

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR

*Coastal Wild Wood*

Phase 1

THIS IS A COMPREHENSIVE LEGAL DOCUMENT, WHICH PROVIDES FOR THE IMPOSITION OF MANDATORY HOMEOWNER ASSESSMENTS. THIS DECLARATION IS BINDING UPON ALL FUTURE OWNERS IN THIS SUBDIVISION.

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND  
RESTRICTIONS**

KNOW ALL MEN by these presents that SIM HENRY (hereinafter referred to as "Declarant"), being the sole owner of that certain land described as follows:

Lots 1 through 13 of Coastal Wild Wood according to the final plat thereof recorded May 11, 2006 of the Plat Records of Aransas County, Texas: Volume 5 page 206 and desiring to establish and carry out a uniform plan for the use, occupancy, ownership, and improvement of all residential lots in said subdivision for the benefit of the present and future owners of said lots, Declarant does hereby declare, establish, and adopt certain reservations, restrictions, conditions, protective covenants, and easements (hereinafter collectively referred to as "Restrictions"), which shall be applicable to the use, occupancy, ownership, and improvement of all residential lots in said subdivision (the term "Lot" as used herein shall mean all platted residential lots as shown on the aforescribed plat and shall also include any residential building site created by consolidation of the originally platted lots, as permitted herein), and every contract, conveyance or other transfer of title hereafter executed with respect to any residential lot or lots in the aforementioned subdivision shall conclusively be held to have been executed, delivered, and accepted subject to the following Restrictions and this Declaration, regardless of whether or not said Restrictions and Declaration are set out in full or are incorporated by reference in said contract, conveyance or other transfer of title.

The term "Declarant" as used herein shall mean SIM HENRY, his successors and assigns provided such successors or assigns acquire in a single transaction not less than five (5) residential lots for purposes of development or residential constructions and receive an assignment of Declarant's rights as a part of the acquisition.

The terms "residential lot" and "lot" as used herein shall include all lots described above except any lot that may be owned or acquired by the Association and shall be deemed common area for so long as such lot is owned by the Association. Any common area shall not be subject to the Restrictions except as provided in Article 22 herein.

The term "additional property" shall mean and refer to real property which is annexed and made subject to this Declaration pursuant to Article 28 of this Declaration or any Amended or Supplemental Declaration.

This Declaration shall effect only those lots identified above and as may be annexed and shall not effect any other property.

The Coastal Wild Wood Property Owners Association (herein sometimes referred to as the "Association"), has been incorporated under the laws of the State of Texas as a non-profit corporation for the purpose of

implementing this Declaration, assessing and collecting the annual maintenance charge specified herein, managing said fund, arranging for the performance of services contemplated, and making payment therefore out of said fund, the establishment and enforcement of rules and regulations effecting the operation, use and enjoyment of any common area and facilities, for the acquisition and use of real and personal property, and for effective and efficient operation of the business of the Association for benefit of its membership. In this regard, said Association shall have all the powers granted by the Texas Non-Profit Corporation Act.

The initial mailing address of the Association is 109 Cove Harbor South, Rockport, Texas 78382. the mailing address of the Association may be changed by recording notice of change of address in the Office of the County Clerk for Aransas County, Texas.

#### **ARTICLE 1. LAND USE AND BUILDING TYPE**

All lots subject to these Restrictions shall be used only for single-family residential purposes and no building or structure shall be erected, placed, added to or altered on any except a single family residential dwelling, not exceeding two and one-half (2.5) stories of living area in height, attached garage not to exceed three (3) car capacity, and appurtenant structures as allowed below. Each owner of any lot subject to these Restrictions shall be deemed to have covenanted and agreed, by acceptance of a contract, conveyance or other transfer of title covering such lot, that such owner will not apply for a permit to erect, place, alter or add to any structure on any lot other than a single-family residence or other allowed structure as specified and permitted herein. Any garage apartment or servants' quarters which may be situated on any lot shall not be used for rental purposes and may be used only by servants who are employed in the dwelling situated or by members or temporary guests of the family occupying the dwelling on said lot. "Approved" as used in this Article 1 means the approval specified in the following Article 2 hereof and "single-family residential purposes" as used in these Restrictions means residential occupancy by not more than two (2) unrelated adult persons and their children living together as a single housekeeping unit, together with any bona fide household servants. No residence can be occupied until a septic system has been approved by the appropriate governing authorities for construction, installation, and operation. Every residence constructed shall have an enclosed garage. No garage constructed as part of the original construction of the residence by the original builder may be converted to living quarters, unless and until a replacement garage of equivalent size is constructed. If two (2) lots are joined together as a single residential unit, the interior lot lines (and common setback line) between the joined lots shall be disregarded for purposes of placement of the residence and other structures. No lot may be subdivided into an additional lot or lots. During the period of original construction of new homes, construction and sales trailers may be temporarily placed and utilized upon residential lots, with approval of Declarant. No detached garage or accessory building shall exceed the height of the dwelling to which it is appurtenant, unless approved by the Architectural Control Committee upon an affirmative finding that such construction will have no substantive negative effect upon neighboring properties. Every garage and accessory building (except greenhouses) shall continue the style and architecture of the primary dwelling. The square footage of each detached garage and accessory building shall not exceed sixty percent (60%) of the ground floor of the primary dwelling, and no more than three (3) outbuildings (including detached garages) shall be permitted unless approved by the Architectural Control Committee upon an affirmative finding that such construction will have no substantive negative effect upon neighboring property. All homes must face the serving street unless approved otherwise by the Architectural Control Committee upon a finding that facing the street would create no undue hardship and no disruption in the harmony of the community. No residence shall be constructed without simultaneous construction of garage for not less than two (2) automobiles.

#### **ARTICLE 2. ARCHITECTURAL CONTROL**

No building or improvement of any character shall be erected, placed, added to or altered on any lot affected hereby until the building plans, specifications, and a site plan showing the location of the proposed structure or structures have been submitted to and approved by the Architectural Control Committee (hereinafter sometimes referred to as "Committee"), for the Association as being in compliance with these Restrictions as to use, quality of workmanship and materials, nature of materials, harmony of external design, external colors, existing and proposed structures, and location of improvements with respect to topography, finished grade elevation, lot boundary lines, and building lines within the scheme and design of Declarant. The location of water wells and septic systems are also subject to the approval of the Committee.

The plans and other documents to be submitted to the Committee for the Association as above set forth shall be submitted in duplicate for approval prior to commencement of the erection, placement, addition to or alteration of any such improvements on any lot. Upon approval, the Committee shall mark each set approved, return one (1) set to the applicant, and retain one (1) set for the records of the Committee. In the event the Committee fails to approve or disapprove such plans and documents in writing within thirty (30) days after actual receipt of the request for approval, such plans and documents shall be deemed approved insofar as the requested improvement is not otherwise prohibited by the Covenants. Failure to reject the requested plan shall not be deemed a waiver of any covenant contained herein and the requesting party must comply with all these covenants, otherwise construction, once approved, must commence within one hundred-eighty (180) days of approval; if not, the approval granted will be void. Deposit in the mail of any rejections within thirty (30) days of the actual receipt of the request shall be deemed timely. If the person requesting approval by the Committee provides a facsimile number, approval or denial of the request may be delivered by facsimile.

During the period that Declarant owns any lot, the Committee shall be appointed by Declarant; the initial Committee shall be composed of Sim Henry, Karanne Henry, and Walter Knight. Declarant may appoint additional members to the Committee. In the event of resignation or removal of any member of the Committee while Declarant owns any lot, Declarant shall appoint a successor to fill the vacancy on the Committee. Declarant may, at Declarant's sole choice, assign Declarant's right to appoint members to the Committee created in this Article 2 to the Board of Directors of the Association or to a successor Declarant. If Declarant assigns its right to appoint members of the Committee, the Committee shall consist of three (3) members. The person or entity empowered to appoint members to the Committee is also empowered to remove and replace members of the Committee. When Declarant and any successor or substitute Declarant no longer owns any lot within the subdivision or annexed subdivisions, the power to appoint members of the Committee shall be vested in the Board of Directors of the Association.

The Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction or interpretation. The Committee shall have the authority to determine and publish reasonable standards for materials, colors, and design for improvements from time to time, as the Committee sees fit. The Committee shall have the authority to designate one or more members of the Committee to respond on behalf of the entire Committee.

Members of said Committee and their representatives shall not be liable to any person subject to, possessing or claiming the benefits of the Restrictive Covenants for any damage or injury to property or for damage or loss arising out of their acts or failure to act hereunder, it being understood and agreed that any remedy be restricted to injunctive relief and no other. The members of the Committee shall not be entitled to any compensation for services rendered pursuant to this Covenant. The Committee and its members do not represent or warrant that any approved construction meets any building standard, will increase the value of any property or will cause no harm to neighboring properties. All improvements are constructed at the sole risk of the Lot Owner.

