

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE BISCAYNE, SECTION ONE,  
AN ADDITION IN GALVESTON COUNTY, TEXAS

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE BISCAVNE, SECTION ONE,  
AN ADDITION IN GALVESTON COUNTY, TEXAS**

This Declaration of Covenants, Conditions and Restrictions ("this Declaration") 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, Declarant has caused 83.323 acres of the Land to be subdivided and platted into an addition to Galveston County, Texas, known and to be known as "THE BISCAVNE, SECTION ONE, an Addition to Galveston County, Texas" (the "Addition"), in accordance with the Final Plat of said Addition prepared by Sidney Bouse, a registered professional Land Surveyor of the State of Texas, and recorded under Clerk's File No. GAC2003024231 of the Plat Records of Galveston County, Texas (the "Plat"), consisting of eighty-three (83) lots, twenty (20) reserves, two (2) blocks and 83.323 acres, situated in the A. Van Nordstrand Survey, Abstract No. 203, Galveston County, Texas; and

WHEREAS, Declarant desires to (a) dedicate the easements for utilities and drainage shown and reflected on the Plat; (b) reserve in favor of itself and/or the Association herein established certain easements on and across the Lots in the Addition; and (c) impose the protective and restrictive covenants set forth later herein on the Lots in the Addition and on the Common Area of the Addition:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Declarant hereby adopts the Plat of the Addition, dedicates the easements for easements for utilities and drainage shown and reflected on the Plat, including, without limitation, the easements for utilities and drainage located outside of the perimeter boundaries of the Addition (but shown and reflected on the Plat), and imposes on the Lots in the Addition the basic restrictions set forth on the Plat.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the Lots in the Addition, and for the purpose of providing for the orderly development, use and enjoyment of the Lots in the Addition, Declarant hereby declares that all of the Land in the Addition shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions hereinafter set forth, which shall constitute covenants running with the Land and shall be binding upon all parties having any right, title or interest in the Land, 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.

**ARTICLE I  
DEFINITIONS**

Section 1. "**Association**" shall mean and refer to Biscayne Owners Association, Texas non-profit corporation, its successors and assigns.

Section 2. "**Owner**" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is part of the Addition, including contract sellers, but

excluding (a) those holding title merely as security for the performance of an obligation, or (b) those holding title to, or an interest in, the mineral estate only, with no title to, or interest in, the surface estate.

Section 3. “**Lots**” shall mean and refer to all of the platted lots shown and reflected upon the recorded plat or plats of said Addition, and “Lot” shall mean and refer to any or each of the Lots in the Addition.

Section 4. “**Private Streets**” means and refers to Biscayne Beach Boulevard, Colby Court, Nick Lane, Kyndall Corner, Sara Way, Kinsey Drive, Cameron Circle Biscayne Beach Road, and 60’ Private Street as shown, reflected and designated “PRIVATE STREET” on the Plat.

Section 5. “**Member**” shall mean and refer to each and every person or entity who holds membership in the Association, as provided herein.

Section 6. “**Declarant**” shall mean and refer to Coastal Flats, Ltd. and its successors and assigns. However, as used in this paragraph, the term “assigns” shall not be construed to mean, refer to or include any person or entity which shall acquire from Coastal Flats, Ltd., or its successor, one (1) or more of the Lots in the Addition, whether improved or unimproved, for occupancy or resale, unless Coastal Flats, Ltd., or its successor, expressly assigns to such assignee all of its rights and privileges as “Declarant” under this Declaration.

Section 7. “**Addition Common Area**” shall mean and refer to and include any real property (including all improvements now or hereafter placed, erected, constructed, installed or located thereon) owned by the Association for the common use and enjoyment of the Owners. The Addition Common Area to be owned by the Association shall be all of the property in the Addition, excluding

(a) The Lots shown and reflected on the recorded plat or plats of the Addition and the improvements located thereon, and

(b) The easements for all water, sanitary sewer, storm sewer, electric, telephone, cable television and other utility lines (and all appurtenances thereto) now or hereafter lying, installed and maintained within (i) any easements for Private Streets, (ii) any utility or drainage easements reflected on the recorded plat or plats of the Addition, or (iii) any utility or drainage easements herewith or hereafter granted, conveyed or dedicated on or across any Lots in the Addition or the Addition Common Area, which lines and appurtenances are owned and maintained, or are to be owned and maintained, by any public authority or franchised public utility company.

Without limitation of the foregoing, the Addition Common Area includes the easements for the Private Reserves “A” through “T” as designated on the Plat, together with:

(a) The pond located along and adjacent to the northerly boundary of the Addition and designated on the Plat as “Pond”;

(b) The sewage treatment plant located at the northwest corner of the Addition and designated on the Plat as “Sewage Treatment Plant”;

(c) The Private Streets;

(d) The one hundred thirty (130’) foot wide dune protection area located on the southern boundary of the Addition running east and west, designated on the Plat as “130’ Wide Dune Protection Area”;

(e) The beach area located to the south of the 130' Wide Dune Protection Area running east and west, designated on the Plat as "Beach (Accreting)"; and

(f) 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.

Section 8. "**Future Development Tract**" shall mean and refer to all or any part(s) of that certain 451.627 acre tract or parcel of land out of and part of the Land, in Galveston County, Texas, described in Exhibit B (the "Future Development Tract").

Section 9. "**Supplemental Declaration**" shall mean and refer to any supplemental or supplementary declaration of covenants, conditions and restrictions bringing additional property within the scheme of this Declaration and within the jurisdiction of the Association, as provided in Article II hereof.

Section 10. "**Mortgage**", "**Deed of Trust**" or "**Trust Deed**" shall mean and refer to a pledge of a security interest in or the creation of a lien upon a Lot (or Lots), together with any improvements thereon, to secure repayment of a loan made to the Owner(s) of such Lot or Lots (or made to another, but secured by such Lot or Lots).

Section 11. "**Mortgagee**" shall mean and refer to the beneficiary of, or secured party in, a Mortgage on a Lot or Lots.

