

073838

Beachside

DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR BEACHSIDE

NOTE: THIS DECLARATION CONTAINS BINDING, IRREVOCABLE AGREEMENT TO ARBITRATE AND IS SUBJECT TO ARBITRATION PURSUANT TO THE STATE CODE STATUTE OR UNIFORM ARBITRATION ACT THAT IS APPLICABLE REGARDING BINDING ARBITRATION.



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ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Additional Property" shall mean and refer to additional real estate that the Declarant, in its discretion, may incorporate as additional phases of the Subdivision and bring same under this Declaration but shall be under no obligation to do so.

(b) "Annual Assessments" or "Assessments" shall mean an equal assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots and the operation, maintenance and repair of the Common Area.

(c) "Architectural Review Committee" or "ARC" shall mean and refer to the Architectural Review Committee established under Article VIII hereof.

(d) "Association" shall mean and refer to Beachside Property Owners' Association, Inc., its successors and assigns, a not-for-profit Texas Corporation.

(e) "Boat Slip Area" (not Common Area) means the area declared and attached as an exhibit to the Beachside Boat Slip Association Declarations, and as may be amended by Declarant/Developer.

(f) "Common Area" shall mean and refer to all common area and those areas of land, including the facilities to be constructed thereon, if any, shown and specifically designated as such on any subdivision plats of the Subdivision (as hereafter defined) filed by Declarant or by any other means so designated by Declarant. The Common Area shall be all areas that are not included in: (i) one of the 909 proposed Lots; (ii) areas marked as "Reserved by Developer for future Development" on the plats of the subdivision filed by the Declarant in the Plat Records of Matagorda County Texas; and (iii) the Boat Slip Area which is not common area. All of the Common Area will be under control of the Property Owners' Association. Such areas are intended to be devoted to the common use and enjoyment of the Members of the Association as herein defined, and are not dedicated for use by the general public. However, no general plan or plats of the Subdivision showing additional property or adjoining areas which may later be developed as additional phases of the Subdivision shall cause such areas to be included as Common Area nor shall the Association or any Owner be entitled to any right, title or interest therein unless and until such adjoining areas shall have been formally included as a part of the Subdivision by the Declarant pursuant to the terms hereinafter contained. Subject to the provisions of Article VI hereof, existing and future roads and rights-of-way, alleys, private lanes, greenways, median strips, planting areas, clubhouse with attached covered pavilion, community swimming pool, tennis courts, observation deck, recreational areas, parks, viewing pier, playground, gazebo, basketball court, boat storage area, entrance walls and signage, electronic privacy gate, mail center, gate house, lakes, canals, open space, common docks, boat launch, wetlands, and any other areas or facilities, if any, all subject to regulatory approval, designated as "Common Area" on the plat of Beachside

Subdivision in Matagorda County, Texas, according to the plat of the subdivision filed of record as Slide Numbers 445A – 452A of the Plat Records of Matagorda County, Texas, and any further phases of “Beachside” shall become “Common Area” upon conveyance by Declarant to the Association.

Provided however, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative reciprocal or otherwise), all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns.

(g) “Common Docks” (Common Area) mean any dock or boat slip designated for day use by all Lot Owners in Beachside. The use of Common Docks shall be subject to regulatory approval and to the rules and regulations of the Association.

(h) “Declarant” shall mean and refer to D.H. PALACIOS DEVELOPMENT, L.P. a Texas Limited Partnership, its successors and/or assigns.

(i) “Declaration” shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Beachside, as it may be amended from time to time.

(j) “Dwelling” shall mean and refer to the completed single family home located upon a Lot.

(k) “Governing Documents” shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association, the Architectural Guidelines (“Guidelines”), the Application for Preliminary Architectural Review, the Application for Final Architectural Review, Beachside Guidelines Pattern Book, Beachside Approved Plant List, the Rules and Regulations of the Association and the Texas Property Code.

(l) “Lot” shall mean and refer to any lot of land intended for residential use, with delineated boundary lines appearing on any recorded subdivision map of the Subdivision with the exception of any Common Area shown on any plats of the Subdivision. In the event any lot is increased in size by subdivision or combination, the same shall nevertheless be and remain a lot for the purposes of this Declaration. This definition shall not imply, however, that a lot may be subdivided if prohibited elsewhere in this Declaration.

(m) “Member” shall mean and refer to an Owner who is a member of the Association as provided in Article V hereof.

(n) “Multi Family Area” shall mean and refer to any portion of the Subdivision designated as such by the Declarant in which Lots are for multi family residential use. (o) “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s) later developed, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term “Owner” shall also refer to the heirs, successors and assigns of any Owner.

The Declarant shall not be deemed an Owner.

(p) "Setback" shall mean an area along the boundary of a Lot where no building or other structures including, without limitation, swimming pools, fences, patios or decks shall be permitted, without the express written permission of Declarant.

(q) "Single Family Area" shall mean and refer to any portion of the Subdivision designated as such by the Declarant in which Lots are for single family residential use.

(r) "Subdivision" shall mean and refer to all property including Lots, Common Area, Boat Slip Area, areas marked as "Reserved by Developer for future Development" on the plats of the subdivision filed by the Declarant in the Plat Records of Matagorda County Texas and all areas subject to this Declaration, together with any additional phases that may be developed and specifically submitted to the provisions of this Declaration pursuant hereto. All references to "Beachside" or "Properties" means this subdivision as defined in this section (r).

(s) "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of the Declaration.

(t) "Waterfront Lot" shall mean all Lots that have a wood or vinyl bulkhead.

(u) "Turnover Date" shall have the meaning as set forth in Article V hereof.

ARTICLE II

Uses of Property

Section 1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, swimming pool or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration.

Section 2. Subdivision of Lot. No Lot shall be subdivided except as hereinafter provided and no building or residence, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the Setbacks or easements as hereinafter established except as herein provided. Provided, however, two or more Lots may be combined to provide one building site in accordance with this Declaration.

Section 3. Increased Size of Lots. A Lot or Lots may only be subdivided provided the effect is to increase the size of both of the adjoining Lots. In such cases, the Declarant may alter the building lines to conform. Should the Owner or Owners of any Lots and/or portions of Lots which have been combined for a single building site subsequently wish to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, such may be done only if the written consent of the Declarant its successors or assigns is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the subdivision do not have the right to review, pass on or interfere with such Lot rearrangement, as such rights shall be exclusively that of the Declarant or any successors or

assigns to whom the Declarant may expressly have transferred such rights, but the Owner of any other Lot in the subdivision does not, by virtue of such status as an Owner, become any such successor or assign. More than one Lot may be combined to form one Lot with the written consent of Declarant, its successors and assigns. Upon combination of Lots, the building line requirements prescribed herein shall apply and the easements reserved herein shall be applicable to the rear, side and front Lot lines of such Lot as combined. The resulting building site and structures erected thereon must otherwise comply with these Restrictions and the new property line of the resulting building site shall be used to compute the set-back lines as set forth herein. Annual assessments are applicable on each individual Lot as originally recorded by Declarant regardless of whether two or more Lots are combined by an owner to form one. Where a Lot is subdivided to increase the size of two adjoining Lots, annual assessments are applicable to the owner of each subdivided portion. The assessment on the subdivided portions for each Lot Owner is based on the percentage of acreage acquired from the subdivided Lot.

Section 4. Alteration of Setback Lines in the Best Interest of Development. Where because of size, configuration, natural terrain, or any other reason in the sole opinion of the Declarant, it would be in the best interest of the development of the Subdivision that the setback lines of any Lot should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to grant a variance to the Lot Owner or in the case of a Lot owned by Declarant, the Declarant may change said setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the Architectural Control Committee hereinafter established. Any such alteration made as provided herein shall meet the minimum standards of the Matagorda County Subdivision Ordinance.

Section 5. Completion of Improvements. With the exception of construction which is interrupted or delayed due to strikes, national emergencies, or physical damage to the work in progress (such as damage due to fire, lightning, windstorm, flood, hail, riot or civil commotion, explosion, or theft), any Dwelling constructed upon a Lot must be completed within one (1) year subsequent to commencement of construction, except with the written consent of Declarant, its successors or assigns, or, if the Declarant so designates, by the ARC. The Owner of the Lot on which the improvements are being constructed shall at all times keep public and private streets contiguous to the Lot free from any dirt, mud, gravel, garbage, trash or other debris which might be occasioned by construction of the improvements. During construction, the Owner shall require its contractors to maintain the Lot upon which such work is being done in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, the Owner shall cause its contractors to immediately remove all equipment, tools, and construction material, and debris from the Lot.

In the event that completion of the Dwelling, outbuildings, or other improvements on any Lot is not completed within one year, and it is determined that construction progress has diminished to such an extent that completion of the Dwelling, outbuildings, or other improvements is unlikely within 120 days, notice will be given to the Owner that the Owner has the obligation, within 30 days, to remove all construction work in progress, including without limitation, the foundation and all building improvements and all stored building materials, and fill and grade the Lot so that it is restored to its natural grade level. The Declarant or the Association (after termination of Class B membership) shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and place a lien upon the Lot upon Owner's failure to pay these charges.

No building under initial construction shall be occupied until construction is completed and all necessary approvals of the ARC and any governmental authorities have been obtained.

Section 6. Residential Use of Lots. All Lots shall be used for residential purposes exclusively except for limited home office uses permitted under Section 11 of this Article II. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family Dwelling constructed in accordance with the Plans and Specifications herein defined in Article III. Ancillary buildings or other out buildings shall conform to the architectural scheme and appearance of the Dwelling. Declarant or its assignee may maintain a sales office, models and construction office upon one or more Lots until all Lots to be located within the Subdivision have been sold.

Section 7. Maintenance and Landscaping of Lots. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkept condition of buildings or grounds on such Lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. If the Owner fails to maintain his Lot the Association shall have a right to have the Lot mowed and/or trash removed and impose an Individual Assessment on that Lot. Each Owner shall maintain such Owner's Lot and shall keep underbrush and weeds mowed. Such maintenance obligation shall also extend to the portion of any Common Area and/or public street right-of-way located between the boundary lines of each Lot and any pavement within such street right-of-way, and to the portion of any Common Area located between the boundary line of each Lot and the shore of any lake stream or other body of water located within such Common Area.