If the Committee determines that the complexity of a request for architectural approval so warrants, the Committee may retain an architect and/or engineer for assistance and advice; in this event, the reasonable costs of such architect and/or engineer shall be paid by the party requesting architectural approval.

The initial mailing address of the Committee is 109 Cove Harbor South, Rockport, Texas 78382. The mailing address may be changed by recording notice of change of address in the Office of the County Clerk in Aransas County, Texas.

Architectural Control Committee action is in addition to and not in lieu of any construction permits that may be required by statute, ordinance or regulation.

### **ARTICLE 3. DWELLING SIZE AND MATERIALS**

Any dwelling situated on any lot must contain a total living area of not less than 2,000 square feet with at least 1,200 square feet of living area on the ground floor, exclusive of open or screened porches, terraces, driveways, garage, garage apartment, servant's quarters or other approved accessory building or structure. All foundations on

residences and all out buildings must be concrete and must be fully enclosed at the perimeter exclusive of verandahs, decks, patios, porches, and/or gazebos. The roofs of all structures shall not be flat, built up gravel or otherwise unless approved by the Committee. Roof material shall be tile, approved metal or a dimensional composition shingle of 240 pound weight or more. All roof pitch and design must be approved by the Committee. The use of sheet siding is prohibited. All exterior building materials are subject to approval by the Committee, in its sole discretion. No "box on box" two story designs will be allowed. All plans for residences will be evaluated with consideration given to lot size, lot location, dwelling placement, landscaping, adjacent lot configuration, and natural barriers.

Driveway thresholds shall be constructed as described in Article 5 below. Beyond the driveway threshold, driveways may be constructed of concrete, stamped concrete, brick pavers asphalt (hot-mix), two course asphaltic coated rock treatment on crushed limestone base material or other road topping as may be approved by the Committee, and may not be less than ten feet (10') in width.

From time to time the Committee may publish a memorandum of approved materials, colors, and designs that are deemed acceptable to the Committee for use within the subdivision subject to this Declaration.

#### **ARTICLE 4. LOCATION OF BUILDINGS AND IMPROVEMENTS ON LOTS**

No part of any building shall be located nearer to any street boundary line of any lot than the building setback line or limiting lines shown on the recorded plat of the aforementioned subdivision or as specified below, whichever is greater. All lots shall have buildings set back from the street not less than fifty feet (50'). Rear setbacks will be thirty feet (30') on all lots. All building placement on the southern exposure must be inside the natural tree line.

No part of any building shall be located within thirty feet (30') of any interior lot boundary line. The Committee shall determine which line (or lines) is a rear line in the event of an irregular lot. If two (2) lots are joined together as a single residential unit, the interior lot line between the joined lots shall be disregarded for placement of the residence and other structures. For the purposes of these Restrictions, the front line of each lot shall be the shortest boundary line thereof abutting the street as shown by the recorded subdivision plat. The residential dwelling on each lot in the aforementioned subdivision shall face the front of the lot. No building or improvement shall impair the use of any easement provided in the plat of the subdivision or dedicated by instrument. No garage door of any attached garage shall face the street or be parallel with the front of the residence, unless approved by the Committee; no detached garage shall face the street or be parallel with the front of the residence, unless approved by the Committee; detached garages which are more than twenty feet (20') behind the rear line of the residence may face the street or as approved by the Committee.

No structure or improvement of any kind shall be placed between the front set back line and the front property line except driveway security gates, outdoor lighting, landscape materials, and landscape related improvements as may be approved by the Committee in its sole discretion, except as provided above.

The Architectural Control Committee shall have the power to waive the set back line requirements and the frontal orientation requirement of any residence on a lot as a predicate to Committee approval upon a finding by the Committee that such waiver will not create an unreasonable burden upon the subdivision and that there is sufficient need for such waiver. Such waiver shall not alleviate the requirements of any building code or governmental regulation, shall be applied to each specific situation, and shall not be deemed a waiver of any future enforcement. No waiver shall be effective unless the appropriate governmental authority, if any, approves an applicable variance.

#### **ARTICLE 5. SPECIAL CONSTRUCTION REQUIREMENTS**

The location of drives and entrances into the property must be approved by the Committee. Note: a power easement is also required. This can be overhead or under the ground and must be approved by A.E.P.

Wells and septic systems require separation as per county specifications.

#### **ARTICLE 6. DRAINAGE**

The owner of each lot shall maintain the original drainage design and construction of drainage on the residential lot. The original drainage design and construction shall not be altered without prior approval by the Committee; also during the first ten (10) years of the existence of each lot, no approval for alteration of the drainage design of any lot shall be effective unless Declarant has given its written approval of such change. Declarant shall have no liability of any kind for its approval or rejection of any request for alteration of drainage.

The owner of the lot upon which drainage is altered shall have the sole responsibility for any damages arising there from. No landscape plan or design which would have the effect of altering the drainage of any individual lot to hold water or would increase the flow of water to another lot, may be approved. Each property owner is solely responsible for changes to the drainage upon each owner's property, including but not limited to, damages to such owner's property and surrounding property. All pond construction must be approved in writing by the Board of Directors as to size, depth, slope, and placement of excavated soils. There will be no sale of excavated soils without the approval of the Board of Directors.

#### **ARTICLE 7. UTILITY AND DRAINAGE EASEMENTS**

All easements for utilities and drainage shall be kept clear of improvements or structures of any kind, and no trees, shrubs, berms or other obstruction may be placed upon such easements in such a manner as would in any way limit the intended use of the easements. In this regard, Declarant, the hereinafter named Association, and any utility company or drainage authority using said easements shall be not liable for any damage done to shrubbery, trees, flowers or other property which is located within the area covered by said easements.

**Reserved Easements** All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights, made prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. The Board is hereby granted the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Declarant reserves, creates, grants and dedicates (without warranty) to the Association a non-exclusive easement upon, over and across each Lot for ingress and egress for any and all of the purposes stated in this Declaration and to exercise, enjoy and carry out any and all of the rights and powers granted herein, on and subject to the terms and conditions of this Declaration. Entry upon any Lot as provided in this Section shall not be deemed to trespass, and the Association and Declarant shall not be liable for any damage so created unless damage is caused by the willful misconduct or gross negligence of the party against whom damages are sought to be collected.

Declarant reserves, creates, grants and dedicates (without warranty) for the benefit of any Owner building or constructing any Improvements on such Owner's Lot, and their respective employees, subcontractors, successors and assigns, a non-exclusive easement of ingress and egress over, within and upon the Entrance, Roads and Easements, and that portion of the Beach and Channels which is adjacent to such Owner's Lot, as may be expediently necessary for the construction, servicing, and completion of Improvements and landscaping upon such Owner's Lot.

**Installation and Maintenance** There is hereby created an easement upon, across, over, and under all of the Easements for installing, replacing, repairing and maintaining all utilities, including but not limited to, water, gas, telephones and electricity lines and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service line, or other utility facilities or appurtenances thereto, on, across and under the Property. Notwithstanding any provision contained in this section, no electrical lines, water lines, or other utilities or appurtenances thereto may be located or relocated on any Easement until approved by the Architectural Committee.

**Drainage Easements** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require.

**Surface Areas** The surface of easement areas for underground utility services shall be maintained by the Owner of the Lot which such easement overlays and such Owner may use the surface of such easement areas for

planting of landscaping. Trees with large root systems shall not be planted directly over utility lines. Neither the Association nor any supplier of any utility service using any easement area shall be liable to any Owner for any damage done by them or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such Easement area.

**Damages** Each Owner and each lessee of any Owner shall be liable to the Association for any damage to Common Areas which may be sustained by reason of the negligent or intentional misconduct of such persons of his family, guests or invitees.

**Roads and Other Common Areas** Declarant reserves for itself, the Association, each Owner, and the respective employees, agents, representatives, guests, contractors, and other invitees of the Association and the Owners the right to use and enjoy the Common Areas for the purposes indicated herein. No Common Area user is authorized in any way or manner to remove, alter, damage or destroy any portion of the Common Areas. The Association shall have the power and authority to promulgate Rules regarding the use of the Common Areas, and shall have the power and authority to enforce these Restrictions and such Rules regarding the use of the Common Areas.

The Association shall be responsible for the maintenance, repair, replacement, management, operation and condition of the Entrance and roads and for the regulation of the use of all Common Areas.

#### **ARTICLE 8. PROHIBITED STRUCTURES**

Mobile homes and modular homes are prohibited on any lot, whether or not wheels are attached except where preempted by federal or state law or regulation. No antenna of any kind may be placed, kept or maintained on any lot except (a) "wire" or "tube" antenna for receiving usual and ordinary AM-FM radio and television signals, which antenna must be contained within the attic space of the residence and (b) "dish" or "satellite" receiver, of not greater than one (1) meter in diameter, to be installed only on the side or back of the house, not to exceed the height of the tallest part of the house structure; each owner shall use his best efforts to conceal all antennae from persons on the fronting street. No broadcast antenna or antenna used for output devices may be placed outside any residence.