## **ARTICLE II**

### **PROPERTY SUBJECT TO DECLARATION: ADDITIONS THERETO**

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to the terms, covenants, conditions, restrictions, easements and reservations contained in this Declaration is THE BISCAYNE, SECTION ONE, an Addition in Galveston County, Texas, as shown and reflected on the Plat, which property may be sometimes referred to herein as the "Existing Property" or "The Biscayne, Section One".

Section 2. Additions of Property. Declarant, at its sole election, may bring within the scheme of this Declaration and within the jurisdiction of the Association all or any part(s) of the Future Development Tract by executing and filing of record in the office of the County Clerk of Galveston County, Texas, a Supplemental Declaration describing such additional property and expressly subjecting such additional property to the scheme of this Declaration and to the jurisdiction of the Association, together with a plat of such additional property. 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 herein as they relate to or affect such additional property, but such Supplemental Declaration shall not in any manner revoke, modify or add to the covenants established by this Declaration as to the Existing Property. After any additional part or parts of the Future Development Tract are brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of this Section 2, the term "Addition", as used herein, shall be deemed to mean, refer to and include The Biscayne, Section One, together with such additional part(s) of the Future Development Tract as are brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to this Section 2.



Section 3. Waiver of Right to Add Property to Addition. At any time, the Declarant, in its sole discretion, may waive and relinquish its right to bring all or any specifically described part of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association pursuant to Section 2 above. Such waiver or relinquishment shall be effected by Declarant's executing and filing for record in the office of the County Clerk of Galveston County, Texas, a written statement stating (in essence) that the Declarant waives and relinquishes its right to bring any further part or parts of the Future Development Tract, or any specifically described part or parts of the Future Development Tract, within the scheme of this Declaration and within the jurisdiction of the Association. Subsequent to the execution and recordation of any such waiver, Declarant shall have no further right to bring any additional part or parts of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association; except, however, if the waiver or relinquishment is only as to any specifically described part or parts of the Future Development Tract, then Declarant shall have no right to thereafter bring such specifically described part or parts of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association, but it shall have the right to bring all or any part or parts of the remainder of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of Section 2 above.

Section 4. Assignment of Rights Reserved to Declarant. Declarant (or its successors) shall have the express right to assign, by written instrument executed by Declarant (or-its successors) and filed for record in the office of the County Clerk of Galveston County, Texas, all of its rights as Declarant under this Declaration, including, without limitation, the rights and discretions reserved to Declarant in Sections 2 and 3 above of this Article II.

### **ARTICLE III PROPERTY RIGHTS AND EASEMENTS**

Section 1. Owners' Easements of Enjoyment in Addition Common Area. Each and every Owner of a Lot or Lots shall have a right and easement of use and enjoyment in and to the Addition Common Area, subject, however, to the provisions, limitations and restrictions contained in this Declaration or in the Bylaws of the Association and to any reasonable rules and regulations adopted by the Association, from time to time, relating to the use of the Addition Common Area. Such right and easement shall be appurtenant to and pass with the title to every Lot, whether or not so stated in any deed or other instrument of conveyance or encumbrance affecting such Lot.

Section 2. Platted Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage are shown and designated as such on the recorded plat or plats of the Addition. Except as provided below in this Section 3, no Owner shall construct or erect any building or structure of a permanent nature within these easements, nor shall any structure, planting or other material be placed by an Owner, or permitted by an Owner to remain, in any such easements which may damage or interfere with the installation and maintenance of utilities or drainage in the easements. Easements for installation and maintenance of underground utilities and drainage may be crossed with sidewalks and driveways, provided that (a) there are prior arrangements made for such crossings with the public authority or utility company providing services therein, and (b) neither the Declarant, the Association or any public authority or utility company using such easements shall be liable for any damage done by them, or their respective agents, employees, representatives or contractors, to such sidewalks or driveways in the course of installing, repairing, maintaining, relocating or removing any utility or drainage lines or other installations, or any appurtenances thereto, within any of such easements.

Section 3. Blanket Utility Easement. There is hereby reserved upon each Lot in the Addition an eight-foot (8') wide blanket underground utility easement in favor of any franchised public utility company for the purpose of installing and maintaining utility service to the residence constructed on that Lot.

Section 4. Blanket Easements. An easement over and upon every Lot in the Addition is hereby reserved by Declarant in favor of itself and the Association, and their respective representatives, agents, employees and contractors, to enter in and upon any Lot for the purpose of exercising any rights or performing any obligations herein granted to or imposed on the Declarant or the Association. Further, Declarant hereby grants the following blanket easements:

(a) To all law enforcement, fire protection and emergency medical service agencies and personnel, an easement over each Lot in the Addition and the Private Streets in The Biscayne, Section One for the performance of their official duties;

(b) To all public authorities and franchised public utility companies having sewer or utility lines or services in the Addition, an easement over the Addition Common Area for the purpose of accessing, maintaining, repairing, replacing or operating their respective lines (and appurtenances) constructed or installed in any utility or drainage easements shown on any recorded plat or plats of the Addition or within the easements for the Private Streets in The Biscayne, Section One; and

(c) To any public authority providing trash collection services to the Lots, or to any private trash collection company providing trash collection services to the Estate Lots pursuant to a contract with the Association, or with the Owners of the Lots themselves, an easement for ingress and egress purposes over the Private Streets in The Biscayne, Section One.

Section 5. Express Easement of Encroachment. The Association, by a majority vote of each class of its Members, may grant an Owner an express easement for an inadvertent encroachment by such Owner's improvements onto the adjacent Addition Common Area, provided that such Owner's improvements are otherwise constructed in accordance with this Declaration. The encroaching improvements for which an express easement of encroachment is granted pursuant to this Section 5 shall remain the property of the Owner of such improvements and shall be maintained by the Owner in accordance with the later provisions of this Declaration

#### **ARTICLE IV** **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 1. Members. Every Owner of a Lot in the Addition shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. Classes of Members. The Association shall have two (2) classes of Members, as follows:

Class A. Class "A" Members shall be all Owners, with the exception of Declarant and any Builder(s) (as that term is defined below), and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a given Lot, all of such persons shall be Members, and the vote for such Lot shall be exercised as they may determine among themselves; but in no event shall more than one (1) vote be cast with respect to any Lot owned by Class "A" Members,

Class B. The Class "B" Members shall be the Declarant and any Builder(s) (as that term is defined below), which shall be entitled to three (3) votes for each Lot owned. The Class "B" membership shall cease and be converted to Class "A" membership upon the happening of either of the following events, whichever shall first occur.

