

FIRST SUPPLEMENTAL DECLARATION  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF THE BISCAYNE, SECTION ONE,  
FOR  
BISCAYNE BEACH WEST ENTRY ROAD AND  
THE BISCAYNE, SECTIONS TWO AND THREE,  
AN ADDITION IN GALVESTON COUNTY, TEXAS

**FIRST SUPPLEMENTAL DECLARATION  
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AND RESTRICTIONS OF THE BISCIAYNE, SECTION ONE,  
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This First Supplemental Declaration of Covenants, Conditions and Restrictions (the First Supplemental Declaration") of Biscayne Beach West Entry Road and The Biscayne, Sections Two and Three, is made and executed on the date hereinafter set forth by Coastal Flats, Ltd., a Texas limited partnership ("Declarant").

WHEREAS, Declarant is the owner of that 534.95 acre tract or parcel of land out of and part of the Samuel Parr Survey, Abstract No. 162, and the Abraham Van Nordstrand Survey, Abstract No. 203, in Galveston County, Texas, and being part of that certain 886.50 acre tract of land conveyed to Thad Clint Felton by Administrator's Deed, dated March 5, 1996, and recorded under Clerk's File No. GAC9608671 of the Real Property Records of Galveston County, Texas, and being more particularly described in Exhibit A (the "Land"), subject to a Conservation Easement recorded under Film Code No. 016-22-1082 of the Deed Records of Galveston County, Texas; and

WHEREAS, by Declaration of Covenants, Conditions and Restrictions of The Biscayne, Section One, an Addition in Galveston County, Texas (the "Master Declaration"), filed for record under Clerk's File Number GAC2003046626 of the Real Property Records of Galveston County, Texas, Declarant caused 83.323 acres land in Galveston County, Texas, to be subdivided into eighty-three (83) lots, twenty (20) reserves, and two (2) blocks situated in the A. Van Nordstrand Survey, Abstract No. 203, Galveston County, Texas, in accordance with the Final Plat of The Biscayne, Section One (the "Section One Plat") filed for record on February 4, 2003, and recorded under Clerk's File No. GAC2003024231 of the Plat Records of Galveston County, Texas, reference to the Master Declaration and the Section One Plat being here made for all purposes; and

WHEREAS, the Master Declaration and the Section One Plat describe or reflect a 451.627 acre tract adjacent to The Biscayne, Section One, and referred to in the Master Declaration and on the Section One Plat as the "Future Development Tract"; and

WHEREAS, the Master Declaration provides, in part, that Declarant, at its sole election, may bring within the scheme of the Master Declaration, and within the jurisdiction of the Biscayne Owners Association, a Texas non-profit corporation (the "Association"), all or any part of the Future Development Tract by Declarant's filing for record in the office of the County Clerk of Galveston County, Texas, a Supplemental Declaration subjecting such additional property to the scheme of the Master Declaration and to the jurisdiction of the Association, together with a plat of such additional property; and

WHEREAS, the Master Declaration further provides, in part, that any such Supplemental Declaration may contain complementary and supplementary provisions, conditions, covenants, restrictions and reservations, and may amend and modify the provisions, conditions, covenants, restrictions and reservations contained in the Master Declaration as they relate to the additional property to be brought within the scheme of the Master Declaration and within the jurisdiction of the Association, but such Supplemental Declaration may not in any manner revoke, modify or add to the covenants established by the Master Declaration for The Biscayne, Section One; and

WHEREAS, the Master Declaration defines the term "Addition" to mean, refer to and include The Biscayne, Section One, together with such additional part or parts of the Future Development Tract as shall be brought within the scheme of the Master Declaration and within the jurisdiction of the Association pursuant to the terms and provisions of the Master Declaration; and

WHEREAS, the Declarant now desires to bring into the Addition (as that term is defined in the Master Declaration), and within the jurisdiction of the Association and the integrated scheme of development and ownership provided in and contemplated by the Master Declaration, an additional 86.21 acre tract or parcel of land out of the Future Development Tract, which 86.21 acre tract is west of The Biscayne, Section One, and is to be known, platted and subdivided into The Biscayne, Section Two, an Addition in Galveston County, Texas, said 86.21 acre tract of land being described by metes and bounds in Exhibit B hereto attached, which exhibit is made a part hereof by reference; and