Landscaped and grassed areas on each Lot as designated by the ARC in its sole discretion shall be watered by means of an automatic underground sprinkler system which shall be employed so as to keep all vegetation in excellent condition. Landscaping as approved by the ARC shall be installed prior to occupancy of the building improvements on each Lot. Occupancy prior to completion of landscaping shall require the written approval of the ARC, shall be for good cause only, and shall be no earlier than ninety days prior to completion of landscaping. To ensure that all landscaping will be completed in accordance with the approved landscape plan, Owner shall post a performance bond with the ARC in the manner set forth in the Architectural Review Guidelines in the amount of \$1,000.00 or such other sum as is established by the ARC from time to time.

Section 8. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals, junk, junk automobiles, or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot so as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a Dwelling located on an adjoining Lot. Bottled gas containers and oil tanks shall be screened from public view. No Lot shall be used for storage of building materials prior to the issuance of the building permit for the primary residence.

Section 9. Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No

exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of a Lot. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Subdivision. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground. "Satellite dish" antennas and similar equipment in excess of 18 inches in diameter shall not be allowed except in the rear yard (to the rear of the Dwelling) and must to the fullest reasonable extent, be screened from view from adjoining Lots and roadways as per the Architectural Guidelines.

Section 10. Signs. No sign of any nature shall be placed on any Lot without prior written approval of the ARC or the Declarant. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or improvement thereon except as herein expressly permitted. "For Sale", or similar signs may be permitted on a Lot, provided the sign complies with material, size, and color guidelines promulgated by the ARC. Political signs for a political candidate or ballot item for election, as set forth in the Texas Property Code §202.009, may be displayed on a Lot but can only be displayed on or after the 90th day before the date of the election to which the sign relates and must be removed 11 days after the election. The sign must be ground mounted, 2'x 3' in size and a Lot Owner may only display one sign for each candidate or ballot item. In addition, it shall be permissible for the Association to have a sign located on the Common Area, if the design, size and location of such sign is approved by Declarant, prior to its erection. No other sign of any kind or design shall be allowed. Declarant as developer reserves the right at its sole discretion to erect temporary or permanent signs on Lots and Common Area identifying owner's names, street names, common area, traffic signs including stop signs and speed limit signs, and any other signs that will aid in the development of the subdivision including signs advertising the Subdivision and/or model homes. No sign shall be permitted within the road right-of-way. Should it be determined that a sign erected on a Lot or in the Common Area does not conform to ARC guidelines, the Association, the Declarant, its agents or assigns shall have the right from time to time to enter said Lot without any liability for damage, wrongful entry, trespass or otherwise for the purpose of removing the nonconforming sign. The Declarant or the Association has the right from time to time to revise the rules and regulations regarding signs in order to meet the needs of the community or satisfy any governmental regulations.

Section 11. Prohibition Against Business Activity. No business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, landscape business, professional office or beauty shop or the like or any trade of any kind whatsoever (in which clients or members of the public regularly come to any Lot or any significant business traffic is generated in the Subdivision) shall be carried on upon any Lot or Lots. Provided, however, that nothing contained herein shall be construed so as to prohibit use of any portion of a residence as a home office, so long as no clients or members of the public regularly come to any Lot and no significant business traffic is generated in the Subdivision on account of such use. Provided further, however, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots or the showing of said houses for the purpose of selling houses in the Subdivision. Nothing herein shall be construed to prevent the Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the subdivision.

Section 12. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on

garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Subdivision shall be permitted (except licensed contractors may burn construction debris during the period of construction of improvements on any Lot if they have been properly permitted). Provided, however, that the Declarant or the Association shall be permitted to modify the requirements of this Section 12 where necessary to comply with orders of governmental bodies.

Section 13. Temporary Structures. No structure of a nonpermanent character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main Dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used for a residence or permitted to remain on the Lot after completion of construction. Prior to placement on any Lot, all temporary construction shelters must be approved in writing by the ARC.

Section 14. Other Structures. No home, tent (other than small overnight tents used by children which remain in place for less than 24 hours), barn, shed, shack, trailer, mobile home, modular home, tree house or other similar out-building or structure shall be placed on any Lot at any time either temporarily or permanently, except as provided in Section 13 above, nor shall above ground swimming pools be permitted.

Section 15. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

Section 16. Vehicles and Off-Street Parking. There are no areas where permanent on street parking is allowed. Temporary on street parking may be allowed for 24 hours maximum. Each Owner shall provide for parking of vehicles off alleys, private lanes, streets and roads within the Properties. Except as otherwise specifically provided for in this Declaration, no parking shall be permitted in or along any of the alleys, private lanes or streets in the Properties. There shall be no outside storage or parking upon any portion of the Properties of any mobile home, modular home, trailer (either with or without wheels), motor home, tractor, truck (other than personal-use pick-up trucks and sport utility vehicles), commercial vehicles of any type (including, without limitation, cars or trucks with advertising signs or lettering), camper, motorized camper or trailer, motorcycle, motorized go-cart, golf carts or other related forms of transportation devices, except if adequately screened from view or otherwise permitted in writing by the Declarant or the Association. A boat or other water craft and trailer may be parked under the dwelling between the stilts. No Owners or other occupants of any portion of the Properties shall repair or restore any vehicle of any kind upon or within a property subject to this Declaration except: (i) within an enclosed garage, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Violators of the prohibitions contained in this Section 16 shall be subject to having their vehicles towed, at the Owner's expense, by or at the direction of the Association, and to the levy of fines by the Association in such amount as may be determined from time to time by the Board of Directors. Additional rules and regulations regarding use, repair and storage of vehicles in the Properties may be promulgated from time to time by the Board.

Section 17. Sewer, Water, Utilities. No septic tanks or surface toilets are permitted in the Subdivision. Portable toilets will be allowed only during construction. If applicable, the grantee of any Lot assumes all responsibility for obtaining all necessary permits. The water and sewer in Beachside Subdivision is to be served by the City of Palacios. Buyer understands and agrees that it will be responsible for the then applicable water meter fee, water tap fee, sewer tap fee, any

billing deposits and electrical hook up fee.

Section 18. Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots or Common Area. The term "firearms" shall include, without limitation, guns, "B-B" guns and pellet guns.

Section 19. Animal and Pets. No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any portion of the Subdivision, except that dogs, cats, or other usual and common household pets not to exceed a total of three (3) may be permitted. Dogs shall be leashed when on the Common Area. No dogs shall be permitted to roam the property and the Association may have strays and dogs that are not leashed and are found off their Owner's Lot picked up by governmental authorities. Under no circumstance shall any pet be allowed into the estuarine wetlands. Those pets which, in the sole discretion of the Association, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or an Owner of any portion of the Subdivision shall be removed upon request of the Association. No pets shall be kept, bred, or maintained for any commercial purpose. Pets shall only be permitted on the Common Area if such portions thereof are so designated by the Association. All persons bringing a pet onto the Common Area shall be responsible for immediately removing any solid waste of said pet.

Section 20. Driveways. All private driveways, rights-of-way, and culverts, if required, installed therein, shall be of a type and quality approved by Declarant or the ARC and the grade of same shall be set by Declarant or the ARC.

Section 21. Mailboxes. Declarant shall provide locations, in its sole discretion, for mailbox centers for the community. No other mailboxes and no paper boxes are allowed.

Section 22. Garages. A dwelling is not required to have a garage, but if one is built it must be an enclosed garage. No garage shall be converted to a living area without prior ARC approval. If approved, Lots may have a detached garage as long as the garage is constructed of materials similar to the dwelling and is compatible in design.

Section 23. Wells and Irrigation Systems. No sprinkler or irrigation systems of any type that draw upon water from lakes, wetlands, canals, or other ground or surface waters within the Subdivision shall be installed, constructed, or operated within the Subdivision by any person, unless prior written approval has been received from the Declarant. This Section shall not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property to the Subdivision in accordance with Article X Section 2 of this Declaration. No private water wells or individual drinking water supply system shall be permitted upon any Lot.

Section 24. Canals and Lakes. No canals or lakes shown on any map of the Subdivision shall be used for swimming, boating, diving or fishing, nor shall the use of any personal floatation devices, jet skis or other such items be permitted on any canal or lake except as permitted by the rules and regulations of the Association. No piers, docks or barriers shall be constructed on any portion of the canals or lakes nor attached to the shoreline or banks thereof, except those that may be constructed by the Declarant or as approved by the Declarant, so long as it is a Class B member, the ARC and Beachside Boat Slip Association. There will be three designs of piers that a Lot Owner may choose from and the pier must be approved by the ARC and is subject to regulatory approval and permitting. No Lot Owner may use or permit to be used

any water from any canal, lake or other bodies of water for irrigation of such Owner's Lot unless expressly approved in writing by the Declarant, its successors or assigns or ARC. Neither the Declarant nor Association shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the canals or lakes within the Subdivision. No dredging or filling shall be undertaken on any property adjacent to any water body. The Declarant makes no warranties whatsoever as to the water level in the canals and lakes nor to their continued existence beyond the time that the construction of them has been completed and they are filled with water and turned over to the Association. There is to be no interference with pumps, fountains or water features. See Article IV for additional provisions regarding canals and lakes. Declarant reserves a temporary construction easement of forty (40) feet in width outside of all Common Areas and Common Areas around all canals and lakes along with the right to clear and grade the land and enter thereon, without the risk of trespass for the purpose of constructing, clearing or grading the Common Area, canals and lakes. The temporary construction easement will expire August 1, 2011.

Section 25. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted. Exterior sculpture, fountains, gazebos, arboretums, flags, and similar items are subject to Declarant's or ARC's prior approval; provided, however, that nothing contained herein shall prohibit the appropriate display of the American flag.

Section 26. Play Structures and Yard Accessories. All yard accessories and play structures, including basketball backboards and any other fixed game, shall be subject to ARC review and prior approval.

Section 27. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design on a structure, as determined in the sole discretion of Declarant. Under no circumstances shall solar panels be installed that will be visible from any street in the Subdivision.