(a) When the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership; or

(b) January 1, 2024;

provided, however, if after attaining an equality of the total votes of Class "A" and Class "B," as provided in Subsection (a) above, the Declarant shall bring additional property within the scheme of this Declaration and within the jurisdiction of the Association pursuant to Section 2 of Article II hereof, thereby creating additional Lots in the Addition, the Declarant and any Builder(s) shall again be Class "B" Members and shall again be entitled to three (3) votes for each Lot owned until such Class "B" membership terminates pursuant to this Section 2.

The term "Builder", as used in this Section 2, shall mean and refer to any person or entity which, in a single purchase, shall acquire directly from the Declarant at least three (3) for the purpose of resale (whether with or without improvements).

Section 3. Voting by Class. Excepting those instances where voting (or agreement) by class is specifically required in this Declaration or in the Bylaws of the Association, voting shall be by the Members of the Association as a whole, and not by class.

## **ARTICLE V**

### **ASSOCIATION ASSESSMENTS**

Section 1. Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it in the Addition, hereby covenants, and each Owner of a Lot in the Addition is hereby deemed to covenant by acceptance of a deed to such Lot (whether or not it shall be so expressed in such deed), to pay to the Association (a) regular annual assessments, (b) special assessments for capital improvements, and (c) additional Lot assessments. Such assessments shall be established and collected in the manner hereinafter provided. The regular annual assessments, special assessments for capital improvements, and additional Lot assessments, together with interest, costs and reasonable attorney's fees thereon, shall be a charge upon the land and a continuing lien on each Lot against which an assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees thereon, shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title unless expressly assumed by them. Declarant hereby reserves and assigns to the Association, without recourse, a vendor's lien on each Lot (including all improvements now or hereafter constructed, erected or developed thereon) to secure the payment of all assessments levied on such Lot pursuant to this Article V, together with interest, costs and reasonable attorney's fees thereon.

Section 2. Purpose of Regular Annual Assessments. The regular annual assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Addition and for the performance of the Association's maintenance obligations hereunder. The regular annual assessments shall be used to pay, and the Association shall acquire and pay for out of the funds derived from the regular annual assessments, the following:

(a) Costs of maintaining and repairing the Addition Common Area and any and all improvements now or hereafter constructed, erected or installed thereon, including, without limitation, (i) the private streets constructed within the easements for the Private Streets shown and reflected on the Plat, and (ii) the entry constructed or installed, or to be constructed or installed, near the intersection of Biscayne Beach Boulevard with Texas State Highway 87;

- (b) Costs of maintaining, repairing, and operating the Sewage Treatment Plant;
- (c) Costs of maintaining, repairing, and operating the Private Streets;
- (d) Costs of maintaining, repairing, and operating the Private Reserves;
- (e) Costs of maintaining, repairing, and operating the Pond;
- (f) Costs of maintaining, repairing and operating the Addition identification sign(s), including any lighting and landscaping therefor, constructed or installed, or to be constructed or installed, on the Addition Common Area;
- (g) Costs of landscaping, mowing, edging and maintaining the Addition Common Area;
- (h) Taxes and assessments levied by any taxing authorities on the Addition Common Area (and any improvements thereon) and the premium cost of maintaining (i) fire and extended coverage insurance on any insurable improvements on the Addition Common Area, together with any equipment, fixtures or other personal property of the Association, and (ii) if determined by its Board of Directors to be prudent or necessary for the protection of the Association and its Members, liability insurance in favor of the Association, including premises liability coverage on the Addition Common Area, all with such limits and deductibles as the Board of Directors of the Association shall determine from time to time;
- (i) Cost of water, electricity, lighting and other utility services for the Addition Common Area;
- (j) Any expenses which the Association is required to incur or pay pursuant to the terms of this Declaration (or any Supplemental Declaration) or the Association's Bylaws, or which shall be necessary or proper in the opinion of the Board of Directors of the Association, for (i) the administration of the affairs of the Association, (ii) the performance of the duties of the Association, or (iii) the enforcement of the provisions of this Declaration, the Association's Bylaws or any rules and regulations of the Association; and
- (k) Any other costs or expenses which is determined by a vote of the Association Members, from time to time, to be a common expense of the Association.

Section 3. Power to Fix Regular Annual Assessments. The power and authority to fix and levy the regular annual assessments shall rest exclusively with the Board of Directors of the Association, and when the same are determined and fixed by the Board of Directors, as herein provided, same shall be final, conclusive and binding upon each Owner, his heirs, legal representatives, successors and assigns, including contract purchasers.

Section 4. Special Assessments for Capital Improvements. In addition to the regular annual assessments authorized and provided for above, the Association may fix and levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying the costs of construction, reconstruction, repair or replacement of any capital improvement on the Addition Common Area. Any such special assessment, before becoming effective and a binding obligation of the Owners, must be approved by a two-thirds (2/3rds) vote of each class of Members who are voting, either in person or by proxy, at a meeting duly called for that purpose.

Section 5. Notice and Quorum for Action Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 above shall be sent to all Members not less than ten (10) days, nor more than sixty (60) days, in advance of such meeting. Such notice shall state that the purpose (or one of the purposes) of the meeting is to vote upon a special assessment, specifying the purpose of the proposed special assessment. At the first such meeting called, the presence of Members, either in person or by proxy, entitled to cast fifty percent (50%) or more of all the votes of each class shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum for the first meeting. No such second meeting shall be held more than sixty (60) days after the first called meeting.

Section 6. Uniform Rate of Assessment. Except as provided in Section 3 above, regular annual assessments and special assessments for capital improvements (but not the additional Lot assessments provided for later herein) must be fixed at a uniform rate for all Lots in the Addition.

Section 7. Collection of Regular Annual Assessments and Special Assessments. The regular annual assessment shall be collected by the Association on a monthly, quarter annual, semi-annual or annual basis, as determined by the Board of Directors from time to time. Special assessments for capital improvements shall be collected on such basis as shall be determined by the vote of the membership in approving the establishment and levy of such special assessments.