No above ground swimming pools shall be constructed; a small, temporary, children's wading pool, not more than twelve inches (12") deep nor more than six feet (6') in width, may be placed in the rear of the residence for use by children. No clothesline shall be constructed unless concealed from general view by fences, buildings and/or landscape as may be required by the Committee. No flag poles, skateboard ramps, or other athletic apparatus may be erected, maintained or placed, at any time, in front of the respective front building setback lines. Without limiting the foregoing limitations, no portable building, tent, shed, barn, basketball goal or other portable structure of any nature shall be placed on any lot without approval by the Committee; provided, however, with approval by Declarant, that a temporary office, flag poles, signs, and work-shed may be placed upon a lot by a home building company, without Committee approval, for use in connection with the erection and/or original sale of dwellings in the aforementioned subdivision but such temporary office, flag poles, signs, and work-shed shall be removed at completion of the erection or sale of the dwellings, whichever is applicable. Any such permitted temporary structure shall never be used for residential purposes.

#### **ARTICLE 9. PROHIBITED ACTIVITIES**

Except as provided elsewhere in these Covenants, no business or service activity of any kind shall be conducted on or from any lot or from any improvements situated thereon, whether activity be for profit or otherwise. The lots and buildings may be used for non-commercial residential uses only. No lease or rental of any residence may be for a period of less than one hundred eighty (180) days. Prior to occupancy of any lot by a tenant/lessee, the owner shall provide a copy of the lease agreement to the Board of Directors; all lease agreements shall contain a provision notifying the tenant/lessee of this Declaration and requiring that all persons occupying the lot comply with all provisions of this Declaration. No property shall be used as corporate housing, corporate retreat or other use that creates a transient occupancy.

No noxious or offensive activity of any kind, which may constitute or become an annoyance or nuisance to the subdivision neighborhood, shall be permitted on any lot, nor shall any illegal activity be permitted on any lot. No activity intended as a harassment of any owner shall be allowed. Without limiting the foregoing, violation of any order of the State of Texas, any state agency or political subdivision, or any municipal ordinance, state law or federal law shall be deemed a nuisance and subject to enforcement as provided herein. Outdoor lighting must be down-shielded to minimize its effect on adjacent properties; the Committee may prohibit any lighting deemed inconsistent with the nature of the community. No lot may be used for storage of material and equipment except for normal residential requirements or incidental to the construction of improvements thereon as approved by the Committee.

In the interest of public safety, streets and roadways shall not be used as playgrounds or recreational areas. No firearms or fireworks may be discharged at any time; the term "firearms" shall include rifles, shotguns, pistols, revolvers, pellet guns, bb guns, blow guns, paint guns, cannons, and all other items defined as "firearms" in the Texas Penal Code. Bows and arrows may not be used.

#### **ARTICLE 10. WATER WELLS AND SEWAGE TREATMENT**

All water wells must be pressure cemented or grouted to one hundred feet (100'). All on-site sewage facility systems and water wells must meet or exceed the minimum requirements of all regulatory agencies. No water well or on-site sewage facility may be located nearer to any property line than twenty five feet (25'). Upon request by the Association, the Lot Owner shall produce satisfactory evidence of compliance with all applicable public health laws, rules, and regulations for water wells and on-site sewage facilities. All shall be maintained in good and safe working condition.

#### **ARTICLE 11. MINING AND MINERAL OPERATIONS**

No oil or gas wells, drilling or development operations, refining, quarrying or mining operations of any kind shall be permitted on any lot.

#### **ARTICLE 12. GARBAGE AND OTHER WASTE**

No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and such substances shall not be kept or stored upon any lot, except that the garbage and other waste accumulated from normal household operations may be kept temporarily for purposes of ordinary waste collection. All such waste substances being kept on a lot pending collection thereof shall be kept in sanitary containers with securely closed tops or lids or in plastic bags with the tops thereof securely closed.

Any such containers shall be hidden from general view, except when awaiting collection on regularly scheduled collection day. The temporary location of such containers pending collection and the period of time such containers or bags may be situated at such temporary location shall all be subject to the approval of the Committee. All containers, bags or other equipment for storage or disposal of such waste substances shall be kept in a clean and sanitary condition. All waste containers shall be placed for collection on the same day as pickup is scheduled, and in compliance with all applicable ordinances, rules, and regulations. No burning of any type of household trash is allowed.

#### **ARTICLE 13. ANIMALS**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot. No more than three (3) dogs and/or two (2) cats may be kept, and these animals shall not be kept, bred or maintained for commercial purposes. All pets must be attended and on a leash except when within the confines of a residence or fenced area; no pet shall be allowed to roam the subdivision. Incessant barking, howling or offensive odor of pets shall be deemed a nuisance and is prohibited. All pets must be vaccinated against those diseases for which vaccinations may be required by municipalities, such as rabies and distemper.

The owner and custodian of each pet shall immediately remove the excrement of his/her pet from yards, streets, sidewalks, and rights-of way. No animals may be kept on the front yard unattended and compliance with local ordinances is required.

Large animals (horses, mules, donkeys) may be permitted as follows:

- (1) A minimum of five acres in one continuous lot is required for keeping large animals.
- (2) No more than two large animals are allowed per every three acre increment. Example:
  - 5 acres - 2 animals
  - 6 acres - 4 animals
  - 9 acres - 6 animals
- (3) No large animals (horses, mules, donkeys) will be boarded for any reason other those belonging to the Lot Owner.
- (4) Two or more Lot Owners with common lot lines, with approval of the Committee, may combine common properties for the purpose of enjoyment, riding, etc. However, no horses, mules or donkeys will be kept on properties of less than five acres.
- (5) The keeping of large animals must not create any offence to other Lot Owners.
- (6) The entire lot must be fenced sufficiently to contain animals securely.
- (7) The aforementioned animals will not be walked, ridden or in any way allowed off the owners property unless in a trailer intended for transporting such animals. No large animals, horses, mules or donkeys will be allowed on common areas, roads, streets or ponds.
- (8) Any and all large animals are subject to approval of the Committee within the scope of this Article 13.

#### **ARTICLE 14. EASEMENTS**

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and additional drainage easements are reserved over the rear five feet (5') of each lot and along and parallel to the side property line(s) five feet (5') in width. Within these easements, no structure, planting or other material shall be placed or permitted to remain so as not to damage or interfere with the installation, performance, and maintenance of utilities, or which may change the direction of low or drainage channels in the easements, or which may obstruct or retard the flow of drainage channels in the easements. The easement area of each lot and all improvements on it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

#### **ARTICLE 15. FENCES, WALLS, AND HEDGES**

Declarant has caused or may, but is not obligated to cause, the construction of a masonry, wood or metal fence along certain portions of lot boundary lines which are common with boundaries of the subdivision, boundaries of the easements and rights-of-way, as may be shown on the aforesaid plat.

The obligation to maintain, repair, and replace the afore described fence along the above specified lot boundaries or portions thereof, shall be the obligation of the Association

In order to preserve the open nature of the subdivision and to facilitate the movement of wildlife, perimeter (lot line fences) shall be no higher than four feet (4').

Dog runs, corrals, swimming pool enclosures, and other special purpose fences may be approved by the Committee in its sole and absolute discretion.

Interior fences and fence type walls shall be generally three feet (3') to seven feet (7') in height above the ground level unless otherwise approved by the Committee. The surface or any such fence or wall shall be faced with brick, stone, wood or other material approved by the Committee. The design of fences and gates shall be subject to the approval of the Committee. All color of fences and walls shall be determined by the Committee considering harmony with the existing residence and subdivision as a whole. Driveway gates may be installed at each residence pending design approval by the Committee.

Fences will be required on lots of five (5) acres or more on which horses, donkeys or mules are kept. These fences will be of a standard design with sufficient design and construction to contain such animals. These fences must be approved by the Committee.

Phase 1 Special Conditions: Lots 5, 8, 9, and 10 of Coastal Wild Wood Phase 1 share ownership of approximately five (5) acres of low land and pond area. This area is not to be fenced or cross-fenced. Property fences for lots 5, 8, 9, and 10 must be within twenty feet (20') of the wood line. Fences on lots 5, 8, 9, and 10 that border the five (5) acres of low land and pond area must be of common design and approved by the Committee." NOTE: This area has been protected in its natural state for the enhancement of the property on lots 5, 8, 9, and 10. Failure to comply with the maintenance requirements of this area, including mowing, trimming, and planting, etc., may result in the property owner being assessed additional maintenance fees by the Association as noted in Article 21.

Phase 1 Special Conditions: Lots 11 and 12 of Coastal Wild Wood Phase 1 share ownership of approximately two (2) acres of low land and pond area. This area is not to be fenced or cross-fenced. Property fences for lots 11 and 12 must be within twenty feet (20') of the wood line. Fences for lots 11 and 12 that border the two (2) acres of low land and pond area must be of common design and approved by the Committee. NOTE: This area has been protected in its natural state for the enhancement of the property on lots 11 and 12. Failure to comply with the maintenance requirements of this area, including mowing, trimming and planting, etc., may result in the property owner being assessed additional maintenance fees by the Association as noted in Article 21.

