintenance charge:** The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Subdivision. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described herein, including the maintenance of the Common Areas, any greenbelt or easements, roads, rights-of-way, and any common use pier, and the establishment and maintenance of a reserve fund for maintenance thereof. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Developer or Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area, etc. as may from time to time be authorized by the Association. Payment of all legal and other expenses incurred in connection with the enforcement of all charges and assessments, conveyances, restrictions and conditions with the affecting the properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments, landscaping in common areas, utilities, insurance, taxes, employing policemen and a security force and doing any other things or things necessary or desirable in the opinion of the Association to keep the Properties neat and in good order, or which is considered a general benefit of the Owners or occupants of the properties, it being understood that the judgment of the Association in the expenditure of said fund shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Charge is for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Subdivision.

d. **Lien for Failure to Pay Maintenance Charge:** Each Lot shall be subject to a lien to secure unpaid assessments. Said lien shall be foreclosed by formal court proceeding after written notice to the delinquent property owner. This lien shall be subordinate to any lien holder who has provided work or materials for the improvement of any tract and also to any lien holder who has financed construction on the property, and valid purchase money liens. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed by formal foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Jackson County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code (and any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such



Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Jackson County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder. In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity. It is the intent of the provisions of this Section to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any duly authorized officer of the Association acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Jackson County, Texas amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection, including reasonable attorney's fees, which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

**2.3 Architectural Control Committee:** The term "Architectural Control Committee" as used in this Declaration, shall mean or refer to the Developer or to an outside Architectural Control Company retained by the developer to perform the Architectural Control duties. Until the Transition Date, Developer and/or individuals or entities appointed by the Developer, shall review all plans and sample materials required herein to be submitted to the Committee for approval and exercise all other design review powers delegated to the Committee in this Declaration and in the Association Bylaws. The fee for ACC submittal for a building plan shall initially be \$1,000.00. After the Transition Date, the Board of Directors shall appoint an Architectural Control Committee (the "ACC or Committee"), composed of three or more individuals. The Committee shall function as the representative of the Association to provide for and assist in the architectural control of improvements to Lots within the Property.



**2.4 No Construction Without Review:** No building, fence, wall, bulkhead or other structure shall be commenced, erected, or maintained upon any tract, nor shall any exterior addition to; or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography.

**2.5 Damage Deposit:** Each member submitting for ACC approval agrees to post a \$5,000 bond or cash payment to the Property Owners Association, for repairs to roadways and drainage caused by Owners contractors, subcontractors, or other associated workers, prior to receiving final approval from the Architectural Control Committee. The money will be held in the Association's account and costs of any damages will be deducted at completion of the building project. In the event there are no damages, the full balance will be returned to Owner.

**2.6 Failure to Timely Approve:** In the event that any plans and specification are submitted to the Architectural Control Committee as provided herein, and such Architectural Control Committee shall either fail to approve or reject such plans and specifications for a period of 45 days following such submission, approval by the Architectural Control Committee shall not be required, and full compliance with this Restriction shall be deemed to have been had.

**2.7 Enforcement:** The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member or Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulation of the Association from any Member or Related User for breach of this Declaration or such Rules and Regulations by such Member or Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to



such violating Members, plus attorneys' fees incurred by the Association with respect to exercising such remedy. Before the Board may invoke the remedies provided above, it shall give registered or certified notice of such alleged violation to Owner, and shall afford the Owner a hearing. If after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Developer, or of any owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

**2.8 Voting:** The total number of votes within the Association shall be on the basis of one (1) vote per Owner, per Lot, except that the Developer shall have ten (10) votes for each Lot owned by Declarant. The total number of Lots and therefore the total number of votes may also be increased or decreased from time to time by the annexation or de-annexation of Property, pursuant to Sections 4 and 5 of this Declaration. Unless otherwise specifically provided herein or in the Bylaws, all Association matters requiring a vote of the Members shall be determined by a majority vote (i.e., a majority of the votes cast) so long as the quorum requirements are met. If more than one party is the Owner of a Lot, there must be unanimous agreement among those who own an interest, otherwise the vote(s) attributable to that Lot shall not be counted. Any action requiring a vote of the Members may take place one of two ways: 1) By vote cast in person at a meeting; and/or 2) By absentee ballot as provided for in the Bylaws.