Section 8. Establishment and Notice of Regular Annual Assessment. At the organizational or any subsequent meeting of the initial Board of Directors of the Association, the regular annual assessment for the first calendar year shall be fixed and established by the Board of Directors, and written notice thereof (including the basis upon which such regular annual assessment is to be collected) shall be forthwith given to each Owner subject thereto. The first such regular annual assessment shall be adjusted according to the number of months remaining in the annual (calendar year) assessment period. Thereafter, not less than thirty (30) days prior to the commencement of each calendar-year assessment period, the Board of Directors of the Association shall fix and establish the regular annual assessment for the ensuing assessment year and shall give written notice thereof (including the basis upon which such regular annual assessment is to be collected) to every Owner subject to such regular annual assessment. Upon a person or entity becoming the Owner of a Lot in the Addition (and upon notification of such fact given to the Board of Directors of the Association), it shall be the duty of the Board of Directors to notify such new Owner of the regular annual assessment charged upon his Lot (in the same manner as notice is given to those Owners owning Lots as of the commencement of any annual assessment period). The failure of the Board of Directors to give written notice to any Owner, as herein required, shall not in any manner exempt or relieve such Owner from his obligation to pay the regular annual assessment on his Lot, or exempt his Lot from the assessment lien provided for herein, but such Owner shall not be in default for failure to pay his regular annual assessment (on the due date or dates thereof) until notice of such regular annual assessment is given to such Owner in the manner herein provided. Each Owner (including Declarant) covenants and agrees to give written notice to the Board of Directors of the Association upon the sale or transfer by such Owner of his Lot, including the name and mailing address of the Lot purchaser(s) and the date upon which the sale or transfer was or will be effected.

Section 9. Limited Exemption from Regular Annual Assessments. Notwithstanding anything herein to the contrary, Declarant shall not be liable for or obligated to pay regular annual assessments on any Lot it owns until the earlier of (a) the expiration of twelve (12) months from the date of this Declaration, or (b) the expiration of thirty (30) days after improvements have been substantially completed thereon. Further, notwithstanding anything herein to the contrary, a Builder (as that term is hereinafter defined) shall not be liable for or obligated to pay regular annual assessments on any Lot owned by such Builder until the earliest of (i) the substantial completion of improvements thereon, (ii) the conveyance by such Builder of the Lot to anyone other than Declarant, or (iii) six (6) months after such Builder initially acquired record title to the Lot from Declarant. For the purposes of this paragraph, the term "Builder"

shall be construed to mean a person or entity who shall purchase or acquire from Declarant one (1) or more unimproved Lots for the purpose of construction of improvements thereon for sale to the public.

Section 10. Date of Commencement of Regular Annual Assessments. The regular annual assessments provided for above in this Article shall commence as to each Lot on the first (1st) day of the calendar month next following:

- (a) The conveyance of a Lot by Declarant to an Owner (other than a Builder);
- (b) With respect to a Lot owned by Declarant, the earlier of (i) the expiration of twelve (12) months from the date of this Declaration, or (ii) thirty (30) days following the substantial completion of improvements on the Lot; or
- (c) With respect to a Lot conveyed by Declarant to a Builder, the earliest of (i) the substantial completion improvements thereon, (ii) the conveyance by the Builder of such Lot to anyone other than Declarant, or (iii) six (6) months after the Builder has acquired record title to such Lot from Declarant.

Section 11. Certification of Payment of Assessments. Within ten (10) days after the date a written request for subdivision information is received from an Owner, an Owner's agent, or a title insurance company or its agent acting on behalf of an Owner, the Association shall deliver to the Owner, the Owner's agent, or the title insurance company or its agent, (a) a current copy of the Declaration applying to the Addition, (b) a current copy of the Bylaws and rules of the Association, and (c) a resale certificate that complies with §207.003(b) of the Texas Property Code. A properly executed resale certificate shall be conclusive and binding upon the Association as of the date thereof. The Association may establish and collect a reasonable charge to assemble, copy and deliver the information required by §207.003 of the Texas Property Code.

Section 12. Effect of Nonpayment of Assessments, Remedies of Association.

- (a) Any assessment (of whatever kind or character, whether a regular annual assessment, special assessment for capital improvements, or additional Lot assessment) not paid within ten (10) days of the due date thereof shall be delinquent. Any delinquent assessment shall bear interest from the due date thereof at the rate of eighteen percent (18%) per annum. All unpaid assessments, together with interest thereon as provided above, shall constitute a lien upon the Lot (together with all improvements thereon) against which the unpaid assessments were levied by the Association. To evidence such lien, the Association may, but is not required to, prepare and file for record in the office of the County Clerk of Galveston County, Texas, a written notice, signed by an officer of the Association, setting forth the amount of the unpaid assessments, the name of the Lot Owner, and a description of the Lot upon which such assessments are unpaid.
- (b) The Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien upon such Lot in the manner hereinafter provided. No Owner may exempt himself or otherwise escape liability for the assessments herein provided by abandoning his Lot or in any other manner. Suit to recover a money judgment against a defaulting Owner shall be maintainable without foreclosing or waiving the lien securing the assessments owing by such defaulting Owner.
- (c) The assessment lien may be enforced by the Association by judicial proceedings or non-judicial proceedings (pursuant to the provisions of Section 13 below) to foreclose the lien on the defaulting Owner's Lot (including all improvements thereon) in like manner as a mortgage (with a power of sale) on real property upon the recording of a notice of lien, as provided in Subsec. (a) above. In any such foreclosure, the Owner shall

be required to pay the costs and expenses of such proceedings, including (in the case of a non-judicial foreclosure) a trustee's fee equal to five percent (5%) of the gross sales proceeds, the costs of preparing and filing the notice of lien, and all other expenses of foreclosure, including reasonable attorney's fees. The Association shall have the power to bid on the Lot at foreclosure sale (whether judicial or non-judicial) and to acquire and hold, lease, mortgage or convey the same.