Section 28. Trees. Trees may be removed without prior written approval within the building foundation area of the main Dwelling and within twenty (20) feet of the main Dwelling provided that the location of the house has been approved in writing by the ARC or the Declarant. Except as provided for in this Section and in Article VIII of this Declaration, no tree six (6") inches in diameter or greater at ground level shall be cut, removed or intentionally damaged on any Lot without the prior written approval of the Architectural Review Committee.

Section 29. Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of any Lot within the Subdivision shall be made without the prior written approval of the Declarant or the Association Board of Directors.

Section 30. Architectural Style. The architectural style for the community shall be Coastal Theme.

Section 31. Boat Slip Area. The Boat Slip Area is not part of the Common Area. Use of and access to the Boat Slips in the Boat Slip Area will be sold only to Lot Owners on a space available basis, subject to regulatory approval, and will be subject to assessment by Beachside Boat Slip Association, Inc. Boat Slip owners will have the express right to sell or lease their Boat Slip to another Beachside Lot Owner. When a Lot Owner, who owns a Boat Slip sells its Lot: (i) the Boat Slip must be sold with the Lot; (ii) transferred to a new Lot owned by the

Member; or (iii) sold to another Beachside Lot Owner. In no event shall a Boat Slip be owned by anyone other than a Lot Owner in Beachside Subdivision. In its sole discretion, the Declarant will set up a Boat Slip Association and select the manner in which slips will be sold and the manner in which the Boat Slips will be operated in order to administer and maintain the facility. The use of the Boat Slip will be subject to the terms and conditions of the Permit issued by the Corps of Engineers and the Boat Slip Association's Declaration, Rules, Regulations, Covenants and Restrictions.

Section 32. Marketing and Sales Activities. Declarant, its affiliates, and designated Preferred Builders may construct and maintain upon portions of the Common Area and other property they own, such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, and Builders may park vehicles in areas other than garages or driveways, including on streets. Builder's rights under this Section are subject to Declarant's prior written approval.

Section 33. Right to Use Common Area for Special Events. As long as Declarant, its successors or assigns, or any Affiliate of Declarant owns any property described in and shown on the recorded plat of Beachside, Declarant may use the Common Area to sponsor special events for charitable, philanthropic, or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time requested;
- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and
- (c) Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunctions, by any other remedy in law or equity, and by the terms of this Declaration.

Section 34. Water Levels and Drainage. Declarant makes no representations, guarantees, or warranties whatsoever as to the water level of any lake, canal waterway or body of water located on or adjacent to this subdivision. Declarant reserves the right (but shall not have the obligation) which right shall survive the closing, to place, move or remove dirt or trees on the subject property to construct the subdivision improvements, facilitate drainage, or to provide the uniformity of grade with surrounding lots, should the foregoing be deemed necessary or appropriate in the sole discretion of the Declarant.

Section 35. Featured Builder(s). Declarant reserves the exclusive right to designate certain builders as Featured Builders. All Featured home builders are independently owned and operated companies. To qualify as a Featured Builder, a builder must satisfy certain criteria and requirements established by the Declarant. The designation of any builder as a Featured Builder and the criteria and requirements established by the Declarant its successors or assigns, for a builder to qualify as a Featured Builder are solely for the Declarant's protection and benefit and are not intended to, and shall not be construed to, benefit any Lot Owner or any other party whatsoever. Declarant makes no representation, express or implied, to any Lot Owner or any other party whatsoever with regard to the Featured Builders, including, without limitation, a Featured Builder's performance or ability to perform, solvency or financial status, compliance

with applicable laws and regulations, use of construction substances and materials and performance pursuant to any or other reasonable standard of performance. Neither the Declarant nor any real estate broker is responsible in any manner for the performance of the obligations of a Featured Builder chosen by a Lot Owner, who shall look solely to the builder for enforcement of any claims for nonperformance, breach of warranty or any other matter relating to the construction of the Lot Owner's home.

Each Owner acknowledges and agrees that Featured Builders are not agents or employees of Declarant, the Association, or their respective agents, assigns, or employees. The Association, Declarant, and their respective agents, assigns, or employees shall not be held liable to any Person for any loss, damage, or injury resulting from any decision, action, inaction, negligence, contractual breach, tort, or work performance of any Featured Builder.

Section 36. Construction Site. During the construction phase of the subdivision, only authorized workers, employees, and agents (and their invitees) of the Developer/Declarant shall be allowed on the property without express written permission in the sole discretion of the Developer/Declarant. This provision is in effect until, at the sole discretion of the Developer/Declarant, all construction has been completed by Developer/Declarant.

ARTICLE III

Construction in Accordance with Plans and Specifications

Section 1. General. All structures of every type and description shall be constructed, placed or erected within the Subdivision in accordance with the provisions of this Article III together with other applicable provisions of this Declaration. Only new construction of residential buildings shall be permitted, it being the intent of this covenant to prohibit the moving of an existing building or portion thereof on a Lot and remodeling or converting same into a Dwelling. All notes indicated on recorded plats must be adhered to.

Section 2. Size of Residences and Lot Coverage. All interior lot residences to be constructed shall have a minimum of 1,800 square feet of enclosed air conditioned living area (exclusive of porches, decks and garages and other unairconditioned spaces). All waterfront lot residences to be constructed shall have a minimum of 2,000 square feet of enclosed air conditioned living area (exclusive of porches, decks and garages and other unairconditioned spaces). No residence shall exceed three and one half stories above ground level. For additional building height regulations see the Architectural Guidelines.

Section 3. Setbacks. No building or structure, including porches, decks, swimming pools or projections of any kind (including eaves), shall be erected so as to extend over or across any of the Setback lines shown on the recorded plats of the Subdivision or as described in the Declaration or any amendment thereto so as to be nearer to the Lot boundary line than such Setback line. See Site Requirements of the Architectural Guidelines and the recorded plats of the subdivision. In order to preserve particular view corridors, or to account for unusual topography, natural site features, streetscape or other extenuating circumstances, in its sole discretion, the Declarant and/or ARC reserves the right to require alternate setbacks and to determine house and structure locations at the time of the ARC review.

Section 4. Fences, Walls and Animal Pens. Any fences, walls or animal pens sought to be constructed on any Lot shall require the specific written approval of the Declarant or the ARC as to location, size, composition, configuration, exterior materials, color and other similar matters, which approval may be withheld for purely aesthetic considerations. No hedge, shrubbery or vegetation of any kind shall be grown or placed in the form of a fence on any Lot or Lots across the front street line of the said Lot or Lots or on either of the side lines of the said Lot or Lots until such time as the Declarant approves same as to location.

Section 5. Prohibited Building Materials. Exposed exterior walls composed of concrete block (unless covered with stucco or other approved material), imitation asphalt brick siding, tar paper, and imitation asphalt stone siding shall be prohibited. All other materials are subject to the approval of the ARC, which may approve or reject such materials in its discretion, on purely aesthetic grounds.

ARTICLE IV

Additional Provisions as to Canals and Lakes

Section 1. Buffer Areas. There shall be on all Lots that abut water, a green area Buffer thirty (30) feet wide behind all wooden or vinyl bulkheads. No removal of the green areas shall be made within any Buffer Area required by this Declaration or shown on any recorded plats of the Subdivision, except with the prior written consent of Declarant or the ARC.

Section 2. Declarant's Rights and Easements. Declarant, as developer, hereby reserves and is granted a maintenance easement in favor of itself, its successor and assigns over, under, onto and across all Buffer Areas for the purpose of maintaining and restoring the green area. The reservation of these easements shall not place upon Declarant any obligation to perform such activities and such performance shall lie solely within the discretion of Declarant. These rights of Declarant are in addition to the rights and obligations of Association set out in Article VI, Section 4 of this Declaration. The easements herein reserved and granted are perpetual, non-exclusive and shall run with title to the Lots.

Section 3. Rights of Enforcement. In the event an Owner does not maintain the Buffer Area required in Section 1 above, Declarant and Association may each enforce such Owner's obligations either by an action in specific performance or may perform such work themselves and the cost and expense of such work and materials, shall be due and payable by such Owner within seven (7) days of demand by Declarant or Association, as the case may be. In the event such Owner refuses to make such payment as aforesaid, the Declarant and Association shall have the right to bring an action for the collection of same plus attorney's fees related thereto; and Association shall have the additional right to enforce collection thereof in the manner provided under Article VII, Section 6 of this Declaration.

Section 4. Ownership and Control of Lakes and Canals. No right title or interest, including, without limitation, riparian rights, in any canal or lake shall attach to or become an appurtenant to the title to any Lot by reason of or upon conveyance of such Lot by Declarant unless such conveyance specifically includes such rights. The Declarant reserves unto itself, its successors and assigns an easement upon and across every Lot to maintain said canals and lakes as more fully provided in Article VI, Section 8 of this Declaration, and the Association shall be responsible for all maintenance of said canals and lakes, including but not limited to monitoring water levels, maintaining any fountains or aeration devices, dredging, maintenance of bulkheads

and providing lake mitigation services (i.e. algae control and aeration). Nothing in this section shall relieve Lot Owners of their responsibility to maintain the area of their Lot bordering the Common Area around the canals and lakes.

ARTICLE V

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an Owner of any Lot which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. Board of Directors. Initially, there shall be three (3) members of the Board of Directors of the Association who shall serve until such time as their successors are duly elected and agree to serve. The directors shall have annual meetings and other such meetings as may be called for at the request of the president of the Association, by a majority of the directors, or as called for in the Bylaws. The foregoing notwithstanding, so long as the Declarant, or its successors and assigns as Declarant, is the Class B Member, Declarant shall have the sole right to select the Board of Directors and shall have the right to remove, without cause, any or all of the Directors. Declarant may select board members who are not Owners.

Section 3. Articles of Incorporation and Bylaws. The Articles of Incorporation of the Association and Bylaws of the Association shall be adhered to in the administration and operation of the Association.

Section 4. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, such purchaser automatically becomes a Class A Member.

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot owned. Class B membership shall cease and become converted to Class A membership upon the happening of the earlier of the following:

- (a) The date on which the Declarant no longer owns any part of the entire Subdivision, including but not limited to Common Areas; or
- (b) Fifteen (15) years from date of recordation of this Declaration; or
- (c) At such time as Declarant, in its sole discretion, voluntarily relinquishes Class B Member status in writing.