WHEREAS, the Declarant now desires to bring into the Addition (as that term is defined in the Master Declaration), and within the jurisdiction of the Association and the integrated scheme of development and ownership provided in and contemplated by the Master Declaration, an additional 3.999 acre tract or parcel of land out of the Future Development Tract, which 3.999 acre tract is west of The Biscayne, Section One, and north of The Biscayne, Sections Two and Three, and is known and platted into a sixty foot (60') wide private drive from State Highway 87 to The Biscayne, Section Two, known as "Biscayne Beach West Entry Road", said 3.999 acre tract of land being described by metes and bounds in Exhibit C attached hereto, which exhibit is made a part hereof by reference; and

WHEREAS, the Declarant now desires to bring into the Addition (as that term is defined in the Master Declaration), and within the jurisdiction of the Association and the integrated scheme of development and ownership provided in and contemplated by the Master Declaration, an additional 18.73 acre tract or parcel of land out of the Future Development Tract, which 18.73 acre tract is west of The Biscayne, Section One and north of The Biscayne, Section Two, and is to be known, platted and subdivided into The Biscayne, Section Three, an Addition in Galveston County, Texas, said 18.73 acre tract of land being described by metes and bounds in Exhibit D hereto attached, which exhibit is made a part hereof by reference.

NOW, THEREFORE, Coastal Flats, Ltd., a Texas limited partnership (the "Declarant"), hereby makes this First Supplemental Declaration under and in accordance with the provisions of the Master Declaration:

I.

The Declarant, being the owner of the above-described 86.21 acre tract, which is out of and a part of the 451.627 acre "Future Development Tract" described in the Master Declaration and reflected upon the Section One Plat, has caused said 86.21 acre tract to be subdivided and platted into an addition in Galveston County, Texas, known and to be known as The Biscayne, Section Two, an Addition in Galveston County, Texas ("The Biscayne, Section Two"), in accordance with the Plat of said The Biscayne, Section Two, prepared by Coastal Surveying of Texas, and filed for record on September 13, 2005, recorded under Clerk's File No. GAC2005063742 of the Plat Records of Galveston County, Texas; and, acting under and pursuant to the provisions of the Master Declaration, the Declarant hereby brings said 86.21 acre tract of land within the scheme of the Master Declaration and within the jurisdiction of the Association, and said The Biscayne, Section Two, shall henceforth constitute a part of the "Addition," as defined in the Master Declaration.

II.

The Declarant, being the owner of the above-described 3.999 acre tract, which is out of and a part of the 451.627 acre "Future Development Tract" described in the Master Declaration and reflected upon the Section One Plat, has caused said 3.999 acre tract to be platted into an entry road to The Biscayne, Section Two, in Galveston County, Texas, known and to be known as Biscayne Beach West Entry Road in Galveston County, Texas, in accordance with the Plat of said Biscayne Beach West Entry

Road, prepared by Coastal Surveying of Texas, and filed for record on June 3, 2005, recorded under Clerk's File No. GAC 2005036450 of the Plat Records of Galveston County, Texas; and, acting under and pursuant to the provisions of the Master Declaration, the Declarant hereby brings said 3.999 acre tract of land within the scheme of the Master Declaration and within the jurisdiction of the Association, and said Biscayne Beach West Entry Road, shall henceforth constitute a part of the "Addition," as defined in the Master Declaration.

III.

The Declarant, being the owner of the above-described 18.73 acre tract, which is out of and a part of the 451.627 acre "Future Development Tract" described in the Master Declaration and reflected upon the Section One Plat, has caused said 18.73 acre tract to be subdivided and platted into an addition in Galveston County, Texas, known and to be known as The Biscayne, Section Three, an Addition in Galveston County, Texas ("The Biscayne, Section Three"), in accordance with the Plat of said The Biscayne, Section Three, prepared by Coastal Surveying of Texas, and filed for record on December 1, 2005, recorded under Clerk's File No. GAC 2005081476 of the Plat Records of Galveston County, Texas; and, acting under and pursuant to the provisions of the Master Declaration, the Declarant hereby brings said 18.73 acre tract of land within the scheme of the Master Declaration and within the jurisdiction of the Association, and said The Biscayne, Section Three, shall henceforth constitute a part of the "Addition," as defined in the Master Declaration.

IV.