#### **ARTICLE 16. TRAFFIC SIGHT BARRIERS**

No shrub, tree, object or thing which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadway, whether such roadway is public or private, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines of such lot., a line connecting such property lines at a point located on each said street property lines at a distance of twenty-five feet (25') from the point where such lines intersect or would intersect if extended. Nor shall any such obstruction be placed or permitted to remain on any lot within the triangular area formed by the street property line of such lot, the edge line of any driveway or alley pavement, and a line connecting said lines at points located on each of said lines at a distance of ten feet (10') from the point at which said lines intersect or would intersect if extended.

#### **ARTICLE 17. WILDLIFE HABITAT AREAS, CUTTING OF TREES AND VEGETATION AND REMOVAL OF TRASH**

Each lot shall keep at least ten percent (10%) of the surface in its natural state of wildlife. Although not mandatory, every Lot Owner is encouraged to leave as much of the lot in native habitat as possible. Any area left in its natural state shall be exempt from regular maintenance. Only vegetation which is invasive, i.e. vines, may be removed from wildlife habitat areas without prior approval of the Committee. For surface area of each lot that has been landscaped or otherwise converted from its natural state, the owner and occupants of each lot shall at all times keep all grass and weeds cut and trimmed in a reasonably neat manner and shall maintain adequate ground cover to protect against soil erosion, and in no event permit an accumulation of garbage, trash, rubbish or otherwise. There shall be no burning permitted at any time. Within twenty five feet (25') of property line adjoining any residential lot all understory (underbrush) must be left in place or any approved landscaping that would provide habitat for wildlife and form a natural sight barrier, or as approved by the Committee. Within thirty feet (30') of any property line, no tree with trunk size of six inches (6") or more in diameter, measured two feet (2') above ground level, may be removed without the express written permission of the Committee unless it falls within the foundation perimeter of the residence and outbuildings, or the tree constitutes a hazard to people or property.

#### **ARTICLE 18. INTRODUCTION OF NON-NATIVE PLANTS**

Care should be given when planting exotic trees, shrubs plants, and aquatic plants into the native landscape. No plant listed as a prohibited or illegal plant by the State of Texas or other governmental entity having jurisdiction may be planted within the subdivision. Without limiting the foregoing, the following plants are specifically prohibited; Chinese Tallow (Sapium sebiferum), Brazilian Pepper tree (Schinus terebinthifolius), Castor Bean (Ricinas communis), Giant Reed Wild Cane (Arunddonax), Chinaberry (Melia Azedarach), Melaleuca Paperbark

Tree (*Melalucca quinqueneria*), Maccartey Rose (*Rosa bracteata*), Salt Cedar (*Tamari Spp*), Rooted Water Hyacinth (*Eichhornia Azurea*), Water Hyacinth (*Eichhornia crassipes*), Water Lettuce (*Pistia stratiotes*), Water Spinach (*Ipomoccea aquatica*), and Japanese Honeysuckle (*Lonicera japonica*).

#### **ARTICLE 19. SIGNS OR BILLBOARDS**

The owner of a lot shall be entitled to display one sign thereon from time to time for purposes of selling or renting property; provided that each face of such sign shall be rectangular in shape and shall not exceed five (5) square feet in surface area, and that the content of such sign be limited to the words: "Sold," "For Sale," or "For Rent," the name and telephone number of the seller or real estate agent, and the words "Shown by Appointment Only." No "For Sale" or "For Rent" sign shall be displayed for any purpose other than a bona fide offer to sell or to rent the property upon which the sign is located. No "Sold" signs shall remain on a lot more than two (2) weeks after completion of the sale. During the period of lot sales and construction of new residences, home builders maintaining a sales or construction office within the subdivision, or areas duly annexed, Declarant and homebuilders with consent of Declarant shall have the right to place directional signs and other "Sold" and "For Sale" signs (not exceeding eight (8) square feet in size) that do not contain the telephone number of the builder and other marketing signs, provided such signs are approved in writing by the Committee. For purposes of security and safety, the Board of Directors shall have the authority to approve the installation of one (1) sign on each lot noting the existence of a residential security system; no such sign shall be placed greater than two feet (2') from the residence, and no sign or sticker shall be installed without the size, shape, color, and material being first approved by the Committee. Also, the Association may place signs on lots noting special accomplishments, such as awards for "Yard of the Month," Christmas decorating, and landscape. No other sign, advertisement, billboard or advertising structure of any kind may be erected or maintained within subdivision boundaries without first having obtained the consent in writing of the Board of Directors of the hereinafter named Association. Said Board of Directors of the Association shall have the right to remove any un-permitted sign, advertisement, billboard or structure which is erected or placed on any lot or adjacent easement or right-of-way without such consent and in so doing, shall not be subject to any liability for trespass or other tort in connection therewith.

No sign shall be displayed on any motor vehicle, trailer, bus, boat, camper or related means of transportation, except for commercial vehicles upon which the following may appear: (1) the name of the business owning or leasing the vehicle, (2) the street address of the business owning or leasing the vehicle, (3) the telephone number of the business owning or leasing the vehicle, (4) any license number of the business owning or leasing the vehicle required by a regulatory authority, and (5) any logo of the business owning or leasing the vehicle. As used herein the term "commercial vehicle" shall mean a motor vehicle that (1) is owned or leased by a business, (2) is utilized solely in the furtherance of the business purpose, (3) is utilized solely for transporting equipment, parts, and tools used for the business purpose, (4) is covered by a policy of insurance as a commercial vehicle, and (5) is not used for general transportation of the primary driver. No sign of a temporary nature, i.e. magnetic or easily removed and replaced sign shall be allowed.

No sign, of any kind shall be placed or allowed to remain on any street, whether private street or public street.

The provisions of this Article 19 may be enforced at anytime by any person or entity named referenced or identified on any sign.

#### **ARTICLE 20. MISCELLANEOUS VEHICLES AND EQUIPMENT**

No travel trailers, motor homes, commercial vehicles, lawn equipment, equipment, boats, boat trailers, camping vehicles, motorcycles, all terrain vehicles, trailers or vehicles other than vehicles used for general personal transportation purposes, may be parked or stored upon the lot unless parked in the garage or screened from view, nor shall any such object be left, parked or stored on any adjacent lot, street, right of way, easement or common area, except for temporary parking incident to the contemporaneous use of such object or as otherwise approved by the Board of Directors. No commercial vehicles, commercial equipment, motorized vehicles containing more than two (2) axles or single rear axle tractor trailer vehicles may be parked or otherwise stored within the subdivision boundaries, except as may be temporarily parked during the time that the driver of such vehicle is providing professional services, labor and/or materials on the lot where such vehicle is temporarily parked; no such vehicle

shall remain overnight within the subdivision. Note: Due to the relation of this property and the proximity to water sports activity, boats and boat trailers are permitted to be parked on private property for a 72 hour period during which owners are not required to have such shielded from view.

Without limiting the foregoing, it shall be presumed that any vehicle that does not have attached a current license plate and current safety inspection sticker (if required by statute), has one (1) or more flat tire or is otherwise disabled or partially disassembled, is a vehicle stored in violation of this Article 20.

Motorcycles, motorbikes, motor scooters, motorized bicycles, and other motorized vehicles shall not be operated on any lot or operated from any lot over the streets of the aforementioned subdivision unless such vehicle is operated by a state licensed driver and such vehicle is equipped with an adequate and properly functioning muffler, nor shall such vehicles be kept or operated in such a way as to constitute a nuisance or danger.

#### **ARTICLE 21. MAINTENANCE OF RESIDENTIAL LOT**

All dwellings, fences, walls, water wells, septic systems, and other approved structures must be kept in good state of operation, paint and repair, and must be maintained at the cost of the homeowner so as not to become unsightly.

In addition to rights, powers, and remedies granted by law, in the event of default on the part of the owner or occupant of any lot in observing the requirements set out in Articles 1 through 21 above, or any of them, and the continuation of such after ten (10) days written notice from the hereinafter named Association of the existence of such default, said Association, upon approval by the Board of Directors, may enter upon said lot through its agents, without liability to the owner or occupant in trespass or otherwise, and cause to be done any work or other thing necessary to secure compliance with these restrictions, and may charge the owner or occupant of such lot for the cost of any such work or thing. The owner or occupant of each lot agrees, by the purchase or occupation of the lot, to reimburse the Association immediately upon receipt of a statement covering the cost of any such work or thing. In the event of failure to pay such statement, the amount thereof and any attorneys fees and court costs shall be added to the annual maintenance charge assessed by the Association against such lot and become a charge thereon and be collected in the same manner as the regular annual maintenance charge provided for in these restrictions.