From and after the happening of the earliest to occur of (a) (b) or (c) above, the Class "B" Member shall be deemed to be a Class "A" Member and entitled to one vote for each Lot owned in the manner provided above. The earliest to occur of (a) (b) or (c) shall be referred to as the "Turnover Date".

ARTICLE VI

Property Rights in the Common Area/Miscellaneous Easements

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Area, subject to the rules and regulations of the Association, and such easement shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees. In the event that Declarant incorporates additional land under the provisions of this Declaration pursuant to Article X, Section 2 of this Declaration, all Owners of Lots within such additional phases shall have the same rights and privileges with regard to use of the Common Area as the Owners of Lots originally made subject to this Declaration. The Declarant and the Association shall grant to Beachside Boat Slip Association, Inc. any necessary easements over, under and across all Common Area for ingress and egress to the Boat Slip Area and for construction and completion of construction and development of the Boat Slip Area including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

Section 2. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that within fifteen (15) years from the date of recording of this Declaration, it will convey to the Association, by Quit-Claim Deed, fee simple title to the Common Area upon the conditions set forth herein, subject to those rights reserved unto Declarant pursuant to this Declaration and to the provisions of this Declaration.

In lieu of the conveyance provided for herein with regard to the alleys, private lanes, streets and roads, Declarant may cause such alleys, private lanes, streets and roads to be dedicated to any governmental entity, as provided for in Section 3(a) hereof. In the event the alleys, private lanes, streets and roads are dedicated to a governmental entity, acceptance of such dedication may be conditioned upon the agreement of the Association that the Association shall maintain, (at Association's sole cost and expense) any and all landscaping, shrubbery and the entrance sign to the Subdivision which may be located within the dedicated areas.

NOTICE IS HEREBY GIVEN THAT THE STREETS, ROADS AND ROAD RIGHTS OF WAY INSIDE BEACHSIDE ARE PRIVATE STREETS, AND ARE NOT TO BE MAINTAINED BY ANY PUBLIC ENTITY. THE STREETS, ROADS AND ROAD RIGHTS OF WAY SHALL BE PART OF THE COMMON AREA TO BE MAINTAINED BY THE ASSOCIATION.

Section 3. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of Declarant, and/or of the Association, to dedicate, transfer or convey all or any part of the Common Area, with or without consideration (and subject to the condition set out in Section 2 immediately above), to any governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely limit the use of the Common Area by the Members of the Association;

(b) The right of the Declarant, and/or of the Association, to grant and reserve easements and rights-of-way for maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage and other utilities and services, including, without limitation, a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Declarant to grant and reserve easements and rights-of-way through, over and upon and across the Common Area for the completion of the Subdivision, for the operation and maintenance of the Common Area and perpetual non-exclusive easements for ingress and egress and utility installation and maintenance to any other property of Declarant regardless of whether or not made subject to this Declaration;

(c) The right of the Association, as provided in its By-Laws to suspend the enjoyment rights of any Member in the Common Area (but not access to a Member's Lot) for any period during which any assessment remains unpaid, and for a period not to exceed thirty (30) days from any infraction of its published rules and regulations. The Association must send written notice to the Owner by certified mail, return receipt requested as per Texas Property Code §209.006 describing the violation that is the basis for the suspension action, charge or fine and state the amount that is due to the Association from the Owner. Owner shall be entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months. The Owner may request a hearing under Texas Property Code §209.007 on or before the 30th day after the date the Owner receives the notice.

(d) The rights of the Association, in accordance with law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and in pursuance thereof, to mortgage the same.

Section 4. Maintenance. The Association shall at all times maintain, including applicable taxes regardless of ownership, all portions of and structures situated on the Common Area, including, but not limited to, Recreational Amenities, existing and future roads and rights-of-way, alleys, private lanes, greenways, median strips, planting areas, clubhouse with attached covered pavilion, community swimming pool, recreational areas, parks, tennis courts, basketball court, viewing pier, playground, gazebo, boat storage area, entrance walls and signage, electronic privacy gate, mail center, gate house, lakes, canals, open space, common docks, boat launch, wetlands, and any other areas or facilities, (except as maintained by a municipal utility district or other governmental or quasi-governmental entity) signs; perimeter fencing (except for the interior surface of perimeter fencing along a Lot boundary); and entry features, including special lighting if any, all subject to regulatory approval, designated as "Common Area"; and the Association shall maintain the Common Area in good repair, and shall repair or replace as often as necessary, any leased property, the paving, drainage structures, street lighting fixtures, (if not maintained by utility company) landscaping, entrance signage, community boat launch (subject to regulatory approval), and other amenities situated on the Common Area. The Association shall

also maintain any additional property, which may include a Lot, for which the Association, in its sole discretion, assumes maintenance responsibility under this Declaration, a Supplemental Declaration, or a contract, covenant, or agreement which the Association enters into (or which Declarant enters into on the Association's behalf). The Board of Directors acting by a majority vote shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Area and all other common expenses. All work pursuant to this Section and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with Article VII. Excluded here from shall be paving and maintenance of individual Lot driveways which shall be maintained by each Owner. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

Declarant under its Corps of Engineers' Permit is required to preserve and restrict the use of certain acreage of estuarine wetlands adjacent to the development. The acres that will be restricted for the estuarine wetlands are not within the footprint of the development. The Declarant and the Association will set forth rules and regulations that no Lot Owner, its guests, invitees, agents or representatives can enter the restricted wetlands area.

Section 5. Additional Structures. Prior to the Turnover Date neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Declarant, erect, construct or otherwise locate any structure or other improvement in the Common Area.

Section 6. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the Subdivision. Family shall be defined as any number of persons related within the second degree of consanguinity or affinity, living with not more than one person who is not so related as a single household unit and one household employee of such household unit. It is not the intent of the Declarant to exclude from a residence any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to the Owner's tenants who occupy a residence within the Subdivision.

(c) Guests. Any recreational facilities and other Common Area, may be utilized by guests of Owners or tenants subject to this Declaration, the By-Laws of the Association and to the Rules and Regulations of the Association governing said use and as established by its Board of Directors.

Section 7. Rules and Regulations. The use of the Common Area by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association governing such use, or which may hereafter be prescribed and established by the Association.

Section 8. Easement for Utilities and Maintenance. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the Setback areas, and easement areas on each Lot as shown on the recorded map of the Subdivision and/or as set forth herein and over, upon, across and under the Common Area for maintenance and/or the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including an easement for privately owned television and other communications cable and equipment. Declarant may further cut drainways for surface water when such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, pumping stations, and tanks on Common Area. It shall not be necessary to obtain the consent of Owners of Lots adjoining any existing utilities or pump stations. Such rights may be exercised by the licensee of the Declarant but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the Subdivision which will interfere with the rights of ingress and egress provided for in this paragraph. Specifically, other than Declarant, no Owner shall erect any structure, including, without limitation, walls, fences or paving within any areas designated on the Plat of the Subdivision and/or as set forth herein as a "Road Right of Way", "Utility Easement", "Common Area", areas marked as "Reserved by Developer for future Development", "Boat Slip Area", "Drainage Ditch", or "Swale", nor shall any Owner change the grade of any such easement area, provided however, that driveways may cross utility and drainage easements at the front of the Lots subject to prior approval of Declarant and that any planting in easement areas shall not interfere with the applicable easement and shall be limited to grassing and small shrubbery. Each Owner shall keep drainage ditches and swales located on such Owner's Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lot as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate governmental entity. The easements referred to in this paragraph are, without limitation, those shown upon the recorded plat(s) of the Subdivision; as set out in easements of record; upon the plans of the Subdivision; as set forth herein or which are located on, over or under the ground.

In addition to the foregoing rights reserved to Declarant, and not in limitation thereof, Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable commercial easement and right of ingress and egress over, upon, across and under the Common Area and all streets and roads within the Subdivision for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacement and operation of water lines and other utilities which serve or shall serve property presently owned by Declarant. Declarant, its agents, contractors, servants, employees and assignees may enter upon the easement areas for the purposes of maintaining, repairing, replacing and operating such water lines and other utilities and drainage facilities and for the purpose of installing additional utilities and drainage facilities. Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable easement and right-of-way over, under and across those areas designated as "Road Right of Way", "Common", "Utility Easement",

"Drainage Ditches" or "Swales" on the plat of the Subdivision for the purpose of providing drainage of the Subdivision and lands now or hereafter adjacent to the Subdivision or in the vicinity thereof (whether or not a part of the Subdivision) and for the installation, repair and maintenance of pipes and other facilities necessary for such drainage. Declarant, its agents, contractors, servants, employees and assignees may enter upon any of the easement areas so designated on the recorded plat of the Subdivision for the purpose of maintaining, repairing, replacing and operating any of the drainage facilities, pipes, ditches, and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. No Owner shall erect any structure or fence within such easement areas without the prior written consent of Declarant. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures, plants, trees, or other items which may be located in such utility and drainage easements and Declarant shall have no obligation to replace any such structures which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves unto itself, its successors and assigns, perpetual, alienable, commercial easements over and under all Lots along an area 5 feet in width inside each side boundary line of each Lot and 10 feet along the front and rear of each Lot Line and along street right of ways for the purpose of installation, construction, maintenance, repair, replacement, use and operation of utilities and utility systems of all kinds (including but not limited to water, sewer, electric, and natural gas), drainage (including but not limited to storm water and surface drainage), and access. Declarant further specifically reserves over and under all Lots along the wooden or vinyl bulkhead an area 25 feet in width for a Bulkhead Easement for the maintenance of the bulkhead. These easements shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Subdivision which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns whether or not such property is made a part of the Subdivision and whether or not such property adjoins the Subdivision.

Section 9. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees, including but not limited to, any property manager employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours, whenever practicable.

Section 10. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the Subdivision for the maintenance of signs, sales offices, rental offices, property management offices and construction offices, together with such other facilities as in the sole opinion of Declarant reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Lots or Common Area. The Declarant also reserves the right to grant to any builder or builders the right to operate and maintain builder sales offices at any location within the subdivision upon such terms and conditions as the Declarant in the Declarant's sole discretion may determine.