The Declarant hereby and herewith adopts the Plat of The Biscayne, Section Two (the "Section Two Plat"), the Plat of the Biscayne Beach West Entry Road (the "Biscayne Beach West Plat") and the Plat of The Biscayne, Section Three (the "Section Three Plat"), and does hereby dedicate the easements for street, utility and drainage purposes shown and reflected upon the Section Two Plat, the Biscayne Beach West Plat and the Section Three Plat, and does hereby impose upon the Lots in The Biscayne, Sections Two and Three, and the Biscayne Beach West Entry Road the basic restrictions and blanket easements set forth upon the Section Two Plat, the Section Three Plat, and the Biscayne Beach West Plat.

V.

As herein and hereby modified and supplemented, all of the provisions, covenants, conditions, restrictions and reservations set forth and contained in the Master Declaration, together with all of the blanket easements reserved, granted or created by the Master Declaration, are hereby extended and made expressly applicable to the (a) 86.21 acre tract herein and hereby subdivided, platted and declared as The Biscayne, Section Two, (b) 18.73 acre tract herein and hereby subdivided, platted and declared as The Biscayne, Section Three, and (c) 3.999 acre tract herein and hereby platted and declared as Biscayne Beach West Entry Road, and all of such property shall be held, sold and conveyed subject to the easements, provisions, covenants, conditions, restrictions and reservations set forth in the Master Declaration, as modified and supplemented hereby, and subject to the easements and basic restrictions set forth and reflected upon the Section Two Plat, the Section Three Plat, and the Biscayne Beach West Plat. All of the aforementioned easements, provisions, covenants, conditions, restrictions and reservations, as modified and supplemented hereby, shall constitute covenants running with the land and shall be binding upon all parties having any right, title or interest in said 86.21 acre tract, said 18.73 acre tract, and/or said 3.999 acre tract, or any part thereof, and upon such parties' respective heirs, successors, legal representatives, devisees, lessees and assigns, and shall inure to the benefit of such parties and their respective heirs, successors, legal representatives, devisees, lessees and assigns.

VI.

Section 6 of Article I of the Master Declaration, entitled "Addition Common Area" is hereby supplemented by the addition of the following language:

"Furthermore, without limitation of the foregoing, as to The Biscayne, Sections Two and Three only, the Addition Common Area includes the easements for the Reserves "1" through "3" and "A" through "L" as designated on the Section Two Plat, and the easements for the Reserves "M" through "U" as designated on the Section Three Plat together with:

- (a) The Private Streets, including, but not limited to, Biscayne Beach Road, Granite Lane, Marble Street, Biscayne Beach West, and Biscayne Beach West Entry Road; and
- (b) All other improvements now or hereafter constructed, placed, erected or installed within the easements for the Private Streets, exclusive, however, of any aerial easements, water, sanitary sewer, electric, telephone, cable television and other utility lines (and all appurtenances thereto) now or hereafter lying, installed and maintained within the easements for the Private Streets, which lines and appurtenances are owned and maintained, or are to be owned and maintained, by any public authority or franchised public utility company.

Reserve "4" as designated on the Section Two Plat is not included in the Addition Common Area."

VII.

Article III of the Master Declaration is hereby supplemented by the addition of the following language:

Section 6. Wastewater Treatment Utilization Fee. Each purchaser of a Lot in The Biscayne, Section Two or The Biscayne, Section Three from Declarant shall pay to Bolivar Utility Services, L.L.C., a Texas limited liability company ("Bolivar"), or its assignee, a wastewater treatment utilization fee in the amount of Five Thousand and No/100 Dollars (\$5,000.00) (the "Wastewater Treatment Utilization Fee"). The Wastewater Treatment Utilization Fee shall be paid at the time of closing directly to Stewart Title Company, Beaumont / Galveston, Texas, as agent for Bolivar, and said Wastewater Treatment Utilization Fee shall be disbursed by Stewart Title Company to Bolivar or its assignee at the time of closing on the sale of such Lot. Further, each Owner of a Lot in The Biscayne, Section Two or The Biscayne, Section Three shall use sanitary sewer system services provided by Bolivar, its successors or assigns, during the initial term and any renewals of that certain Agreement for Sanitary Sewer Service, by and between Bolivar, Declarant and Association, dated September 12, 2005.

Section 7. Transfer Fee. Each purchaser of a Lot in The Biscayne, Section Two or The Biscayne, Section Three from any entity other than Declarant shall pay to Association a transfer fee in the amount of One Hundred and No/100 Dollars (\$100.00) (the "Transfer Fee"). The Transfer Fee shall be paid at the time of closing on the sale of such Lot to Association."

VIII.