Section 13. Nonjudicial Foreclosure of Lien. To secure and enforce the payment of all assessments provided for in Article V of this Declaration, together with all interest accrued or accruing thereon and attorney's fees and other costs reasonably incurred by the Association in collecting the same, and for the auxiliary and cumulative enforcement of said lien, and in consideration of the sum of \$1.00 to Declarant in hand paid by the Trustee hereinafter named, and for the further consideration of the uses, purposes and trusts hereinafter set forth, Declarant has granted, sold, and conveyed, and by these presents does grant, sell, and convey unto Charles W. Goehringer, Jr., Trustee, of Jefferson County, Texas, whose mailing address is 550 Fannin, Suite 700, Beaumont, Texas 77701, and any substitute or successor trustee appointed hereunder, each of the Lots in the Addition, to have and to hold the said Lots unto the said Trustee, and to his substitutes or successors forever. Declarant does hereby bind itself, its successors and assigns, to warrant and forever defend the Lots unto the said Trustee, his substitutes, successors and assigns forever, against the claim or claims of all persons claiming or to claim the same, or any part thereof, subject to any superior liens, for and upon the following trusts, terms, covenants, and agreements, to-wit:

(a) This conveyance, however, is made in trust to secure the payment of all assessments provided for Article V of this Declaration (whether now owed or hereafter ever accruing to the Association). Should Declarant, its successors and assigns, make full payment of the assessments hereby secured as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect.

(b) In the event, however, of default in the payment of any assessment hereby secured, in accordance with the terms of Article V of this Declaration, it shall thereupon, or at any time thereafter, be the duty of the Trustee or his successor or substitute, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust against the Lot against which the assessment is due and owing in the manner provided in §51.002 of the Texas Property Code, as then amended, and, after giving notice and advertising the sale as provided in said §51.002 (but without any other action than is required by said §51.002 as then amended) and otherwise complying with that statute, the Trustee shall sell the Lot (including any improvements thereon) at public sale as provided in said §51.002 and make due conveyance to the purchaser or purchasers thereof, with covenants of general warranty binding upon the then Owner of such Lot and such Owner's heirs, executors, administrators and successors.

(c) Out of the money arising from such sale, the Trustee acting shall first pay all expenses of advertising said sale and making the conveyance (including a Trustee's fee of 5% of the gross sales proceeds), and then to the Association the full amount of assessments owing, together with interest thereon and reasonable attorney's fees, rendering the balance of the sale price, if any, to the Owner of said Lot prior to such sale, his heirs or assigns, or to such other person as may be legally entitled thereto. The recitals in the conveyance to the purchaser or purchasers of such Lot shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner of such Lot prior to such sale, his heirs, executors, administrators, successors and assigns.

(d) It is agreed that in the event foreclosure should be commenced by the Trustee, or his substitute or successor, the Association, as beneficiary hereunder, may at any time before the sale of the Lot direct the abandonment of the sale and may then institute suit for the collection of the assessments, interest and collection costs then owing to the Association, and, at the election of the Association, for judicial foreclosure of the assessment lien. It is further agreed that if the Association should institute suit for collection and for judicial foreclosure of the assessment lien, the Association may, at any time prior to the entry of a final judgment in said suit, dismiss the same and require the Trustee, or his substitute or successor, to sell the Lot against which the assessment is then owing in accordance with the provisions of this Section 13.

(e) In case of the absence, resignation, death, inability, failure or refusal of the Trustee herein named or of any substitute trustee appointed hereunder to act, or in the event that the Association shall deem it desirable to remove without cause the Trustee or any substitute trustee and appoint another to execute this trust, then in any of such events, the Association shall have the right and is hereby authorized and empowered to appoint a successor and substitute without any formality other than an appointment and designation in writing, and this appointment shall vest in him, as substitute or successor trustee, the estate and title in and to all said Lots, and he shall thereupon hold, possess, and execute all the rights, title, powers and duties herein conferred upon the Trustee named herein. The right to appoint a successor or substitute trustee shall exist as often and whenever from any of said causes any trustee, original or substitute, cannot or will not act, resigns, or has been removed without cause.

(f) The exercise or attempted exercise of the power of sale herein contained shall not exhaust the power of sale and shall not prevent and subsequent exercise thereof.

(g) The Association, as beneficiary hereunder, if it is the highest bidder, shall have the right to purchase at any sale of a Lot pursuant hereto and to have the amount for which such Lot is sold credited against the indebtedness then owing on such Lot to the Association.

(h) It is specially agreed that in the event of a foreclosure under the powers granted herein, the person in possession of the Lot sold shall thereupon become a tenant at will of the purchaser or purchasers at the foreclosure sale. Should such tenant then refuse to surrender possession of the Lot upon demand, the purchaser or purchasers shall be entitled to institute and maintain a statutory action for forcible detainer of said Lot in the justice of the peace court for the justice precinct in which the Lot is situated. The bringing of an action for forcible detainer shall not preclude the bringing of any other action for the possession of said Lot, and the bringing of one character of action shall not preclude the other and same may be exercised separately or simultaneously.

Section 14. Subordination of Assessment Lien to Mortgages. The assessment lien provided for in this Article V shall be and remain subordinate to the lien of any perfected First Mortgage. A "First Mortgage" is defined as (a) a Mortgage which has first and paramount priority under applicable law, (b) a Mortgage securing an "equity loan" pursuant to §50(a)(6) of Article XVI of the Texas Constitution, or (c) a Mortgage securing a "reverse mortgage" pursuant to §50(a)(7) of Article XVI of the Texas Constitution. A sale or transfer of a Lot shall not affect the assessment lien thereon. However, the sale of a Lot pursuant to the foreclosure of a First Mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to unpaid charges which accrued prior to such foreclosure sale or transfer in lieu thereof. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due and payable or from the lien thereof. The holder of any First Mortgage shall be entitled, upon written request made to the Association, to written notification from the Association of any default by such holder's mortgagor (or grantor under a Deed of Trust or Trust Deed) in any obligation under this Declaration or the



Bylaws of the Association which is not cured within sixty (60) days from the date upon which such default occurred. Any Mortgagee holding a First Mortgage on a Lot may pay any unpaid assessment payable with respect to such Lot, and upon such payment such Mortgagee shall have a lien on such Lot for the amounts paid to the Association of the same rank as the lien of its Mortgage.