#### **ARTICLE 22. MAINTENANCE ASSOCIATION, MAINTENANCE CHARGE, AND SPECIAL ASSESSMENTS**

The Association shall have the power of (1) assessing and collecting the annual maintenance charge specified herein, (2) managing Association funds, arranging for the performance of the services contemplated, and making payment therefore out of said funds, (3) the establishment and enforcement of rules and regulations affecting the operation, use, and enjoyment of common area facilities, (4) acquisition and use of personal property, (5) collection of assessments, (6) maintenance of rights-of-way within, or adjacent to the subdivision, and (7) the general operation of the business of the Association. In this regard, said Association shall also have all the powers granted by the Texas Non-Profit Corporation Act.

Each residential lot in the aforementioned subdivision is hereby made subject to an annual maintenance charge for the purpose of creating a subdivision Maintenance and Improvement Fund to operate and manage the Association authorized herein, along with one or more reserve funds. As to each lot, such maintenance charge shall be due and payable at closing, and thereafter paid in accordance with this Declaration. The initial annual maintenance charge period shall be the remaining portion of the particular calendar year in which the aforesaid notice is given by the Association commencing with such notice date. Thereafter the maintenance charge shall be assessed annually against each lot as of January 1<sup>st</sup> of each succeeding calendar year to cover the full calendar year commencing with the particular annual maintenance charge date. A statement reflecting the amount of annual maintenance charge with respect to each lot shall be mailed or otherwise delivered to each lot owner as soon as practical after each annual maintenance charge date. The amount of each annual maintenance charge shall be paid by the owner of each lot (or the holder of the mortgage on such lot, if applicable) to the Association in advance of January 1 of each year, or within fifteen (15) days after the statement covering such annual maintenance charge has been mailed or otherwise delivered to the Lot Owner (or the holder of the mortgage on such lot, if applicable), whichever last occurs. Upon resolution by the Board of Directors, the annual maintenance charge may be payable in

two installments, one payable on the 1<sup>st</sup> day of January and one payable on the 1<sup>st</sup> day of July 1 each year, each payment being one-half of the annual maintenance charge for each fiscal year. Any maintenance charge assessed hereunder and not paid when due shall bear interest from the date due until paid at the rate of ten percent (10%) per annum.

The maximum allowable annual maintenance charge on each residential lot from and after the date such charge is first assessable against such lot shall be as follows;

- (a) For any assessable period within the calendar year \_\_\_\_\_, the maximum allowable annual maintenance charge on each lot subject to these Restrictions shall be the sum of One Hundred Dollars (\$100.00) per acre or any portion of an acre rounded to two decimal points.
- (b) For any assessable period within the calendar years next succeeding the calendar year \_\_\_\_\_, the maximum allowable annual maintenance charge for each particular calendar year shall be calculated and determined as follows: The average of the Consumer Price Index (all items), Texas area, covering All Urban Consumers, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or the most nearly comparable successor index published by any governmental agency, over the most recent twelve (12) months for which information is available at the time of making the annual maintenance charge applicable to the particular calendar year shall be determined (the "current period average"), the average said index over the twelve (12) months of the calendar year \_\_\_\_ shall be determined (the "base period average"), the maximum allowable annual maintenance charge for the particular calendar year of determination shall be an amount equal to One Hundred Dollars (\$100.00) per acre, as increased by the same percentage that the aforesaid "current period average" (adjusted to the nearest one-tenth of one percent) or the amount of One Hundred Dollars (\$100.00) per acre increased at the rate of eight percent (8%) per year, compounded annually, from the date of the initial annual maintenance charge, whichever is greater. If the afore described Index For All Urban Consumers was not published for any period of time involved in any determination of a possible increase in the annual maintenance charge as aforesaid, the Consumer Price index (all items, United States City Average) previously published by the Bureau of Labor Statistics shall be used for such period of time.
- (c) If any lot shall be subject to the aforesaid maintenance charge for less than a full calendar year, then the annual maintenance charge for any such partial year shall be calculated on a pro rata basis.
- (d) The foregoing notwithstanding, it is specially provided that so long as any lot is both owned by Declarant and does not have a dwelling thereon which is substantially completed and ready for occupancy, the annual maintenance charge applicable to such lot shall be one-fourth of the annual maintenance charge then assessed under the foregoing provisions.

In recognition of the possibility that it may be desirable that the Association be able to levy special assessment from time to time by action of the Board of Directors of the Association for the purpose of defraying all or part of the cost of any construction, repair or replacement of capital improvements upon any common area currently owned, or which may be annexed hereunder and which is dedicated for the use and benefit of the members of the Association (including fixtures and personal property related thereto), the following described procedure is hereby established for imposing any special assessment for such capital improvements, to-wit:

- (1) A special meeting of all members of the Association shall be called in accordance with all regular requirements for a special meeting of the members, provided that written notice of any such meeting shall be given to all members specifying that the purpose of the meeting is to vote on a proposed special assessment for defraying the cost of proposed capital improvements (which are to be generally described in the notice), and further provided that such notice shall be sent to all members not less than thirty (30) nor more than sixty (60) days prior to the date of such meeting.
- (2) The first special meeting of the members called for the purpose of approving the levy of a particular special assessment shall require the presence at the meeting (either by person or by proxy) of members entitled to

cast at least sixty seven percent (67%) of all votes of each class of membership in the Association in order to constitute a quorum for valid action. If the required quorum is not present at such first called meeting, another special meeting may be called with respect to that particular special assessment, subject to the same notice requirement and the required quorum as at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- (3) At least sixty seven percent (67%) of a valid quorum of votes of each membership presented at the meeting (either in person or by proxy) must have voted in favor of any special assessment for capital improvements before such special assessment will be effective.

The services or things which may be furnished and paid for by the Association out of the Maintenance Fund include the acquisitions and operations of common area property, if any, for recreational or other purposes and the construction, installation, operation, maintenance, repair, and replacement of any facilities or improvements placed thereon (subject to the limitations herein set forth with respect to expenditures for such purposes), street lighting, trash removal, grass, trees, monuments (whether located within Coastal Wild Wood subdivision or located on rights-of-way at the entrance of Coastal Wild Wood subdivision ), and other landscaping or decorative improvements on any common area, easement granted for benefit of the Association, or any neighboring rights-of-way, fogging for insect control, paying legal and other expenses for enforcement of the provisions of these Restrictions, paying all taxes assessed against the Association's property, and any and all other services or things which the Board of Directors shall deem necessary or desirable for the maintenance and improvement of the aforementioned subdivision, it being expressly provided that the Association shall not be limited to the particular items set forth above, nor shall the Association be required to furnish and pay for any of said particular items. Also, the Association shall be under no obligation to continue to furnish and pay for any particular service or thing after the commencement thereof. The Association shall provide liability insurance for all directors and shall indemnify officers and directors for uninsured losses relating to acts as directors except for criminal acts.

The proceeds of the maintenance charge provided for herein shall not be used to reimburse Declarant or its successors in interest for any capital expenditure incurred by Declarant in the construction of or other improvements to common area recreational facilities, monuments or landscape, if any, situated within or outside the boundaries of the subdivision. Any expenses or operation or maintenance of such facilities which have been installed by Declarant shall not be paid for with maintenance charge proceeds prior to the conveyance of such facilities, fully completed, and unencumbered to the Association, unless such payment is with the approval and consent of the Federal Housing Administration or the Department of Veterans Affairs, if subdivision approval has been requested and granted by such agencies.

The Association shall be authorized under its Articles of Incorporation to also provide maintenance services similar to those contemplated herein for the benefit of subsequently developed residential subdivision areas in which the lots are made subject to deed Restrictions providing for the establishment of a maintenance charge uniform with that specified herein and which are otherwise substantially the same as these Restrictions, provided such subdivision areas are duly annexed as provided herein.

The Association shall be authorized under its Articles of Incorporation to charge individual property owners for repair or upkeep of property in neglect (mowing, trimming, fence repair, etc.) and to secure contractors to perform such maintenance. The need to perform maintenance and levy the charges will be at the discretion of the Committee.

In this regard, it is specifically provided that if additional residential subdivision areas are duly annexed to the aforementioned subdivision in the manner herein provided, the officers and directors of the Association shall be entitled to combined maintenance charge moneys received from lots situated in the several subdivision areas it may be serving into a single fund and provide and pay for services on behalf of all subdivision areas being served by the Association without the necessity of any allocation to particular lots or subdivision areas. The owner of each lot affected hereby shall be deemed to have agreed to this provision by his acceptance of a conveyance or other transfer of title to such lot.