Section 2(b) of Article V of the Master Declaration is hereby deleted in its entirety and the following is substituted therefore:

- “(b) Costs of maintaining, repairing, and operating the sewer main at The Biscayne, Sections One, Two and Three;”

IX.

Section 2 Article V of the Master Declaration is hereby supplemented by the addition of the following Subsection (l):

- “(l) Costs resulting from an annual operational fee in the sum Fourteen Thousand Four Hundred and No/100 Dollars (\$14,400.00) per year payable by Association to Bolivar beginning January 1, 2006, and continuing on the same date each year thereafter so long as the Agreement for Sanitary Sewer Service remains in effect or until Bolivar’s assignment of the Agreement for Sanitary Sewer Service to the Bolivar Peninsula Special Utility District.”

X.

Section 4(e) of Article VIII of the Master Declaration is hereby deleted in its entirety and the following is substituted therefor:

- “(e) The minimum first floor elevation of a house must be in accordance the requirements for insurance against storms and as required by the Federal Emergency Management Agency (“FEMA”), the County of Galveston, Texas, and any other governmental entity having jurisdiction.”

XI.

Section 4(g) of Article VIII of the Master Declaration is hereby deleted in its entirety and the following is substituted therefor:

- “(g) All piling must be sunk to a depth of at least ten (10) feet. Square piling under the house must measure at least ten (10) inches on each side and at least eight (8) inches on each side under porches and decks. No round piling may be used.”

XII.

Article VIII of the Master Declaration is hereby supplemented by the addition of the following language:

“Section 34. Approval of Builders. No construction of any type or nature shall commence on a Lot in the Addition until the person or entity responsible for performing the construction is approved by the Committee.

Section 35. Dumpsters. At all times during construction on a Lot in the Addition, the person or entity performing the construction shall place a metal roll-off box on the Lot for proper disposal of construction debris.”

XIII.

Section 9 of Article VIII of the Master Declaration is hereby deleted in its entirety and the following is substituted therefor:

“Section 9. Limitation on Driveway Locations. Driveway(s) on Lots 45, 46, 57, 58, and 68 in The Biscayne, Section Two shall open onto Biscayne Beach Road and not Granite Lane, Biscayne Beach West, or the 60’ Private Street. Driveway(s) on Lots 81, 82, 94, 95, 126, and 127 in The Biscayne, Section Three shall open onto Marble Street and not Biscayne Beach West or Granite Lane.”

XIV.

Section 16 of Article VIII of the Master Declaration is hereby deleted in its entirety and the following is substituted therefor:

“Section 16. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, refuse or other waste materials. Trash, garbage and other waste shall be kept in sanitary closed containers pending collection thereof; and garbage cans and other receptacles shall (except when placed on a Private Street for regular collection purposes) be hidden or screened from public view in an enclosure approved by the Committee. No Lot shall be used for the open storage of any materials whatsoever, except for materials used or to be used in the construction of improvements upon a Lot, and then only for so long as such construction progresses. Upon completion of the improvements, any remaining materials, together with all rubble, rubbish, trash and debris shall be promptly removed from such Lot.”

XV.

Section 21 of Article VIII of the Master Declaration is hereby deleted in its entirety and the following is substituted therefor:

“Section 21. Minimum Square-footage. No dwelling shall be permitted on any Lot in which the living floor area (inclusive of enclosed utility and storage rooms, but exclusive of garages and open porches, patios or courtyards) will be less than one thousand eight hundred square feet (1,800 sq. ft.) for Lots 1 – 34 and less than one thousand four hundred square feet (1,400 sq. ft.) for Lots 35-68 and Lots 71-135. No dwelling shall be permitted on any Lot in which the covered deck area will be less than two hundred (200 ft. sq.) unless approved by the Committee. No dwelling shall be permitted on any Lot in which the garage or enclosed storage will be less than two hundred fifty square feet (250 sq. ft.).”

XVI.

Section 22 of Article VIII of the Master Declaration, entitled “Addition Common Area” is hereby supplemented by the addition of the following language:

“All fences, walls, hedges, structures or other improvements must be approved by the Committee prior to installation.”

XVI.

Section 23 of Article VIII of the Master Declaration, entitled "Addition Common Area" is hereby supplemented by the addition of the following language:

"All utility services, including electrical, telephone and cable television service, must be underground from the house to the point of connection from the utility. No 'overhead' utilities are permitted."

XVII.