Section 15. Additional Lot Assessments. Separately and apart from the regular annual assessments and special assessments provided for above in this Article, the Association's Board of Directors shall have the right to make a special assessment against any Lot Owner and his Lot for the costs incurred by the Association in:

(a) Making any repairs or replacements, or in performing any maintenance which an Owner, although otherwise obligated to make or perform under this Declaration, fails to make or perform within thirty (30) days after the Association has given such Owner written notice specifying the repairs or replacements to be made or maintenance to be performed by the Owner;

(b) Performing any lawn mowing or lawn maintenance which an Owner, although otherwise obligated to perform under this Declaration, fails to perform within five (5) days after the Association has given such Owner written notice specifying the lawn mowing or other lawn maintenance to be performed by the Owner; or

(c) Enforcing compliance by an Owner with any covenants, limitations, prohibitions or restrictions contained in this Declaration or the Bylaws of the Association or any rules or regulations adopted by the Association, where any such non-compliance continues for more than ten (10) days after the Association has given such Owner written notice specifying such non-compliance;

plus an administrative charge equal to the greater of (i) twenty-five percent (25%) of the costs incurred by the Association in performing the obligations of the non-performing Owner or in enforcing compliance by the non-complying Owner, or (ii) the sum of \$25.00.

Section 16. Levy and Collection of Additional Lot Assessments. Any additional Lot assessment pursuant to Section 15 above shall be fixed and levied by the Board of Directors of the Association, and written notice thereof shall be given to the owner of the Lot against which assessment is made. Such notice shall specify the nature and amount of the additional Lot assessment and the date upon which the same shall be due and payable (which due date shall be not less than 10 days from the date of such notice). Collection of any such additional Lot assessment shall be made in the same manner as the regular annual assessments provided for herein, and a lien therefor shall exist in favor of the Association upon the Lot (together with the improvements thereon) of the Owner against whom the assessment is made

Section 17. Acceptance of Lot Subject to Lien. Each Owner, by acceptance of a deed to a Lot, (a) accepts such Lot subject to and encumbered with the assessment lien (with power-of sale) set forth in this Article V, (b) grants and confirms to the Association a contractual lien upon his Lot (together with all improvements thereon) to secure all assessments then or thereafter made against such Lot, and (c) expressly vests in the Association or its agents the right and power to bring all actions against such defaulting Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for foreclosure and enforcement of such lien, including, without limitation, non-judicial foreclosure pursuant to the provisions of Section 13 above.

Section 18. Books and Records. Proper books and records shall be kept by the Association with respect to all assessments made by the Association, and each Owner shall at all reasonable times have access to such books and records. The books and records shall be kept in such a manner as to separately identify the assessments and payments thereof on each Lot in the Addition. No payment made

on any individual assessment account shall be transferred or credited to another account without the express written consent of the party making such payment.

**ARTICLE VI**  
**OBLIGATION TO MAINTAIN, REPAIR AND REBUILD**

Section 1. Owner's Obligation to Maintain and Repair. Each Owner, at his sole cost and expense, shall perform such maintenance and make such repairs and replacements to his residence and all other buildings, structures, installations and improvements (including front and side yard privacy fences) located upon his Lot, as shall be required to keep his residence and all such other buildings, structures, installations and improvements in substantially the same condition as at the completion of the original construction thereof, excepting only ordinary wear and tear. Additionally, except where an obligation for maintenance has been imposed by this Declaration on the Association or (as provided in Section 3 of Article VI) has been assumed by the Association, each Owner, at his sole cost and expense shall (a) regularly mow and maintain his yard, including all landscaping thereon (whether planted by the Declarant, an Association or the Owner), and keep his yard in a neat and attractive condition, and (b) maintain in good repair and condition all sidewalks adjacent to his Lot and all driveways serving his Lot, even though such sidewalks and/or driveways may be located partly within the street easement(s) for the Private Street(s) abutting his Lot. If any Owner fails to perform the maintenance or make the repairs required of such Owner hereunder, the Association, after giving such Owner written notice specifying the required maintenance or repairs, may perform such maintenance or make such repairs if the Owner does not, within the applicable time periods after notice specified in Section 15 of Article V above, perform the maintenance or make the repairs or replacements specified in such notice. The costs incurred by the Association in performing such maintenance or making such repairs or replacements (together with the administrative charge specified in Section 15 of Article V above) shall, at the election of the Board of Directors of the Association which performed the maintenance or made the repairs or replacements, be the basis for levying an additional Lot assessment against such Owner and his Lot pursuant to the provisions of Section 15 of Article V.

Section 2. Owner's Obligation to Rebuild. If any residence or other structure on any Lot in the Addition is damaged or destroyed by fire or other casualty, it shall be the duty and obligation of the Owner thereof to repair, restore or reconstruct such residence or other improvement to substantially the same condition as before such damage or destruction. Architectural Control Committee approval of the plans and specifications for making such repairs, restoration or reconstruction must be obtained prior to commencement thereof, as more fully provided later in this Declaration. The Owner of such damaged or destroyed residence or other improvement shall commence such repairs, restoration or reconstruction within a reasonable period of time after the occurrence of such damage or destruction and thereafter prosecute the work of repair, restoration or reconstruction of such residence or other improvement with due diligence and shall complete such repairs, restoration or reconstruction within eighteen (18) months from the occurrence of such damage or destruction, subject only to delays occasioned by matters beyond the reasonable control of such Owner.

Section 3. Maintenance by Association. It shall be the duty and obligation of the Association to:

- (a) Maintain and repair the Addition Common Area and any and all improvements now or hereafter constructed, erected or installed thereon, including, without limitation, (i) the private streets constructed within the easements for the Private Streets shown and reflected on the Plat, (ii) the Sewer Plant, (iii) the Private Reserves, and (iv) the Pond;
- (b) Maintain, repair and (as needed) replace the entry at the intersection of Biscayne Beach Boulevard with Texas State Highway 87;

- (c) Maintain and repair The Biscayne subdivision identification sign(s), including any lighting and landscaping therefor, constructed or installed, or to be constructed or installed, on the Addition Common Area;
- (d) Landscape, mow, edge and maintain the unpaved portions of the private street easement for Biscayne Beach Boulevard; and
- (e) Perform any other maintenance and/or repairs as shall be determined, from time to time, by the Association's Board of Directors.