There has been no dedication of recreational common area and recreational common area facilities in conjunction with the development of the aforementioned subdivision. Should common area be acquired, each Lot Owner shall have a right and easement of enjoyment in and to any common area which may be subsequently

acquired or annexed to the aforementioned subdivision and dedicated for the use and enjoyment of the members of the Association, which right and easement shall be appurtenant to and shall pass with the title to each lot, subject to the following:

- (a) the right of the Association to charge reasonable admission and other fees and to establish reasonable rules and regulations covering the use of the common area and any recreational facility situated upon the common area;
- (b) the right of the Association to suspend a member's voting rights and rights to the use of the common area and any recreational facilities thereon for period of time during which any fees or assessments against such member's lot remain unpaid, and to suspend such rights for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the common area or any common area facilities to any public agency or authority having the same or similar purposes as the Association, subject to such conditions as may be reserved in the dedication or transfer. No such dedication or transfer shall be effective unless an instrument approving such dedication or transfer has been signed by at least sixty seven percent (67%) of the members in each class of membership in the Association and has been recorded; and
- (d) the right of any Lot Owner to delegate his or her right and easement of enjoyment in and to the common area and common area facilities to the members of his or her family, tenants or contract purchasers who reside on the property, in accordance with the By-Laws of the Association.

Without requirement of consent by membership of the Association, Declarant may, but is not required to, annex by recordation of a declaration of annexation executed by Declarant all or any portion of the property that adjoins or is adjacent to Coastal Wild Wood or adjoins or is adjacent to other property so annexed, including but not limited to real property located within the subdivision. Other additional residential subdivision areas and common areas may be annexed to the Association with the consent of sixty-seven percent (67%) of the votes of each class of membership of the Association.

A lien is hereby established on the lots subject to these Restrictions to secure the payment of the maintenance charge established hereby, and all present and subsequent owners of said lots should convey such lots with an appropriate reference to the recordation of these Restrictions in the Official Public Records of Real Property of Aransas County, Texas, together with a recitation that said lien has been retained on each lot for the benefit of the Association. The owner or owners of any lot subject to these Restrictions shall be deemed to have covenanted and agreed to pay the aforesaid maintenance charge by acceptance of a conveyance or other transfer of title to such lot, even though the reference and recitation referred to above is not made. Each Class "A" owner acknowledges the lien for assessments created herein was in existence prior to the acquisitions of a lot by such Class "A" member. Upon the transfer of ownership of any lot, the Seller and Buyer of said lot must promptly notify the Association of the name and mailing address of the new owner; a transfer fee, not to exceed seventy-five dollars (\$75.00), adjusted at the same rate as the annual maintenance charge, may be charged if such fee is approved by the Board of Directors. The address for mailing documents to the Association is and may be changed by recording of notice in the Official Public Records of Real Property in Aransas County, Texas.

The aforesaid lien shall secure payment of the maintenance charge and all past due interest which may accrue thereon, together with all reasonable expenses, costs, and attorney's fees which may be incurred in connection with the collection thereof. Said lien shall run with the land and be a continuing charge on the land assessed, and shall also be a personal obligation of the owner(s) of each lot.

Every person or entity owning of record either the entire fee title or any undivided interest in the fee title to any residential lot situated in the aforementioned subdivision, or in any other area duly annexed thereto and brought under the jurisdiction of the Association as hereinafter provided, shall be a member of such corporation. The foregoing is not intended to include persons or entities holding an interest in a lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of such lot.

The Association shall have two classes of members with voting rights as follows:

Class "A" Members shall be all of the owners, other than the Declarant, of residential lots situated in the aforesaid subdivision and in any other area duly annexed thereto, as hereinafter provided. Voting rights of Class "A" members shall be limited to one (1) vote for each lot owned. If any lot is owned by more than one person or entity, all such persons or entities shall be members and the vote to which such lot is entitled shall be exercised as the owners of such lot may determine among themselves.

Class "B" Members shall be Declarant and any successors, assigns, or substitute Declarant, as provided herein. The Class "B" member shall be entitled to five (5) votes for each residential lot owned until such time as the total votes outstanding the Class "A" membership equal or exceed the total votes outstanding in the Class "B" membership, or on December 31, \_\_\_\_\_, whichever date occurs the earliest. After the earliest to occur of the foregoing dates, the voting rights of the Class "B" membership shall be automatically converted to one (1) vote for each lot owned, the same as the Class "A" membership. It is specially provided, however, that at any time other subdivision area are duly annexed to the aforesaid subdivision in the manner hereafter set out, the voting rights as to lots owned by the Class "B" membership shall (if previously converted to one vote per lot) automatically revert to five (5) votes for each lot owned until such time as the total votes outstanding in the Class "A" membership throughout the aforesaid subdivision and any duly annexed area, collectively, shall equal or exceed the total votes outstanding in the Class "B" membership throughout such total area, or until December 31, \_\_\_\_\_, whichever date occurs the earliest, at which time Class "B" voting rights shall be automatically converted to one (1) vote for each lot owned. The initial Board of Directors of the Association has been or will be appointed by Declarant and is to be composed of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. Further, Declarant may remove appointed directors and appoint successor directors at any time.

The aforesaid appointed Board of Directors shall hold office until such time as at least thirty four percent (34%) of the lots in the aforesaid subdivision are owned by persons or entities other than the Declarant of such subdivision, at which time the appointed members of the Board of Directors shall, as soon as practical, call a special meeting of only the Class "A" members of the corporation for the purpose of holding an election to replace one (1) of said appointed directors (the retiring director to be determined by Declarant), said director so elected to serve until the next regular annual meeting of the members of the corporation. The two (2) remaining appointed members of the Board of Directors shall continue to hold office until such time as the voting rights of the Class "B" membership of the corporation shall be automatically converted to the same voting rights as the Class "A" membership (as specified above and in the Articles of Incorporation), at which time the Board of Directors shall, as soon as practical, call a special meeting of all members of the corporation for the purpose of holding an election to select another director to replace one (1) of the two (2) remaining appointed members of the Board of Directors, said director so elected to serve until the next regular annual meeting of the members of the corporation. The then remaining appointed member of the Board of Directors shall continue to hold office until such time as the Class "B" members have sold to other persons or entities all residential lots in the aforesaid subdivision and in any other areas duly annexed thereto (as herein provided).

In case of the resignation, death or incapacity to serve of any appointed director during the period for which such director is to hold office, Declarant shall appoint a successor to serve the balance of the term of office of said director.

For so long as any board position is filled by an appointed director, the terms of office for elected members of the board shall be from the date of their election until the date of the next annual meeting; any elected director may be elected for consecutive and repetitive terms of office. Although annual meetings may not be held exactly one (1) year apart, the terms of office for those elected shall be deemed one year terms regardless of the dates of election and the following annual meeting. At the first regular annual meeting of the members after the Class "B" members have sold to Class "A" members all residential lots situated in the aforesaid subdivision (and in any other subdivision areas duly annexed thereto as hereinafter provided), at the next annual meeting the members of the corporation shall elect at least one (1) director for a term of one (1) year, at least one (1) director for a term of two (2) years, and at least one (1) director for a term of three (3) years, and at each regular annual meeting thereafter the membership is dissolved, the members may elect to increase the number of directors to five (5).

In the case of the resignation, death or incapacity to serve of any of the aforesaid directors elected to office by the members of the corporation, a special meeting of the members entitled to elect such director shall be called to elect a successor to serve the balance of the term of said director.

Any director elected by the members of the corporation may be removed from the Board, with or without cause, by a majority vote of those members of the corporation who were entitled to vote for the election of such director, and in the event of such removal of director, a successor shall be elected to serve for the unexpired term of such removed director by a special election to be held by those members of the corporation who were entitled to vote for the election of the director so removed.

No director shall receive compensation for any service he/she may render to the corporation. However, any director may be reimbursed for his actual expenses included in the performance of his/her duties.

The By-Laws of the aforesaid corporation shall provide that any and all members of the Association shall have the right to inspect the financial books and records (with the exception of any personal files of each member, for which disclosure may be prohibited by the Fair Debt Collection Act or other rule of law) of said corporation at its principal offices at all reasonable times.

If the corporation provided herein should dissolve for any reason, the ownership of any common area and Association property shall immediately be conveyed to the owners of all lots within the subdivision in equal shares based upon a per lot distribution of an undivided interest, UNLESS the Board of Directors has, with appropriate board resolution, conveyed the common area, if any, and Association property to a municipality or other governmental entity for public use.

#### **ARTICLE 23. RIGHTS OF MORTGAGEES**

It is specially provided that the lien hereby created to secure the payment of maintenance charge specified in these Restrictions shall be subordinate to and shall not affect the enforcement of any vendor's lien or deed of trust lien now of record or which may hereafter be placed of record against any lot covered hereby and/or any improvements located thereon. However, such lots shall nevertheless remain subject to said maintenance charge, and the sale or transfer of any lot pursuant to foreclosure of any such superior lien shall extinguish the lien securing the maintenance charge only as to any maintenance charge attributable to such lot for the period of time prior to such sale or transfer, and said lien shall apply on a pro rated basis by calendar days thereafter.