**2.9 Quorum Requirement:** Unless otherwise stated herein or in the Association's Bylaws, the number of votes received by the Association must represent forty percent (40%) of the Members entitled to vote in order to constitute a quorum, whether the votes be cast in person or received as absentee ballots.

**2.10 Transition Date:** The Developer, as the Association's initial Board, shall call a meeting of the Members for the purpose of turning over the operation and control of the Association to the Members (Transition Date) and shall give notice not less than thirty (30) days prior to said meeting. Votes received by Members representing at least thirty-five percent (35%) of the votes entitled to be cast shall constitute a quorum for the transition meeting. Prior to said meeting the Members shall elect, by a majority vote, a minimum of three (3) and a maximum of five (5) Directors to the Board. The election results shall be announced during the meeting. So long as Declarant owns any Parcel in the Project at the time of the Transition Date, Developer, acting on behalf of Declarant, may exercise its voting rights by casting the number of votes it still retains at the time. Immediately following the transition meeting, the newly elected Board may hold their first meeting for the purpose of electing officers and conducting any other business of the directors. Following the Board meeting, the Association may hold its first annual meeting of the Members.

### 3. CONSTRUCTION AND ARCHITECTURAL CONTROL

**3.1 Construction Approval Requirements:** No building or other improvements of any character shall be erected or placed, of the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof, (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the ACC of the construction plans and specifications for the construction or alteration of such

improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, drainage, harmony of external design and color with existing and proposed structures in the Subdivision and location with respect to topography and finished grade elevation. The granting of approval shall in no way serve as a guaranty or warranty as to the quality of the plans or specification nor the habitability, feasibility or quality of the resulting improvements. The sole authority for determining whether construction plans and specifications for proposed improvements are in compliance with the provision of this Declaration as to quality and color of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography, finished grade elevations and other relevant factors, rests with the ACC. Disapproval of plans and specification, including location of the proposed improvements may be based by the ACC, for any reason that shall seem sufficient in the sole discretion of the ACC. Each application made to the ACC shall be accompanied by two (2) sets of professionally drawn plans and specification for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the ACC shall be provided by the Association. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon. The ACC may set reasonable application and inspection fees, and deposits. The owner must obtain from the ACC a receipt for said plans indicating the date said plans are received by the ACC.

**3.2 Dwelling Specifications:** Dwellings shall be erected containing a minimum of 1,200 square feet total of living (heated) area exclusive of porches screened or unscreened, and all of such construction, once commenced, shall be completed expeditiously and without delay of more than thirty (30) days of construction activity after construction has commenced (each a "Dwelling"). Once construction has begun, a Dwelling must be completed within one (1) year from the commencement date. Dwellings can be a maximum height of forty (40) feet. Dwellings must be of earth tone colors. No vinyl, aluminum or vertical siding. The exterior of all buildings must have a coastal theme and be constructed from brick, stucco, stone, hardipank, or any combination of any of the above.

**3.3 Elevation:** First floor elevation must be at least one (1) foot above the 100 year flood plain.

**3.4 Building Setbacks:** Every building constructed on a Lot shall be set back: (a) with regard to any boundary line of a subject Lot adjacent to any street shown on the Plat: the greater distance of (i) fifty (50) feet from said boundary line of the subject Lot; or (ii) outside of any easement which runs along said boundary lines; and (b) with regard to any boundary line of a subject Lot NOT adjacent to any street shown on any plat: the greater distance of (i) ten (10) feet from said boundary line of the subject Lot; or (ii) outside of any easement which runs along said boundary lines. If a contiguous tract (or tracts) is later consolidated with the tract conveyed hereby, these set back provisions shall be applied not to this original tract but to the Consolidated Tract (as herein defined). Additionally, with regard to Bayfront Lots, buildings shall be set back at least fifty (50) feet from the Water Line of the Bay.

**3.5 Detached Buildings:** Detached garages, workshops and sheds may be constructed on the property after or while the main dwelling is being built, so long as they are in harmony with the main Dwelling and are of good construction, kept in good repair, and are not used for residential purposes. Any workshops, or other outbuildings shall be located to the rear of the main Dwelling.



All Dwellings, detached garages, workshops or sheds must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property.