**ARTICLE VII**  
**ARCHITECTURAL CONTROL**

Section 1. General Authority of Architectural Control Committee. No building, fence, wall, screening device, patio, patio enclosure, swimming pool, spa, tennis court, driveway, sidewalk or other improvements (of whatever kind or description) shall be commenced, constructed, erected, placed or reconstructed on any Lot in the Addition; nor shall any exterior addition to or change or alteration of any structure or improvement on any Lot in the Addition be commenced or made, nor shall any exterior repainting or re-roofing involving any change in the exterior color scheme be commenced or performed, until two (2) complete sets of plans and specifications therefor (the "Plans") have been submitted to and approved by the Architectural Control Committee (herein called the "Committee") showing:

- (a) A topographical map showing existing contour grades and showing the location of all proposed Improvements. Existing and finished grades shall be shown at lot corners. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the lot contours is contemplated.
- (b) Exterior elevations.
- (c) Exterior materials and colors.
- (d) Structural design.
- (e) Landscaping plan, including walkways, fences, and walls, elevation changes, watering systems, lighting, vegetation and ground cover.
- (f) Parking area and driveway plan.
- (g) Screening, including size, location, and method.
- (h) Porches and decks.
- (i) Docks and bulkheads, if any, on lakefront Lots.
- (j) Exterior illumination, if any, including location and method.
- (k) Design and materials for construction of interconnect (including any culvert (size and type) or related facility) between driveways and any walkway, and the street or roadway.

The Plans shall also reflect all driveways and sidewalks serving the Lot (or required by this Declaration), even though same may, in part, extend beyond the perimeter boundaries of the Lot. Plan approval or disapproval shall be as provided in Section 5 below. The Committee may, in its discretion, provide developmental guidelines for site planning, architecture, fencing and landscaping and if and when such guidelines are provided, they shall be used as the basis for review and approval (or disapproval) of Plans. Except as otherwise provided for herein, each application made for Committee approval shall be

accompanied by the fee established by the Committee to defray expenses of the Committee. No fee shall be required for a Lot Owner's first three (3) applications for architectural control approval.

Section 2. Composition of Committee. The Committee shall be composed of three (3) members. The initial members of the Committee shall be Thad Felton, Mark Wheat and Shelly Felton. The Declarant (or its successor) shall have the right, in its sole discretion, to increase the number of members of the Committee and to appoint such additional member(s) as may be required to fill the vacancy or vacancies resulting from the increase in the number of the members thereof, such action to be taken and effected by Declarant's (or its successor's) executing a written instrument reflecting such action and filing it for record in the office of the County Clerk of Galveston County, Texas. The Committee shall have the power to designate a representative (who may or may not be a member of the Committee) to act for the Committee; and upon the designation of such representative by the Committee, such representative shall have the power and authority to do any act or make any decision which the Committee itself could do or make under this Declaration. Neither the Committee nor its authorized representative shall have the right to demand, charge or receive any fee or other compensation as a condition to the examination of any Plans submitted hereunder or for granting approval (or disapproval) thereof.

Section 3. Vacancies and Filling of Vacancies. In the event of the death or resignation of any member of the Committee, the remaining member(s) of the Committee, even though less than a majority, may appoint a successor to the Committee by written instrument executed by the remaining member(s) of the Committee and filed for record in the office of the County Clerk of Galveston County, Texas. If all of members of the Committee die or resign, then the Declarant (or its successor) shall have the authority to appoint successor members of the Committee by written instrument executed by the Declarant (or its successor) and filed for record in the office of the County Clerk of Galveston County, Texas. However, if all members of the Committee die or resign, and the Declarant (or its successor) has not appointed successor members within ninety (90) days after the death or resignation of the last of the Committee members, then the Association, through its Board of Directors, shall exercise the authorities herein granted to the Committee. Furthermore, at any time after fifteen (15) years from the date of this Declaration, the Association, by written agreement executed by a majority of the Owners and filed for record in the office of the County Clerk of Galveston County, Texas, may (a) change the membership of the Committee, or (b) withdraw powers and duties from, or restore powers and duties to, the Committee.

Section 4. Term of Committee: Surrender of Authority. The herein granted powers and duties of the Committee shall cease and terminate twenty (20) years after the date of this Declaration, and the approval of the Committee shall not be thereafter required, unless, prior to the expiration of said twenty (20) year period, a majority of the Owners shall exercise their right to restore to the Committee its powers and duties under this Declaration in the manner provided in Section 3 above.

Section 5. Manner of Approval. Plan approval or disapproval by the Committee, or its designated representative, as required in this Declaration, shall be in writing and signed by at least one (1) member of the Committee or by its designated representative (if a representative has been appointed to act for the Committee). If the Committee or its designated representative fails to give written approval or disapproval within thirty (30) days after Plans meeting the requirements of Section 1 of this Article VII have been submitted to it, approval will not be required, and the covenants contained in said Section 1 above shall be deemed to have been fully satisfied. However, the approval or disapproval of Plans by the Committee, or the failure of the Committee to approve or disapprove the Plans within thirty (30) days after the submission thereof, shall in no way authorize any use or improvement of any Lot in violation of any of the other covenants contained in this Declaration, except where the Committee had express authority to grant a waiver or variance from such covenant. Approval of Plans (whether actual or deemed) shall not be valid or effective for more than one hundred twenty (120) days; and if, within one hundred twenty (120) days from Plan approval, the construction, reconstruction, addition, change or alteration for which Plan approval was obtained, has not commenced, then the Plans must be resubmitted and approved by the Committee before any such construction, reconstruction, addition, change or alteration may be

commenced. There shall be no review of any action of the Committee, except by procedures for injunctive relief when such action is patently arbitrary and capricious; and under no circumstances shall the Committee, any member of the Committee, or the representative of the Committee be subject to any suit by anyone for damages for any actions, or failures to act, on the part of the Committee, any member of the Committee, or the Committee's representative.