Section 11. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Declarant, the Association and their respective

agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of any Lot for the purpose of landscaping, mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing rubbish and trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such easements shall not impose any duty or obligation upon the Declarant or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement, but not the obligation, to maintain and/or repair the outer portions of any building, if the Owner shall fail to maintain such building in keeping with the standards of the Subdivision. The cost of such maintenance and/or repair shall constitute a special assessment against the Lot on which the building is located and the Owner of said Lot as provided in Article VII herein.

Section 12. Road Construction Easement. Declarant reserves a temporary construction easement of twenty-five (25) feet in width along both sides and running parallel to streets and roads, alleys and private lanes which easements shall expire thirty-six (36) months after the particular road construction commences. Should it be necessary due to terrain and site conditions, Declarant has at its sole discretion the right to extend the width of the temporary construction easement.

ARTICLE VII

Assessments for the Maintenance and Operation of Common Area and Facilities

Section 1. Assessments, Liens and Personal Obligations Therefore, and Operation Maintenance of Common Area Solely by the Association.

(a) Each and every Owner of any Lot(s) and each and every owner of the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, and (3) individual assessments. Said assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot(s) against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot(s) at the time when the assessment fell due.

(b) The Assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of Owners of Lots in the Subdivision, and in particular for the improvement and maintenance of the Common Area and, upon determination by the Board of Directors, improvements located outside of the Subdivision (including, without limitation, identification and/or directional signage [including landscaping] either exclusively or in cooperation with other association or parties) now or hereafter designated or existing, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, the employment of attorneys, accountants, property managers and other professionals to represent the Association when necessary and such other needs as may arise. In the event that

Declarant performs any of the foregoing services for Association, including, but not limited to, accounting and bookkeeping services, it shall have the right to receive a reasonable fee therefore and such shall not be deemed to be a conflict of interest.

Section 2. Amount and Payment of Annual Assessment. The initial annual assessment payable by each Owner shall be \$1,495 per Lot per calendar year. Upon the closing of the initial sale of each Lot by Declarant, the purchaser of each Lot shall pay to the Association the annual assessment prorated for the current year. The annual assessment may be increased or decreased by the Board of Directors of the Association without a vote of the membership to an amount not more than a twenty (20%) percent difference in the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease differs from the assessment for the previous year by more than twenty (20%) percent. In determining the annual assessment, the Board of Directors of the Association shall appropriate an amount sufficient to pay the costs of insuring, maintaining, replacing, protecting and operating the Common Area and performing the other exterior maintenance required to be performed by the Association under this Declaration including establishing and maintaining adequate reserves. The Board shall fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period (which shall be based on a calendar year), and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto. In the event that any Lot is subject to an assessment for only part of a calendar year, then the amount of such assessment shall be prorated based on the portion of the assessment period for which such Lot is subject to an assessment.

In the event that two Lots are combined for the purpose of providing one building site, such Owner shall pay an assessment for each of the original Lots as if they had not been combined.

Each annual Assessment shall be fully payable in advance on the 1st day of January each year, but the Board of Directors of the Association shall have the option to permit payments in such installments and at such times as it shall determine. The exact amount of each annual Assessment shall be fixed by the Board of Directors of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for any assessment, a certificate in writing, signed by an officer of the Association or by the Association Manager, setting forth whether said assessment has been paid. Such certificate shall be in recordable form and shall be conclusive evidence of payment status of any assessment therein stated to have been paid.

This Section shall not be amended as provided in Article XIV, Section 11 of this Declaration, to eliminate or substantially impair the obligation to fix the assessment at an amount sufficient to properly maintain and operate the Common Area and perform the exterior maintenance required to be performed by the Association under this Declaration.

Section 3. Special Assessments for Insurance and Capital Improvements. In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying unanticipated increases in insurance costs and for unexpected costs associated with the repair or replacement of a described capital

improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Provided that any such assessment shall have the assent of at least fifty-one (51%) percent of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The due date of any specified assessment shall be fixed in the Resolution authorizing such assessment.

Section 4. Individual Assessment. The Association may levy an individual assessment upon any Owner to cover the costs incurred by the Association due to that Owner's failure to maintain their Lot and improvements pursuant to the standards set forth in this Declaration, or to reimburse the Association for any damage to any Common Area property caused by any Owner or their tenant or invitee, or for any other purpose permitted by this Declaration or any Supplemental Declaration (the "Individual Assessments"). Individual Assessments shall be due and payable within thirty (30) days after written notice from the Association.

Section 5. Paid Professional Manager. The Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common Area and in the discharge of the Association's duties.

Section 6. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien. Remedies of Association. If any assessment (or reimbursement as outlined in this Declaration) is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot(s) which shall bind such Lot(s) in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment or reimbursement, however, shall remain his personal obligation and will also pass on to his successor in title.

Any assessment not paid within thirty (30) days after the due date shall be subject to such late charges and shall bear interest at a rate per annum as shall be determined by the Board of Directors of the Association, with such interest rate to not exceed the highest rate of interest allowed by law. The initial late charge imposed for late payment of any assessment is \$25.00 and shall be charged as to any assessment that is not paid within 30 days of its due date. The initial interest rate for late payment is 18% per year (1.5% per month) which shall commence to accrue on any assessment or other account balance that is not paid within thirty (30) days of the date due. The initial date upon which liens may be filed for failure to make payment of assessments and other charges is thirty (30) days after the due date. The Board of Directors may change the initial late charge, interest rate, due dates and lien assessment date by majority vote of the directors.

In the event the Owner of any Lot fails and refuses, after demand by the Association, to pay any annual or special assessment, then the Association may bring legal action against the then Owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot(s); and in the event a judgment is obtained, such judgment shall include interest on the assessment or reimbursement as above provided and reasonable attorney's fees and late charges together with the costs of the action. The Association may further file a notice of lien in the Official Records of Matagorda County, Texas and enforce assessment obligations as permitted by law, including without limitation, by filing and foreclosing a claim of lien in accordance with

the procedures set forth in the Texas Property Code and/or by bringing an action at law against the Owner personally obligated to pay the assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Foreclosure may be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought under the Texas Property Code, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. While a Lot is owned by the Association following foreclosure no right to vote shall be exercised on its behalf and no assessment shall be levied on it. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT. The Association, by and through its Board of Directors, shall have the authority to compromise and settle claims for assessments upon a majority vote upon good cause shown.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot, the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the Association's failure to execute and record any such document shall not, to any extent, affect the validity, enforceability, perfection, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002, as it may be amended, in like manner of any deed of trust on real property. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002, as it may be amended.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments (and reimbursement) provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Lot held by a commercial or savings bank, trust company, credit union, industrial loan association, insurance company, pension fund, or business trust, including but not limited to a real estate investment trust, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any private or governmental institution or agency which has insured the loan of any such lender, or any combination of any of the foregoing entities; provided, however, that a sale or transfer of any Lot pursuant to a decree of foreclosure or pursuant to any proceeding in lieu of foreclosure, shall not relieve such Lot from liability for any assessments which thereafter become due, nor from the lien of any subsequent assessment. Said assessment liens, however, shall be subordinate to the lien of any such mortgage or mortgages hereafter placed upon the Properties subject to assessment.

Section 8. Exempt Property. All Common Area subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

ARTICLE VIII

Architectural Standards and Control

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee established in Section 1 of this Article VIII. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include, without limitation, staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements hereof have been fully met and until the written approval of the Architectural Review Committee has been obtained.

Section 1. Architectural Review Committee. The Architectural Review Committee (ARC) shall have exclusive jurisdiction over all construction on any portion of the Properties, including but not limited to the authority to review and approve all proposed Site plans showing where improvements are to be erected. The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate Architectural Review Guidelines ("Guidelines") which include the Application for Preliminary Architectural Review, the Application for Final Architectural Review, Beachside Guidelines Pattern Book, Beachside Approved Plant List and such other Rules and Regulations as the ARC deems necessary. The Guidelines, Pattern Book, Plant List, Review Process and Rules and Regulations shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend in its sole discretion these documents. It shall make them available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Subdivision and who shall conduct their operations strictly in accordance therewith. As long as Declarant owns any part of the entire Subdivision, including but not limited to Common Areas, which are subject to this Declaration or retains the right to add additional phases, the Declarant retains the right to appoint all members of the ARC, which shall consist of at least three (3), but no more than five (5) persons. The members of the ARC do not have to be Owners. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ARC. The ARC shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots, Buffer Areas, and Common Areas. The right of approval herein reserved and granted shall include, without limitation, the right to designate or re-designate which Lot line shall be the "front" in the case where a Lot is bordered by more than one street.

The ARC shall promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions, or alterations shall be submitted in advance to the ARC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his/her Dwelling or to paint the interior any color desired. In the event the ARC fails to approve or to disapprove such plans or to request additional information reasonably required

within forty-five (45) calendar days after submission, the plans shall be deemed approved; provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal or approval of plans, specifications, and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which, in the sole and uncontrolled discretion of the ARC, may deem sufficient. The approvals required pursuant to this Article shall be in writing and are in addition to any approvals required by other applicable governmental authority.

Nothing in this Declaration shall be construed to prohibit the ARC from promulgating different Guidelines and/or Procedures for each Phase or portion thereof of the Properties and the ARC is specifically authorized to do so. Additionally, all reasonable costs incurred by the ARC in reviewing and approving applications to the ARC shall be the responsibility of the applicant. Unless specifically waived by the ARC, all applications and submissions of plans for approval by the ARC must be accompanied by an architectural review fee of \$1,000.00 or such other sum as is established by the ARC from time to time. Optional, preliminary plan approval may be obtained by submitting plans accompanied by a preliminary review fee of \$100.00 or such other sum as is established by the ARC from time to time.

Prior to the commencement of construction, a Lot Owner shall have a registered professional engineer design the foundation plan for their residence. The foundation plan shall be signed, sealed, contain the name, address, phone number and license number of the registered professional engineer. The plan shall be submitted by the Lot Owner to the ARC prior to commencement of construction.

Actual construction of Dwellings and other improvements shall be the responsibility of the Owner of the Lot and the Owner's builder. Any permission granted for construction under this covenant and any designation of approved licensed contractors shall not constitute or be construed as an approval, warranty or guaranty, expressed or implied, by the Declarant or the ARC or its designated agent of the structural stability, design or quality of any building or other improvement or of the contractor who constructs such buildings or other improvements.