Section 26 of Article VIII of the Master Declaration is hereby deleted in its entirety and the following is substituted therefor:

"Section 26. Dune Protection Area. The Dune Protection Area is protected by State and Federal regulations. It may not be trespassed on or altered in any manner, unless authorized in writing, by the appropriate regulatory agencies. Crosswalks shall be allowed provided they are constructed in accordance with all laws, ordinances, rules and regulations of Texas General Land Office, the County of Galveston, Texas, and other governmental agencies having jurisdiction over the Dune Protection Area. Prior to constructing a crosswalk, proper permit(s) must be obtained from the Texas General Land Office, the County of Galveston, Texas, and any other governmental agencies having jurisdiction over the Dune Protection Area. In addition, no crosswalk shall be constructed until the plans and specifications of same have been submitted to and approved in writing by the Committee. All crosswalks shall be constructed in conformance with on (1) of three (3) designs to be provided by the Committee upon request."

XVIII.

Section 29 of Article VIII of the Master Declaration is hereby deleted in its entirety and the following is substituted therefor:

"Section 29. Docks. Only the Owners of those Lots that front the lakes contained in Reserves 1 – 3 as shown on the Section Two Plat will be permitted to construct a dock. One (1) dock, set on piles at a minimum spacing of three (3) feet, with open decking not more than six (6) feet in width, and not more than twenty (20) feet in length shall be permitted for each Lot fronting the lakes. Docks shall be constructed using treated wood only and shall be left unpainted. Notwithstanding anything contained herein to the contrary, a dock may be disapproved by the Committee. No dock shall be constructed until the plans and specifications for same shall have been submitted to and approved in writing by the Committee."

XIX.

The modified or supplemental restrictions or limitations set forth in Paragraph IV of this First Supplemental Declaration are and shall be applicable solely and only to the Lots in The Biscayne, Sections Two and Three, and shall not in anywise be deemed or construed to supplement, amend, or modify the provisions, covenants, conditions, restrictions and reservations of the Master Declaration as to any other Lots in the Addition. Further, as modified and supplemented by this First Supplemental Declaration, all of the provisions, covenants, conditions, restrictions and reservations set forth and contained in the Master Declaration are hereby and herewith expressly extended and made applicable to the Lots in The Biscayne, Sections Two and Three.

XX.

Wells Fargo Bank Texas, N.A. ("Lienholder"), being the holder of a lien on the Land and the Future Development Tract, joins with Declarant in the execution of this First Supplemental Declaration for the purposes of: (a) consenting to and adopting the Section Two Plat and the Section Three Plat; (b) consenting to the grant or dedication by Declarant of all street and utility easements shown and reflected on the Section Two Plat and the Section Three Plat, together with all other easements granted or reserved by Declarant in this First Supplemental Declaration or in the Master Declaration (insofar as same are on, across or affect The Biscayne, Section Two or The Biscayne, Section Three); (c) subordinating its liens to all of the aforementioned easements and easement rights; and (d) subordinating its liens to the restrictions, covenants and conditions imposed by Declarant on The Biscayne, Sections Two and Three, by this First Supplemental Declaration or by the Master Declaration (insofar as same relate to or affect The Biscayne, Sections Two or Three). However, Lienholder joins herein solely as a lienholder and only for the purposes set forth above in this First Supplemental Declaration, and it does not assume any of the liabilities, duties, covenants, warranties or obligations of Declarant, nor does it make any warranties, representations or guaranties, whether express or implied, with respect to any undertaking, covenant, warranty or representation of Declarant, or Declarant's successors or assigns.

IN WITNESS WHEREOF. Declarant and Lienholder have caused this First Supplemental Declaration to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

DECLARANT: Coastal Flats, Ltd, a Texas Limited Partnership

By: Biscayne Beach, L.L.C., a Texas Limited Liability Company, its General Partner

By: \_\_\_\_\_  
Thad Felton  
President

LIENHOLDER: Amegy Bank, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS       §

COUNTY OF JEFFERSON     §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2005, by THAD FELTON, President of Biscayne Beach, L.L.C., a Texas limited liability company, general partner of Coastal Flats, Ltd., a Texas limited partnership, on behalf of such limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS       §

COUNTY OF JEFFERSON     §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, \_\_\_\_\_ of Amegy Bank, N.A., a national banking corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:  
CHARLES W. GOEHRINGER, JR  
GERMER GERTZ, L.L.P.  
550 FANNIN, SUITE 700  
BEAUMONT, TEXAS 77701

**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**

**EXHIBIT D**