#### **ARTICLE 24. TERM OF RESTRICTIONS**

These Restrictions are to run with the land and shall be binding upon and inure to the benefit of the Declarant and the Association, their respective successors and assigns, and all future owners of the residential lots located in the aforesaid subdivision until December 31<sup>st</sup> of the year \_\_\_\_\_ A.D. The afore described initial term of these restrictions shall be extended automatically after the expiration thereof for a successive period of ten (10) years duration each unless an instrument revoking these Restrictions, in whole or in part, is recorded in the Official Public Records of Real Property of Aransas County, Texas at least six (6) months prior to said initial expiration date or the expiration of any ten (10) year extension period. Any such instrument of revocation must be executed by the then owners of at least sixty-seven percent (67%) of the collective number of restricted lots situated in the aforesaid subdivision and any other residential subdivision area which has been duly annexed thereto as specified herein.

#### **ARTICLE 25. ENFORCEMENT OF RESTRICTIONS**

Lot Owners, the Board of Directors of the aforesaid Association, Declarant (until all lots subject hereto have been sold or otherwise conveyed to persons or entities other than commercial homebuilders) and/or the Association itself shall all have the right, power, and authority, without requirement of joinder of the other, to file suit for damages or for injunction, mandatory or prohibitory, to compel compliance with the provisions of these Restrictions. Also, the Association, acting through its Board of Directors, shall have the right to bring an action at law to foreclose the lien hereby established to secure the payment of the aforesaid maintenance charge or special assessment of any kind if any Lot Owner fails to cure any such default within thirty (30) days after notice thereof from the Association. Notice shall be deemed given three (3) days after deposit in the United States Postal system, postage prepaid, written notice, or when actual written notice is delivered, whichever first occurs. The plaintiff in any of the aforesaid proceedings shall be entitled to recover from the defendant in such actions all reasonably

necessary costs and expenses attendant upon bringing such action, including reasonable attorney's fees. The foregoing provision for recovery of costs, expenses, and attorney's fees shall be deemed to have been agreed to by the owner (s) of any lot covered hereby acceptance of a conveyance or other transfer of title to such lot.

Invalidation on one or more of the provisions of these restrictions, by court order or otherwise, shall in no way effect any other provision hereof, and all such remaining provisions not expressly invalidated shall continue in full force and effect.

**Prior Lien.** All sums assessed in the manner provided in this Article but unpaid shall, together with interest as provided herein and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The obligation to pay assessments hereunder is part of the purchase price of each Lot when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment of the assessments or charged hereby levied, and is hereby transferred and assigned to the Association, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of such assessments. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens, all sums unpaid on a Mortgage lien of record, or sums borrowed for the improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by a duly authorized officer of the Association. The sale or transfer of any Lot shall not affect the assessment lien.

**Filing of Lien Affidavit.** To evidence the aforesaid Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and may be recorded in the office of the County Clerk of Aransas County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same.

**Notice to Mortgagees.** Upon the written request of any Mortgagee, the Association is authorized to report to said Mortgagee any unpaid Assessments remaining unpaid for longer than 30 days after the same are due.

**Power of Sale.** As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Property, by such party's acceptance of a deed thereto, hereby grants the Association acting by and through its President as Trustee, and such successor or substitute Trustees as may be appointed by the Board, a lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Official Records of Aransas County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall first send to the defaulting Owner written notice by certified mail stating that such Owner is in default with respect to the payment of said Assessments under this Declaration and giving such Owner twenty (20) days to cure the default, and if said default is not cured within said time, to then send to the defaulting Owner a copy of the notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid,

certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be posted at the courthouse door of Aransas County, Texas, and also filed for record in the Official Records of Aransas County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

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

**Enforceability.** No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of its Lot. In addition to the above, rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

**Binding on Owner.** Each Owner further, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce such lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to applicable law, and each Owner hereby grants to the Association a power of sale in connection with such lien.

**Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

- (1) liens for taxes, assessments and other levies by governmental and taxing authorities which, by applicable law, are made superior to the Association's lien;
- (2) liens for all sums unpaid under a first and superior mortgage, vendor's lien, deed of trust or home equity security instrument made in good faith and for value and duly recorded prior to the date on which Assessments against the Lot were levied; and
- (3) (3) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien.

All other lienors acquiring liens or encumbrances on any Lot after recordation of this Declaration shall be deemed to consent that such liens or encumbrances are inferior to the lien provided for herein to secure the payment of future Assessments, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. Notwithstanding the foregoing, the Assessment lien provided for herein shall be prior and superior to any declaration of homestead recorded after recordation of this Declaration, unless such priority over homestead shall be prohibited by law. Any sale by a prior lien holder shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment. This subordination shall not apply where the first mortgage or deed of trust is used as a device, scheme or artifice to evade the obligation to pay Assessments or to hinder the Association in performing its functions hereunder.

## **ARTICLE 26. ASSIGNMENT BY DEVELOPER AND MAINTENANCE ASSOCIATION**

The Declarant may, at any time, assign to the Association any and all rights reserved to Declarant, except the right to annex certain properties as provided in Article 30. Any assignment shall be evidenced by an instrument

in writing recorded in the Official Public Records of Real Property of Aransas County, Texas. If not previously assigned, all such rights reserved to Declarant hereunder shall automatically vest in the Association when all lots covered by these Restrictions have been sold or otherwise conveyed from Declarant to other persons or entities, except the right to annex certain properties as provided in Article 29.

The Association may at any time assign or delegate to a committee or designated representative any and all approval rights reserved to the Association hereunder. Any such assignment or delegation shall be evidenced by a resolution of the Board of Directors of the Association.

#### **ARTICLE 27. AMENDMENT OF RESTRICTIONS**

These Restrictions may be amended at any time prior to the termination hereof by recorded instrument in the Official Public Records of Real Property of Aransas County, Texas, by an instrument signed by the then owners and lien holders of at least sixty-seven percent (67%) of the collective number of restricted lots situated in the aforementioned subdivision and in any other residential subdivision area which has been duly annexed thereto as specified herein and joinder of Declarant, if Declarant owns any lot subject to this Declaration.

Declarant reserves the right in its sole discretion to amend these Restrictions without the consent of owners so long as Class "B" membership exists, where such amendment is for a correction or clarification of the Declaration to achieve its intended purposes or to correct scrivener's errors.

#### **ARTICLE 28. ANNEXATION AND SPECIAL CONSENTS**

**1. ADDITION TO PROPERTY.** Additional lands may become subject to this Declaration in the following manners:

(a) Additions by Declarant. The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration, without the consent of members, additional properties in future stages of the development, within ten (10) years from the date of this instrument; provided that such additions are adjacent or adjoining the Coastal Wild Wood or other property previously annexed, including but not limited to real property located within survey Aransas County, Texas. Declarant, its successors and assigns, shall not be bound to make any additions to the property. Any additions authorized under this and the succeeding subsections shall be made by filing of record a Declaration of Covenants, Conditions, and Restrictions or similar instrument with respect to the additional property, which shall extend in the general scheme of the Covenants and Restrictions of these Declarations to such property, and the execution thereof by the Declarant shall constitute all requisite evidence of the required approval thereof. Such document may contain such complimentary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be applicable to the additional lands and are consistent with the overall development. The document may provide for different residential land uses. In no event, however, shall any such instrument be construed so as to revoke, modify or add to the Covenants established by this Declaration, as they are applicable to Coastal Wild Wood. Declarant's right to annex property shall not cease upon Declarant's conveyance of all lots then subject to this Declaration or the Association.

(b) Other Additions. The owner of any property, who desires to add to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may make written submission to the Association together with the following:

- (1) The proposed property shall be described by size, location, proposed land use, and general nature of proposed private improvements;
- (2) The proponent shall describe the nature and extent of common facilities to be located on the proposed property and fully describe any mortgage debt related to the common facilities or other debt which he seeks the Association to assume; and
- (3) The proponent shall state that the proposed additions, if made, will be subject to the general scheme of this Declaration and all Association assessments.

Upon such submission and subject to the Association's later review and approval of a proposed form of Declaration of Covenants, Conditions, and Restrictions for the proposed property, the Association shall vote by class on the proposal. Approval by sixty seven percent (67%) of the total votes of each class of membership shall be required for approval. If the proposed property shall be approved for addition to the jurisdiction of the Association, such addition shall be complete upon the proponent's filing of record a Declaration of Covenants, Conditions, and Restrictions or similar instrument in form approved by the Association and executed by said Board of Directors or one (1) or more authorized officer of the Association.

#### **ARTICLE 29. CONFLICTS WITH LAWS**

When this Declaration and statutes, ordinances and governmental rules and regulations cover the same subject matter, there shall be compliance with each requirement. When this Declaration is in conflict or becomes in conflict with statutes, ordinance, and governmental rules and regulations, the statutes, ordinances, and governmental rules and regulations shall control, with the conflicting provision of this Declaration being preempted, the Board of Directors, on behalf of the Association, may seek reformation of the affected provision to provide, insofar as possible, implementation of the original intent of Declarant. If any provision of this Declaration is held void or preempted by statute, ordinance or governmental rules and regulations, the Board of Directors, on behalf of the Association, may seek reformation of the affected provision to provide, insofar as possible, implementation of the original intent of Declarant.