Section 2. Buildings, Fences, Walls, Etc. No building, fence, wall, deck, trellis, gazebo, boat house, or other structure, and no change in topography, landscaping, or any other item originally approved by the ARC, shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the ARC. Any change in exterior appearance of any building, wall, fence, or other structural improvements and any change in the appearance of the landscaping shall be deemed an alteration requiring approval.

Section 3. Docks, piers, landings, wharfs and seawall/bulkheads. No dock, pier, landing, wharf, seawall/bulkhead or other structure shall be constructed, placed or allowed to remain on any body of water, water course, Tres Palacios Bay or Turtle Bay, unless approved in writing by the Declarant or the ARC.

Section 4. Compliance. All construction within Beachside shall comply with the following regulations for stormwater and wastewater treatment:

(a) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons.

(b) All surface drainage from the roads to the lakes will flow across the Lots, across a designated 30 foot wide green area behind the bulkheads and into the lakes. Each Waterfront Lot will maintain a 30' wide vegetated buffer between impervious areas and surface waters.

Section 5. Declarant's right to exercise Architectural Review Authority. Notwithstanding the above sections, Declarant, in Declarant's sole judgment and discretion, reserves the right and option to exercise Architectural Review Authority without establishing an ARC until such time as Declarant relinquishes Class B membership status.

Section 6. Construction Bonds.

(a) Contractor Performance Bond. Prior to commencement of work, builders will be required to post a Contractor Performance Bond with the ARC in the amount of \$1,500.00 or such other sum as is established by the ARC from time to time, to ensure that the contractor, during construction, keeps the property in a neat, clean, workmanlike manner and to ensure that the contractor completes improvements in accordance with the approved plans and specifications. Should the same not be done at the end of any business day or the end of construction, as appropriate, some or all of the bond may be used to bring the contractor into compliance with approved plans, and for any necessary site maintenance. Any portion of the Contractor Performance Bond remaining at the end of construction and issuance of the certificate of occupancy will be refunded to builder/contractor. Nothing in this subparagraph shall prevent Declarant or the Association from pursuing any legal right, claim or remedy it may have for damages in excess of the bond amount.

(b) Road Bond. Prior to commencement of construction, the Contractor shall submit a \$2,500.00 road bond, or such other sum as is established by the ARC from time to time to ensure that streets and curbs in front of subject Lot are maintained, throughout the construction process, in the same good quality condition as they were in when construction began and to ensure the proper reseeded, and clean-up of right-of-ways and drainage swales for any damage by contractor and its agents. Any portion of the road bond not applied to necessary repairs will be refunded at the end of construction. Nothing in this subparagraph shall prevent Declarant or the Association from pursuing any legal right, claim or remedy it may have for damages in excess of the bond amount.

Section 7. Variances. The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration or the Architectural Review Guidelines, including without limitation restrictions upon height, size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by at least two (2) members of the ARC and shall be effective upon delivery to the Owner. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Architectural Review Guidelines for any purpose except as to the particular Lot and improvements and the particular provision covered by the variance, nor shall it affect in any way

the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Owner's Lot.

Section 8. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed House or other Improvement shall be permitted to exist on any Lot except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Architectural Review Committee. Any damage to the Roadways, curbs or sidewalks or any part of the Common Area or any utility system caused by an Owner or Owner's builder or his subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and his subcontractors on any portion of the Property shall keep such portion of the Property free of construction debris, in accordance with the construction rules established by the Architectural Review Committee or, in the absence of such rules, in accordance with standard construction practices, and shall similarly keep the Lake and contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Subdivision to pay for the cost of repairing any damage to Roadways, curbs or sidewalks or any part of any Roadway, Common Area, or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Subdivision and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or his subcontractors during the construction of Improvements.

ARTICLE IX

Exterior Maintenance, Reasonable Access and Maintenance of Common Area

Section 1. Exterior Maintenance. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant, or the Association (after the termination of Class B membership status of Declarant) may, at its option, after giving the Owner ten (10) days written notice sent to his last known address, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead or diseased trees, shrubs, vegetation or dangerously leaning trees or limbs removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, all of which shall not be deemed a trespass, and all expenses of the Association under this provision shall be a lien and charge against the Lot on which the work is done and the personal obligation of the then Owner of such Lot. The Declarant or the Association, and its assigns, may likewise, after giving the owner ten (10) days written notice sent as aforesaid, enter upon such Lot(s) to remove any trash, debris or garbage which has collected on said Lot(s) without such entrance and removal being deemed a trespass, all at the expense of the owner of said Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to the Owner's last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum secured by a lien against the Lot as herein provided. All notices under this section shall be given as required by Chapter 209 of the Texas

Property Code.

Section 2. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Declarant during the period of development, shall have the right to enter upon any Lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 3. Maintenance of Common Area. It shall be the responsibility of the Association to maintain the Common Area. However, should the Declarant (prior to conveyance to the Association) or the Association (after the termination of the Class B status of Declarant), decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Area to governmental authority, as they have the right to do, such duty to maintain same shall cease as to that portion so transferred.

Section 4. Acceptance and Control of Association Property.

(a) The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by others.

(b) Declarant and its designees may convey to the Association, and the Association shall accept "as is", personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Association shall reconvey to Declarant any portions of the Common Area which Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

Section 5. Removal of Obstructions, Debris, and Materials. The Association may remove any obstructions of any nature located within road right-of-ways or other Common Area including trees and shrubs which, in the opinion of the Association, either might produce a hazard or might interfere with the maintenance of the roads.

ARTICLE X

Phased Development

Section 1. Initial Phase. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Matagorda County, Texas, and is according to the plat of the Subdivision filed of record as Slide Numbers 445A – 452A of the Plat Records of Matagorda County, Texas.

Section 2. Additional Phases. The Declarant may, at its option, from time to time bring other land under the provisions hereof by recording a Supplemental Declaration(s) stating its intention to so incorporate additional real estate. Declarant may incorporate such additional land under the provisions hereof in any number of additional phases as it may so desire and may, in its discretion, change the character or nature of such future phases, including but not limited to changing the architectural theme, building materials, elevations, and minimum square footage requirements for buildings. Such Supplemental Declaration(s) shall not require the vote or consent of the Association or any Owner. Any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Matagorda County, Texas. Such Supplemental Declaration shall describe the real property to be brought under the provisions hereof. Declarant may bring such additional real estate under the terms hereof either in whole or in part and may do so in multiple phases. Upon the Declarant's election to incorporate additional real estate hereunder, all of such real estate so incorporated shall be as fully covered hereby as if a part of the original Subdivision. All property so incorporated shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations as Declarant may impose on the land being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have the unilateral right to transfer to any other person or entity the said right to submit additional property to the provisions of this Declaration. Declarant shall have no obligation to develop any land adjoining the Subdivision in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, in the event that it should decide to develop any additional land located adjacent to the Subdivision, in its sole discretion, shall have no obligation to make same a part of the Subdivision or subject to this Declaration. THE DECLARANT SHALL BE UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNTIL ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED. THE RIGHT TO ADD FUTURE PHASES SHALL TERMINATE 15 YEARS FOLLOWING THE DATE OF THIS DECLARATION.

Section 3. Reservation of Additional Easements and Rights. Declarant reserves for itself and its successors and assigns as developer (and all conveyances by Declarant to Association of Common Area shall be deemed to automatically reserve) easements over, under and across all Common Area for ingress and egress and for construction and completion of construction and development of future phases including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all utility services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

Section 4. Extension of Roads. Declarant shall have the right, but shall have no obligation, to extend any street or road now or hereafter within the Subdivision, without seeking the approval of Association or any other party, for the purpose of serving additional phases of the Subdivision and/or for serving other parcels of property not included within the Subdivision.

Section 5. Voting Rights. As each phase, if any, is added to the Subdivision, the Lots comprising such additional phase shall be counted for the purpose of voting rights.

Section 6. Identification of Additional Phases. Nothing in this Declaration shall prohibit Declarant from naming or identifying any Phase or portions thereof by a name other than "Beachside" and any such other designation shall in no way prejudice the rights or obligations under this Declaration of any Owner of any Lot in any such section or Phase.

ARTICLE XI

Rights of Mortgagees

Rights of Mortgagees or Third Parties. Should a mortgagee or third party acquire the rights of Declarant, by way of foreclosure or otherwise in adjoining or neighboring property contained within the property contiguous to the property subject to this declaration, as same may exist from time to time, it shall be allowed full use of all rights, easements, rights-of-way and utilities contained within the Subdivision for the purpose of serving such adjoining or neighboring areas. These rights shall also inure to the benefit of Declarant should it retain or be the Owner of any portion of said property. Any of such parties may elect to bring additional phases under this Declaration.

ARTICLE XII

Insurance and Casualty Losses

Section 1. Insurance. Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount (as determined by the insurance underwriter) sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, Association, and its Members for all damage or injury caused by the negligence of Association or any of its Members or agents. The public liability policy shall have at least a One Million and No/100 (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million and No/100 (\$3,000,000.00) Dollar limit per occurrence, and a Five Hundred Thousand and No/100 (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance required under this Section shall be common expenses of the Association. This policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be a common expense of Association.

Cost of insurance coverage obtained by Association for the Common Area shall be included in the assessment.

All such insurance coverage obtained by the Board of Directors shall be written in the name of Association as Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

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

(b) All policies on the Common Area shall be for the benefit of Association and Declarant shall be named as additional insured;

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

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

(e) Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against Association's Board of Directors, its manager, and Owners and their respective tenants, servants, agents, and guests;

(ii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of Association or its duly authorized manager without prior demand in writing delivered to Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by Association, its manager, its Owner, or mortgage;

(iii) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(iv) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. However, no fidelity bond shall be required as long as the Class B Member exists. The amount of fidelity coverage shall be determined in the Directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

The Association may purchase officers' and directors' liability insurance, if reasonably available, and the Board of Directors of Association approves the purchase of same. However, every director and every officer of the Property Owners Association shall be indemnified by Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be a party, or

in which he/she may be become involved by reason of his/her being or having been a director or officer of Association, whether or not he/she is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of Association and placed in a capital improvements account.

(b) If it is determined, as provided in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Subsection (a) above. However, repair or replacement of the affected Common Area must be made unless prevented by law or governmental rule or regulation.