**3.6 Sewage Disposal System:** Every Dwelling shall have an individual sewage disposal system which meets or exceeds the minimum standards of State and County health regulations. Prior to occupancy, all Dwellings constructed in this Subdivision must have a septic or sewage disposal system installed by the Owner to comply with the requirements of the appropriate governing agency. All residents of the Subdivision will be required to install aerobic septic systems serving any Dwelling constructed on any Lot.

**3.7 Fences:** Fences on Bayfront Lots shall be constructed of ornamental iron only. No barbed wire or chain link fences shall be allowed in the Subdivision, provided, however, an Owner may obtain approval from the Committee to construct a cage, kennel or dog run out of chain link fence. All fences shall be constructed in harmony with the guidelines established and adopted by the Architectural Control Committee.

**3.8 Driveways and Culverts:** All driveways must be of hard surface from the street to the Dwelling, and Jackson County and Architectural Control Committee approved culverts shall be installed at the Owners expense to cross any roadside drainage ditch. All driveway culverts shall be installed at the original ditch flowline, and any additional modifications needed for Jackson County and Architectural Control Committee review will be at the Owner's sole expense. If Jackson County requires the removal, replacement, correction, modification or repair of any culvert, it shall be the responsibility of the Owner to pay for such work. Should Jackson County require Developer to remove, replace, repair, correct or modify any culvert as a precondition to acceptance of the subdivision roads into the county road system, Developer shall have the right to undertake such work and Owners shall reimburse Developer for all costs incurred.

#### 4. ANNEXATION OF ADDITIONAL PROPERTY

**4.1 Developer's Right to Annex Additional Property:** At any time the Developer shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or person. Developer, its successors and designees reserve all present and future rights to utilize all Common roadways and easements within the Project to comparably develop lands within or adjacent to the Project and to grant use of said easements to additional subsequent individuals or entities. Any such expansion to be included within this Declaration shall be subject to the terms and conditions of this Declaration, but may include reasonable variances.

**4.2 Annexation of Additional Property:** Developer may annex and subject Additional Property to this Declaration by recording an amendment to Exhibit "A" of this Declaration describing the property being annexed. Common Area, as shown on the recorded Plat of the Additional Property, shall be subject to the provisions set forth in this Declaration with the maintenance, repair and replacement of the Common Area being the responsibility of the Association as set forth herein. The voting rights of the Owners of Parcels annexed pursuant to this section shall be effective as of the date of the annexation. The Owner's obligation to pay assessments shall commence as provided in Section 2.2 of this Declaration.

**4.3 Sequence of Annexation:** The Additional Property may be annexed as a whole, at one time or in one or more portions or phases at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The Additional Property



annexed by the Developer need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property.

**4.4 Disclaimer:** DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT: (1) The Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (2) Any Property subject to this Declaration will be committed to or developed for a particular use or for any use; (3) The use of any Property subject to this Declaration will not be changed in the future; or (4) All or any portion of the Additional Property will annexed, or the exact number of Parcels to be added in the event of annexation.

## 5. DE-ANNEXATION

**5.1 Developer's Right to De-Annex Property:** Notwithstanding any other provision of this Declaration, Developer shall have the right from time to time, at its sole option and without the consent of any Owner, the Board or any other person, to delete from the Property and remove from the effect of this Declaration one or more portions or Parcels of the Property, so long as (1) The portion of the Property to be removed and deleted is owned by Declarant, or the Owner of such portion of the Property executes and records an instrument approving such deletion and removal; and (2) Such deletion and removal would not deprive Owners of other parts of the Property of easements or rights-of way necessary to the continued use of their respective parts of the Property (unless Declarant at the same time provides for reasonably adequate replacement easements or rights-of way). Developer may exercise its rights of de-annexation in each case by executing and causing to be recorded an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each Owner of such portion of the Property to be so deleted and removed (if other than Declarant). The deletion and removal of such portion of the Property shall be effective upon the date such instrument is recorded; whereupon, the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property subject to this Declaration. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal. Each portion of the Property deleted and removed pursuant hereto shall thereafter be deemed to be a part of the Additional Property unless otherwise expressly provided to the contrary in the instrument recorded to effect such deletion and removal.

## 6. GENERAL PROVISIONS

**6.1 Enforcement By Declarant:** Declarant shall have the right to enforce, by any proceeding at law or in equity, all restriction now or hereafter imposed by the provisions of this Deed. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**6.2 Covenants running with the Land:** The covenants, conditions and restrictions of this Deed shall run with and bind the land, and shall inure to the benefit of, and be enforceable by,

Declarant or any tract owner subject hereto, and their respective legal representatives, heirs, successors and assigns.