#### **ARTICLE 30. MISCELLANEOUS**

**Term** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until June 1, 2026, unless amended as herein provided. After said date, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten years each, unless amended or extinguished by a written instrument executed by at least 80% of the then Members of the Association, including any Owners of Phase II Property if said property has been made subject to this Declaration by Supplemental Declaration..

**Amendment** This Declaration may be amended by the recording in the Official Records for Aransas County of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the requisite number of Members of the Association.

**Notices** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given to the Association. Such address may be changed from time to time by notice in writing given by such Person to the Association.

**Interpretation** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

**Assignment of Declarant** Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person, and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights, and duties hereunder, which assignment shall be effective only if in writing and recorded in the Official Records for Aransas County, Texas.

**Enforcement and Nonwaiver** Except as otherwise provided herein, any Owner at his own expense, Declarant, the Architectural Committee and/or the Association shall have the right to enforce all of the provisions of these Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any provision of the Restrictions at any time shall not constitute

a waiver of the right thereafter to enforce any such provision or any other provision of said Restrictions. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

**Construction** The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof. In the event of a conflict in a decision of the Architectural Committee and a decision of the Board, the Architectural Committee's decision shall control.

**Disclaimer of Warranty** **DECLARANT MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, OR THE DEVELOPMENT OR ANY IMPROVEMENT TO OR WITHIN THE PROPERTY OR THE LOTS, THE CONDITION OF THE PROPERTY OR THE LOTS, THE SUFFICIENCY OF UTILITIES, THE WORKMANSHIP, DESIGN OR MATERIALS USED IN EVERY IMPROVEMENT, INCLUDING WITHOUT LIMITATION COMMON AREAS, AND INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, LIABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE OR USE, OR ANY WARRANTY OF QUALITY. WHILE DECLARANT HAS NO REASON TO BELIEVE THAT ANY OF THE COVENANTS, TERMS OR PROVISIONS OF THIS DECLARATION ARE OR MAY BE INVALID OR UNENFORCEABLE FOR ANY REASON OR TO ANY EXTENT, DECLARANT MAKES NO WARRANTY OR REPRESENTATION AS TO THE PRESENT OR FUTURE VALIDITY OR ENFORCEABILITY OF ANY SUCH COVENANT, TERM OR PROVISION. ANY OWNER ACQUIRING A LOT IN RELIANCE ON ONE OR MORE OF SUCH COVENANTS, TERMS OR PROVISIONS SHALL ASSUME ALL RISKS OF THE VALIDITY AND ENFORCEABILITY THEREOF, AND BY ACQUIRING SUCH LOT AGREES TO HOLD DECLARANT HARMLESS THEREFROM.**

**Mediation and Arbitration ("ADR")**

- (a) **Initiation.** Except for temporary restraining orders, other injunctive relief and the judicial foreclosure of liens, to the maximum extent allowed by law and irrespective of the form of relief sought, any claim, litigation, proceeding, controversy or dispute (each a "*dispute*") with respect to the Restrictions as between any of the following Persons: Owners; Members; the Board; the Architectural Committee, officers of the Association; or the Association (including, without limitation, any alleged tort related hereto) or the activities associated herewith, shall be submitted to and resolved by ADR as herein provided. Such ADR shall be the sole remedy with respect to such dispute.
- (b) **Mediation.** Prior to arbitration, the parties shall attempt in good faith following notice by one party to the other of a dispute, which notice is entitled "*Notice of Dispute*," to resolve the dispute, and the parties agree to use the following mediation procedures prior to either party pursuing arbitration. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. The Board shall maintain a list of potential Facilitators, but the parties will be in no way limited to their choice by this list. If, within 10 days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "*Facilitator*"), seeking assistance in such regard from the American Arbitration Association ("*AAA*") if they have been unable to agree upon such appointment within 10 days from the initial meeting.
- (c) The fees of the Facilitator shall be shared equally by the parties. In consultation with the Facilitator, the parties will select or devise an alternative dispute resolution procedure ("*ADR*") by which they will attempt to resolve the dispute. The Facilitator shall make the decision as to the ADR procedure, and the place and time of the ADR, not later than 10 days after selection of the Facilitator, unless circumstances require otherwise. The parties agree to participate in good faith in

ADR to its conclusion as designated by the Facilitator. All meetings and proceedings shall be in Aransas or Nueces County at a location mutually selected by the Facilitator.

- (d) **Arbitration.** If the parties are not successful in resolving the dispute through Mediation, then the parties agree that the dispute shall be settled by binding arbitration. The party invoking arbitration shall do so by sending to the other party a notice called “*Notice of Arbitration.*” In such cases, the dispute shall be settled and finally determined by arbitration in accordance with the Rules of Commercial Arbitration of the American Arbitration Association. Any arbitration pursuant to this Section shall be conducted by one (1) arbitrator, and the arbitration proceeding shall be held in Corpus Christi, Texas. The parties shall mutually select the arbitrator. If the parties are unable to agree upon an arbitrator within 10 days of the sending of a Notice or Arbitration, the arbitrator shall be chosen in accordance with the AAA Rules from a panel of individuals, each of whom shall be required to have at least 10 years of real estate experience in Corpus Christi or Rockport, Texas, and none of whom may have or had an affiliation, past or present, with the parties.

The costs of the arbitration shall be allocated as determined by the arbitrator. The arbitration shall begin as promptly as possible after the designation of the arbitrator, and the parties agree to use their best efforts to effectuate a resolution of the claim within 90 days from the date of the designation of the arbitrator. A copy of the decision of the arbitrator shall be signed and given to each of the parties thereto. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party may bring an action to compel arbitration of any dispute in any court having jurisdiction over such matter. All statutes of limitations that would otherwise be applicable shall apply to any disputes asserted in any arbitration proceeding.

The arbitrator shall have the right to award monetary damages, to grant temporary or permanent injunctive relief, to require specific performance, and to award any remedy or relief which a court could order as to the dispute. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The arbitrator may adjourn a hearing from time to time as the arbitrator deems necessary. All parties agree to cooperate fully to have the arbitration completed as expeditiously as possible. All parties shall have the right to representation by counsel at any stage of the proceedings. The arbitrator shall require witnesses to testify under oath administered by any duly qualified person. The parties may provide the arbitrator with briefs on matters which they believe to be beneficial to the arbitrator. Copies of any such briefs provided to the arbitrator shall be provided by the party to the opposing party or his counsel. The arbitrator shall determine the period of time in which parties will have to respond to any such brief filed by their opponent. The arbitrator will preside at the hearing and rule on the admission and exclusion of evidence as well as questions of procedure. The arbitrator may exercise all powers conferred by statute and by these Restrictions. The hearing will be conducted as if it were an informal court trial. At the arbitration hearing, the parties shall be entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing. The evidence will include testimony of persons having knowledge of relevant facts any expert witnesses. Deposition testimony may be offered in lieu of live testimony. Deposition testimony of parties or witnesses may be admitted for evidentiary or impeachment purposes. Documentary evidence, compilations, charts, photographs and other demonstrative exhibits may also be presented at the hearing. Witnesses may be called live or via telephone. The Texas Rules of Evidence and Procedure regarding the presentation and admissibility of evidence will generally but not strictly govern the arbitration proceeding, and the arbitrator may consider any relevant and material evidence, at the arbitrator's discretion. The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered, and the arbitrator may consider all material and testimony presented, as the arbitrator shall consider appropriate. The provisions of Chapter 171 of the Texas Civil Practice and Remedies Code will apply to the arbitration and the arbitrator may issue subpoenas for the attendance of witnesses. Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of this arrangement in advance of the hearing. The requesting party shall pay the cost of the record. If the transcript is agreed by all parties, or determined by the arbitrator, to be the official record of the proceeding, the record must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator, but in that event, the parties shall share in the costs as determined by the arbitrator. The arbitrator and the parties shall maintain the privacy of the arbitration. The arbitrator shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person at a hearing. It is not necessary that the arbitrator make a specific and detailed findings of fact and conclusions of law. All monetary awards or grants of other affirmative relief shall

be paid or satisfied within 30 days from the date of the issuance of the award. If any dispute subsequently arises from and relating to the arbitration or regarding the arbitrator's award or the enforcement thereof, the parties agree to submit said dispute to the arbitrator for resolution.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this the twenty-third day of May, 2006.

**DECLARANT:**

Sim Henry

By: \_\_\_\_\_  
Sim Henry

THE STATE OF TEXAS       §  
  §  
COUNTY OF ARANSAS       §

The instrument was acknowledged before me on May 23, 2006 by Sim Henry.

\_\_\_\_\_  
Notary Public Signature