Section 3. Damage and Destruction.

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

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days.

(c) In the event that it should be determined in the manner described above that the damage and destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the affected portion of the Common Area shall be restored to their natural state and maintained by Association in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots owned; provided, if the damage or destruction involves a Lot(s), only Owners of the affected Lot(s) shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE XIII

Dispute Resolution and Limitation on Litigation

Section 1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Subdivision, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 2 below ("Claims") shall be resolved using the procedures set forth in Section 3 below in lieu of filing suit in any court.

Section 2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 3 below.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 3 below:

- a. any suit by the Association against any Bound Party to enforce the provisions of Article VII (Assessments for the Maintenance and Operation of Common Area and Facilities);
- b. any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief and such other ancillary relief as permitted to enforce the provisions of Article II (Uses of Property) or VIII (Architectural Standards and Control);
- c. any suit in which any indispensable party is not a Bound Party; and
- d. any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 3 below.

Section 3. Mandatory Procedures.

a. Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively the "Parties") shall notify each Respondent in writing (the

“Notice”), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. claimant’s proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of any Texas dispute resolution center or such other independent mediator providing similar services upon which the Parties mutually agree. If the parties cannot agree on a mediator then the mediator shall be selected by a District Judge of the District Court of Matagorda County, Texas.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided however, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five (5) days after the Termination of Mediation, the Claimant shall make a final written settlement demand (“Settlement Demand”) to the Respondent and the Respondent shall make a final written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

c. Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration of the American Arbitration

Association or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided however, nothing herein shall release or discharge Respondent from any liability to Persons other than the Claimant.

2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Texas. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas.

Section 4. Allocation of Costs of Resolving Claims.

a. Subject to Section 4(b), each Party shall bear its own costs, including any attorney's fees incurred, and each Party shall secure equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

b. Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

Section 5. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Section 3(b) and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party, thereafter fails to comply with the Award, then the other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Section 3. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties pro rata) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.

Section 6. Litigation. No judicial or administrative proceeding with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by Members of the Association entitled to vote at a regular or special meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving the proceeding. This Section will not apply, however, to actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); the imposition and collection of Assessments; proceedings involving challenges to ad valorem taxation; counterclaims brought by the Association in proceedings instituted against it; or actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members of the Association, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article XIII, if applicable.

Section 7. Miscellaneous Alternative Dispute Resolution Provisions.

a. Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this Article XIII and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein will control.

b. TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article XIII will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE XIV

General Provisions

Section 1. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations, and conditions.

Section 2. Enforcement. Subject to the provisions of Article XIII hereof, in the event of a violation or breach of any of these restrictions by any Owner or agent, or agent of such Owner, Owners of Lots in the subdivision, or any of them, jointly or severally, Declarant, and/or Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, Declarant, its successors and assigns, shall have the right, but shall be under no obligation, whenever there shall have been built on any Lot in the Subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of Owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction, or condition contained in this Declaration, however, long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ counsel to enforce any of the foregoing covenants, condition, reservations, or restrictions because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant/Association's counsel, shall be paid by Owner of such Lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such Lot and shall be enforceable as herein provided. Failure of Declarant, Association, or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter. In addition, the Board of Directors shall have the authority to enforce the Covenants and Restrictions, including reasonable rules and regulations as outlined in the By-Laws.

Section 3. Fines, Association Administrative Proceedings Including Hearings Regarding Fines and Suspension of Services under Chapter 209 of the Texas Property Code. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a reasonable fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, Lessees or employees to comply with any covenant, restriction, rule or regulation, provided notice and hearing procedures set out in the Texas Property Code are followed. Once imposed, fines shall be treated as an assessment subject to the provisions for the

collection of assessments. The Association may conduct any administrative proceedings permitted or provided for under the Declaration, the Act or as otherwise provided by law, including without limitation, the right of the Association, after notice and an opportunity to be heard, to (1) impose reasonable fines for violations of the Declarations, Bylaws, rules and regulations of the Association, or (2) to suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of the Declaration, Bylaws, and rules and regulations of the Association or during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer. Prior to pursuing the imposition of a fine or the suspension of privileges or services as allowed by the Act and as provided herein, the offending Owner will be notified and given ten (10) days in which to cure his violation or nonpayment. In the event the violation or nonpayment is not cured within this ten (10) day period, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if the offending Owner should be fined or if privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings shall be held before the Board. The offending Owner charged shall be given notice of the charge, an opportunity to be heard and to present evidence and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs; provided, however, that fines imposed shall be subject to the following minimums:

(i) The fine for the first violation or the first day of any continuing or repetitive violation shall not be less than \$25.00.

(ii) The fine for the second violation or the second day of any continuing or repetitive violation shall not be less than \$50.00.

(iii) The fine for the third violation or the third day and subsequent days of any continuing or repetitive violation shall not be less than \$100.00.

Fines imposed shall be assessments secured by liens under Chapter 209 of the Texas Property Code. If it is decided that a suspension of privileges or services should be imposed, notice under §209.006 shall be given, then the suspension may be continued until the delinquency is paid. The Association may institute actions or proceedings permitted by law or the Act to collect any sums due and owing to it.

Section 4. Responsibility of Declarant. Declarant herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 5. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then, in the event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of Texas, and such provision shall be fully effective for said reduced period of time.

Section 6. Binding Effect. All covenants, conditions, limitations, restrictions, easements, and affirmative obligations set forth in this Declaration shall be binding on the

Owners of the Lot(s) or Multi-Family Unit(s) and each and every Owner of the properties and their respective heirs, successors, and assigns, and shall run with the land. All rights, easements and agreements reserved by or granted to Declarant herein shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement thereof, to the Association, or any assignee of Declarant's development rights. At such time as Declarant, its successors and assigns no longer owns any Lots or properties in the Subdivision, any right of approval reserved to Declarant by this Declaration shall be exercised by the Association.

Section 7. The Project. The term "Beachside", "Project", "Property", "Properties" or any synonymous term shall be deemed to mean the Lots designated as Lots 1 through 909 on the recorded plats of the Project, together with any common areas designated as such. No areas lying outside of these Lots, designated areas and streets shall be considered a part of the Project unless and until such area has been submitted to the terms and provisions of this Declaration in accordance with the terms hereof.

Section 8. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by Declarant, Association, or Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns. All of the restrictions and covenants set forth in this declaration will continue and be binding on the Declarant and the Owners and on their successors and assigns for a period of twenty-five (25) years from the date this instrument is filed of record in the Official Records of the Matagorda County Clerk's Office, Matagorda County Texas, and will automatically be extended thereafter for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be terminated only by agreement of Owners to which at least ninety percent (90%) of the votes in the Association are allocated.

Section 9. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner of the records of Association at the time of such mailing.

Section 10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 11. Amendment. These covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time upon sixty-seven percent (67%) vote of the membership in the Association, provided, that so long as the Declarant is the Owner of any Lot affected by this Declaration, the Declarant's consent must be obtained. Provided further, that the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Official Records of the Matagorda County Clerk's Office, Matagorda County, Texas.

Section 12. Amendment Prior to First Conveyance by Declarant. At any time prior to the closing of the first conveyance of a Lot by Declarant, the Declarant, and any mortgage holder, if any, may amend this Declaration by mutual consent. The closing of the first sale shall mean transfer of title and delivery of a deed and not execution of a contract of sale or a like document.

Section 13. Amendment of Declaration Without Approval of Owners. So long as it owns any portion of the Subdivision, the Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration:

(a) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Subdivision;

(b) to qualify the Subdivision or any Lots and improvements thereon for mortgage or improvement loans; or

(c) to make amendments which are correctional in nature only and do not involve a change which materially and adversely affects the rights, duties or obligations herein.

A letter from an official of any such governmental Agency, including without limitation, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Governmental National Mortgage Association of the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such agency shall be sufficient to conform to such request or suggestion. Such amendment shall become effective upon the date of its recordation in the Official Records of the Matagorda County Clerk's Office, Matagorda County, Texas.

Section 14. Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it is a Class B Member of the Association, and, thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Official Records of the Matagorda County Clerk's Office, Matagorda County, Texas.

Section 15. Changes to Plans for the Subdivision. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Subdivision, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions. Any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration.

Section 16. Assignment of Declarant's Rights. Declarant reserves the right to assign its rights to a successor or assign who also assumes Declarant's responsibilities.

Section 17. Indemnification of Officers, Directors, and Others. Subject to Texas law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 18. Access Control – Recreational Amenities. The Association shall have the right and authority, but not the obligation, to control access to any Recreational Amenity or any portion thereof by such means as the Board, in its discretion, deems reasonable and appropriate. This authority shall include, but shall not be limited to, the right to construct, install, operate, and staff entrance gates; to require identification for admission to the Recreational Amenity; to videotape or otherwise record and document all Persons and vehicles entering or exiting the Recreational Amenity; to screen and/or require registration of vehicles, guests, and others entering the Recreational Amenity; and to deny entry to the Recreational Amenity to unauthorized Persons. Unauthorized Persons include Persons other than Owners, residents, and their guests and invitees; police, fire, and emergency medical personnel in the performance of their official duties; and Association-authorized contractors and service providers.

Section 19. Safety and Security. The Association, the Board, its directors and officers, Declarant, and, their respective agents, assigns, or employees shall not be considered insurers or guarantors of security or safety within Beachside, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any safety measure or security system, including any mechanism, system, or procedure for limiting access to any portion of Beachside, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which it is designed or intended. Each Owner, resident, guest, and invitee acknowledges and agrees that the Association, the Board, its directors and officers, Declarant, and their respective agents, assigns, and employees are not insurers and that each person using the Community assumes all risks for personal injury and loss or damage to property resulting from acts of third parties.

Section 20. Recreational Amenities. The use and enjoyment of any recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges and understands, and covenants to inform its tenants and all occupants of its Lot, that the Association, its Board and committees, and Declarant are not insurers of personal safety and that all such Persons assume all risks of personal injury and loss or damage to property resulting from the use and enjoyment of any Recreational Amenity the Association operates or maintains.