**6.3 Severance:** Invalidation of any one or more of these Restrictions by judgment or court order shall in no way affect any other restriction, and all other restrictions shall remain in full force and effect.

**6.4 Developer's Ability to Correct Errors:** The Developer shall have and reserves the right at any time and from time to time prior to the Transition Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein.

**6.5 Variances:** So long as Developer maintains control of the Association, Developer, in its sole and absolute discretion, may grant a variance to any restriction or provision contained throughout this entire Declaration without limitation; and approve or disapprove any proposed improvement or alteration for any reason, including, but not limited to, aesthetics or potential negative impact on its ability to sell any remaining Property. After the Transition Date and in accordance with the Bylaws, the Board or Members may grant reasonable variances, where strict adherence to these restrictions would cause undo hardship or in cases where the Members of the Association would, in the Association's opinion, benefit from said variance. Variances may only be granted by a unanimous vote of the Directors (however there must be a minimum of three (3) Directors on the Board), or at the direction of those Members meeting a forty-five percent (45%) quorum with a two-thirds (2/3) majority vote. Any variance granted is to be recorded in the Jackson County Clerk's Office and should state if the provisions of the variance are to "run with the land" or terminate when the affected Parcel is sold.

**6.6 Terms of Covenants:** The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the then Owners (including Developer) of the Lots has been recorded agreeing to cancel, amend or change, in whole or part, this Declaration.

**6.7 Amendment:** NO SECTION OR PARAGRAPH MAY BE AMENDED BY THE ASSOCIATION IN SUCH A WAY AS TO CHANGE OR NEGATE THE RIGHTS RESERVED BY DECLARANT OR DEVELOPER STATED EITHER HEREIN, IN THE INDIVIDUAL DEEDS TO THE PROPERTY, OR ON THE RECORDED PLAT. Prior to the Transition Date, Declarant or Developer may amend, restate or repeal any or all provisions of this Declaration without approval of the Owners. After the Transition Date, Declarant or Developer may amend this Declaration without approval of the Board, the Association or the Owners as to the Sections referred to above or to correct any inconsistencies, make non-substantive revisions, clarify or more clearly define a provision, to annex Additional Property or de-annex any portion of the Property, or to comply with any law or regulation. FURTHERMORE, after the Transition Date, so long as it owns any Parcel in the Project, Declarant or Developer may amend any provision of this Declaration at its absolute, sole discretion without approval of the Board, the Association or the Owners.



EXECUTED this 24 day of May, 2016

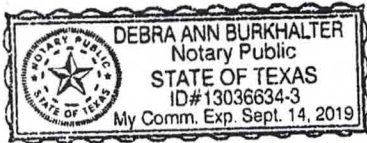
**DEVELOPER:**  
**CAPE SHORES LAND, LLC,**  
a Delaware limited liability company  
By: Renee Howes  
Its: Authorized Agent

STATE OF Texas )  
County of Walker ) ss.

This instrument was acknowledged before me this 24 day of May, 2016  
by Renee Howes as Agent of Cape Shores Land,  
LLC.

Notary Debra Ann Burkhalter

My Commission expires:



THIS NOTARY CERTIFICATE IS TO BE ATTACHED TO: Declaration of  
Covenants, Conditions and Restrictions

Date of Document: May 24, 2016 / Consisting of 17 pages  
Parties to Document: Cape Shores Land LLC, a Delaware limited liability company



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Cape Shores Subdivision Lots 1- 97, as recorded in Jackson County, Texas at Slide 215 – 222, dated 04-20-2016, of the Jackson County Deed Records.

## FILED and RECORDED

Instrument Number: 2016-01476 B: OR V: 513 P: 90

Filing and Recording Date: 05/26/2016 04:44:06 PM Recording Fee: 90.00

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



*Barbara Earl*

Barbara Earl, County Clerk  
Jackson County, Texas

ANY PROVISION CONTAINED IN ANY DOCUMENT WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE REAL PROPERTY DESCRIBED THEREIN BECAUSE OF RACE OR COLOR IS INVALID UNDER FEDERAL LAW AND IS UNENFORCEABLE.