EACH OWNER (INDEMNITOR) AGREES AND DOES HEREBY RELEASES AND DISCHARGES THE DECLARANT, THE ASSOCIATION, THE BOARD AND ANY COMMITTEES, THEIR SUCCESSORS AND ASSIGNS, AND ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AND THEIR SUCCESSORS IN OFFICE, EMPLOYEES, ATTORNEYS, DESIGNEES, REPRESENTATIVES AND AGENTS, HERINAFTER COLLECTIVELY AND SEVERALLY REFERRED TO AS "INDEMNITEES" FROM AND AGAINST ALL LIABILITY FOR, AND ASSUMES THE RISK OF ALL LOSSES, EXPENSES, LIENS, CLAIMS, DEMANDS, DAMAGES AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WHATSOEVER FOR DAMAGE TO THE PROPERTY OF INDEMNITEES AND INDEMNITEES' LESSEES, TENANTS AND INVITEES AND FOR THE PERSONAL INJURY TO OR DEATH OF ANY PERSONS (INCLUDING BUT NOT LIMITED TO INDEMNITOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, DESIGNEES, REPRESENTATIVES, TENANTS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS OF INDEMNITOR) AND/OR DAMAGE TO ANY PROPERTY (INCLUDING BUT NOT LIMITED TO PROPERTY BELONGING TO INDEMNITOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, DESIGNEES, REPRESENTATIVES, TENANTS SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS) AND FOR ANY OTHER LIABILITY, DAMAGES, FINES OR PENALTIES (EXCEPT WHERE REIMBURSEMENT FOR FINES OR PENALTIES IS PROHIBITED BY APPLICABLE LAW), INCLUDING COSTS, EXPENSES, PENALTIES AND INTEREST, ATTORNEY FEES AND SETTLEMENTS HERINAFTER REFERRED TO COLLECTIVELY AND SEVERALLY AS "CLAIMS", ARISING OUT OF OR IN ANY WAY CONNECTED WITH OR RELATING TO THE USE OF ANY RECREATIONAL AMENITY, INCLUDING THOSE CLAIMS CAUSED BY ANY OR ALL OF THE INDEMNITEES. THIS INDEMNITY AGREEMENT SHALL INCLUDE CLAIMS ARISING OUT OF, BROUGHT BY OR CAUSED, IN WHOLE OR IN PART BY INDEMNITEES, ITS OFFICERS, DIRECTORS, EMPLOYEES, TENANTS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS OF INDEMNITEES, AND INDEMNITOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, REIMBURSE AND HOLD INDEMNITEES, ITS OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, DESIGNEES, REPRESENTATIVES, TENANTS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS, HARMLESS FROM ALL "CLAIMS" OF ANY KIND OR CHARACTER, INCLUDING BUT NOT LIMITED TO CLAIMS IN ANY MATTER RESULTING FROM, ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY INDEMNITEES', (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, TENANTS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS) WILLFUL MISCONDUCT, NEGLIGENCE, GROSS NEGLIGENCE, DELIBERATE ACTS, STRICT LIABILITY IN TORT OR BREACH OF WARRANTY, EXPRESS OR IMPLIED, INCLUDING THAT CAUSED BY ANY OF

THE INDEMNITEES' OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, DESIGNEES, REPRESENTATIVES, TENANTS SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS ACTIVITIES, DIRECTLY OR INDIRECTLY, RELATED TO THIS SUBDIVISION.

THE FOREGOING INDEMNIFICATION SHALL NOT BE APPLICABLE TOWARD OR ENFORCEABLE IN FAVOR OF ANY INDIVIDUAL INDEMNITEE FOR A PARTICULAR CLAIM, INsofar AS THAT PARTICULAR CLAIM IS ADJUDICATED BY A COURT OF COMPETENT JURISDICTION, TO RESULT EXCLUSIVELY FROM THE GROSS NEGLIGENCE OR WILLFUL CONDUCT OF THAT INDEMNITEE SEEKING TO ENFORCE THE INDEMNIFICATION, BUT THE FOREGOING SHALL SPECIFICALLY INCLUDE CLAIMS RESULTING FROM THE NEGLIGENCE AND/OR CONTRIBUTORY NEGLIGENCE AND/OR CONCURRENT NEGLIGENCE OF ANY INDEMNITEES.

INDEMNITOR AND INDEMNITEES ACKNOWLEDGE THAT THIS STATEMENT AND THE FOREGOING INDEMNIFICATION UNDER THIS ARTICLE XIV, SECTION 20 COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND IS CONSPICUOUS AND HAS BEEN REVIEWED AND APPROVED BY EACH INDEMNITOR PRIOR TO THE PURCHASE OF A LOT IN THE SUBDIVISION, AFTER CONSULTING WITH LEGAL COUNSEL OF THEIR CHOICE, PRIOR TO THE PURCHASE OF THE LOT. THE INDEMNIFICATION ARISING HEREIN SHALL SURVIVE THE OWNERSHIP OF A LOT IN THIS SUBDIVISION BY INDEMNITOR.

Declarant or the Association may, but shall not be obligated to, implement or maintain certain safety measures designed to decrease the chance of injury resulting from use of any Recreational Amenity; provided, neither the Association nor Declarant shall in any way be considered insurers or guarantors of the safety of any Person using such facilities. In addition, neither the Association nor Declarant shall be held liable for any loss or damage by reason of failure to provide adequate safety measures or ineffectiveness of safety measures undertaken. No representation or warranty is made that any safety measures undertaken will be undertaken, or if undertaken, will be effective, nor that any such measures will in all cases prevent any personal injury or loss or damage to property that the measure is designed or intended to prevent.

Section 21. Changes in Ownership of Lots. Each Owner is required to keep the Association apprised at all times of the current name of the Owner and its address. Within ten (10) days following the closing of any transfer of title, the Owner desiring to sell or otherwise transfer title to its Lot shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In addition, within ten (10) days following any change in the name and address of the Lot Owner, the Owner shall give the Board written notice of the changed information and such other information as the Board may reasonably require.

Section 22. Effective Date. This Declaration shall become effective upon its recordation in the Official Records of the Matagorda County Clerk's Office, Matagorda County, Texas.

Section 23. Plat. Reference to “plat”, “map” or other term synonymous therewith shall mean and include the plats of the subdivision filed of record in the Plat Records of Matagorda County, Texas and all subsequent revisions thereof as and when recorded with the Matagorda County Clerk’s Office, Matagorda County, Texas.

Section 24. Conflict. The Association shall comply with all terms and conditions of the Texas Property Code. In the event of any conflict herein, the Texas Property Code prevails. Any specific reference to a section in the Texas Property Code shall also include any amendments and/or codifications of the Texas Property Code.

Section 25. Exclusive Rights to Use Name of Development. No Person shall use the name “Beachside” or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Beachside" in printed or promotional matter where such term is used solely to specify that particular property is located within “Beachside” and the Association shall be entitled to use the words “Beachside” in its name.

Section 26. Water Rights. The water in the canals and lakes are public water as that term is defined in the Texas Water Code §11.021, and as may be amended, and as such the public has a right to use the canals and lakes.

Section 27. Corps of Engineers Permit.

a. Permit. The Property is subject to the conditions of Department of the Army Section 404/Section 10 Permit Number SWG-2007-412, or a revision thereof. One of the conditions of the referenced permit requires restrictions be placed on the deed for the Property for the purpose of providing compensation for adverse impacts to waters of the United States. The intent of this document is to assure that the Property will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition described in success criteria of the Mitigation Plan for Beachside. Activities, which may, in the future, be conducted within the Property that will affect the vegetative and or hydrologic conditions outlined in the success criteria of the Mitigation Plan, must be coordinated with and approved by the United States Army Corps of Engineers (USACE), Galveston District, Regulatory Branch, prior to initiation.

b. General. Except for such specific activities as authorized pursuant to DA Permit Number SWG-2007-412, or a revision thereof, the following activities are prohibited on the Property subject to this Deed Restriction: There shall be no filling, excavation, mining or alteration of the Property that will affect the success criteria outlined in the Mitigation Plan unless approved in writing in advance by the USACE, Galveston District.

c. Rights of Access and Entry. The USACE shall have the right to enter and go upon the Property for purposes of inspection, and to take actions including but not limited to scientific or educational observations and studies, and collection of samples.

d. Enforcement. In the event of a breach of the restrictions by the Owner, or a third party working with the permission of or under the direction of the Owner, the USACE must be notified immediately. If the USACE becomes aware of a breach of this Agreement, the USACE will notify the Owner of the breach. The Owner shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to swiftly correct the conditions

constituting the breach. If the Owner corrects the conditions constituting the breach in a timely and reasonable manner, no further action is warranted or authorized. If the Owner fails to initiate such corrective action within thirty (30) days or fails to complete the necessary corrective action, the USACE may undertake such actions, including legal proceedings, as are necessary to effect such corrective action. Any forbearance on the part of the USACE to exercise its rights in the event of a breach of the restrictions shall not be deemed or construed to be a waiver of their rights hereunder in the event of any subsequent failure of the Property owner to comply.

Section 28. Annexation. By purchasing a lot subject to these restrictions, Lot Owner agrees to irrevocably consent to the annexation of the property, subject to these restrictions, by the City of Palacios.

[SIGNATURE FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, The Declarant, D.H. Palacios Development, L.P., has caused this instrument to be executed by its proper officers on the 21 day of May, 2007.

D. H. PALACIOS DEVELOPMENT, L.P.,
a Texas limited partnership

By its General Partner:
Palacios Management, LLC,
a Texas limited liability company

By: Darryl R. Hammond
Darryl R. Hammond, Manager

STATE OF TEXAS §
 §
COUNTY OF CALHOUN §

I, the undersigned notary public, certify that Darryl R. Hammond came before me this day and acknowledged that he is a Manager of Palacios Management, LLC, a Texas limited liability company and the general partner of D.H. Palacios Development, LP, a Texas limited partnership, and that by authority duly given and as the act of the limited liability company as general partner of and on behalf of said limited partnership, the foregoing instrument was signed in the name of the aforesaid limited partnership by Palacios Management, LLC, its general partner, acting on behalf of the said limited partnership, D.H. Palacios Development, LP.

Witness my hand and official stamp or seal this 21 day of May, 2007.



Berni McBroom
Notary Public in and for the State of Texas