Section 6. No Liability for Plan Approval. Neither the Committee, nor any member or representative thereof, shall be liable to any person or entity under any theory or under any circumstances in connection with the Committee's approval (whether actual or deemed) of any Plans submitted to the Committee for approval, including, without limitation, any liability based upon the soundness of construction or adequacy of plans and specifications, mistake of judgment, negligence or nonfeasance. Neither the Committee, nor any member or representative thereof, shall have any liability to any person or entity by reason of the construction of buildings or the making of other improvements which shall depart from or be at variance with the approved Plans.

## **ARTICLE VIII**

### **LOT USE RESTRICTIONS**

Section 1. Single Family Residential Use. No Lot in the Addition shall be used for any purpose except for single family residential purposes as used in this Article VIII.

Section 2. Permitted Structures. No structure shall be erected on any Lot other than one (1) detached single-family dwelling not to exceed two (2) stories of living area and such other accessory buildings as are incidental to single-family residential use and not inconsistent with the other restrictive covenants set forth and contained in this Article VIII, if the Plans for such accessory buildings are submitted to and approved by the Committee in the manner provided above herein. Notwithstanding the foregoing limitation, the Committee, in its sole discretion and on a case-by-case basis, may (a) permit a dwelling of more than two (2) stories of living area. Open decking will be permitted above the second level provided it is not more than forty feet (40') above mean sea level and accessed by less than one hundred fifty square feet (150 sq. ft.) of enclosed space. The open decking shall also be less than forty percent (40%) of the floor below.

Section 3. Construction in Accordance with Plans. All buildings and other improvements shall be constructed or made strictly in accordance with the Plans submitted to and approved by the Committee or its representative, or in strict accordance with Plans submitted to the Committee, but for which no approval is required by reason of the failure of the Committee or its representative to approve or disapprove the same within thirty (30) days after the submission thereof, as provided in Section 5 of Article VII above.

Section 4. Types of Construction, Materials and Landscape.

- (a) Every structure, building, or addition thereto shall be affixed to the ground in a permanent manner.
- (b) All elevated structures shall be built on pilings or other type of elevated foundation designed so that the foundation will aesthetically conform to the standards set by the Committee.
- (c) No angle bracing from pilings to floor stringers will be permitted. Elevated structures may be cross braced against the floor joists to prevent racking of structure, and floor joist stringers must be of adequate size to carry floor joists without angle bracing from the pilings to the stringers.

- (d) All houses and other structures must be kept in good repair, and painted or stained when necessary to preserve the attractiveness thereof.
- (e) The minimum first floor elevation of a house must be at least twelve feet (12') above surrounding grade and in accordance with the requirements for insurance against storms and as required by the County of Galveston, and any other governmental entity having jurisdiction.
- (f) Toilet facilities of all houses shall be installed inside each house, and shall be connected before use with a central sewage disposal system serving the Addition. No other sewage disposal system will be permitted in the Addition. No septic tank or privy shall be installed, erected or maintained on a Lot. Nothing herein contained to the contrary or seemingly to the contrary shall prevent the installation and use of sanitary sewer facilities by a water district or other governmental authority in the Addition. Each Lot Owner will, at his or her expense, install a grinder pump and storage tank manufactured by Environmental One Corporation or suitable substitute approved by the Committee, and extend the residence connection line to an outside perimeter of the Lot as specified by the Declarant or a utility district, as the case may be.
- (g) All piling must be sunk to a depth of at least ten (10) feet. Square piling must measure at least twelve (12) inches on each side. No round piling may be used.
- (h) Walls attached to structural or vertical pilings below the living area of the house must be of a breakaway nature and may not be permanently or structurally affixed to the pilings.
- (i) All construction must be in compliance with all laws, ordinances, rules, and regulations of all governmental and municipal agencies having jurisdiction over construction of Improvements on Lots.

Section 5. Use of Common Area. Nothing shall be done in the Addition Common Area which will increase the rate of insurance (whether of fire and casualty insurance or liability insurance), without the prior approval of the Association's Board of Directors.

Section 6. Prohibited Acts. No Owner shall do, or permit to be done by any members of his family or his guests or tenants, any act on any Lot or on the Addition Common Area which shall be in violation of (a) any applicable ordinance, statute, rule or regulation of any municipal or other governmental authority, (b) the provisions of this Declaration, (c) the Bylaws of the Association, or (d) the rules and regulations of the Association relating to the use of the Addition Common Area, nor shall any noxious or offensive activity be carried on or anything be done on any Lot or on the Addition Common Area which may become an annoyance or nuisance to the other Owners or their tenants. No "garage sales", "sidewalk sales", "estate sales" or similar activities or events (even though not commercial in nature) shall be conducted on any Lot or on the Addition Common Area.

Section 7. Chimney Screening. If any metal chimney is used in the construction or remodeling of any residence on any Lot, it shall be encased in brick, stucco or other material approved by the Committee in the same manner as any other exterior building materials.

Section 8. Parking or Storage of Boats, Etc. No boats, trailers, campers, buses, motor homes, recreational vehicles, trucks (except for pickup trucks or vans having a manufacturer's rated carrying capacity of not more than three-quarter [3/4] ton), or similar vehicles (any of the foregoing being herein referred to as a "Restricted Vehicle") may be parked or stored upon any Lot on a Permanent Basis (as that term is defined below in this Section) except wholly within an enclosed garage or other fully enclosed accessory building approved by the Committee, nor may any Restricted Vehicle be parked or allowed to remain on a Permanent Basis on any Private Street in the Addition. No vehicle of any type (including, but not limited to, a Restricted Vehicle or a Commercial Vehicle) shall be parked or left

unattended on any portion of the Addition Common Area, whether or not on a Permanent Basis. A "Permanent Basis", as that term is used herein, shall mean any period or periods in excess of fourteen (14) consecutive days. No commercial trucks, vans, tractor-trailers or trailers (any of the foregoing being herein referred to as a "Commercial Vehicle") shall be parked or left unattended on any Lot or in any Private Street in the Addition, except for the limited time period(s) during which the owner or operator of the Commercial Vehicle is (a) making deliveries to the Declarant, the Association or a Lot Owner (or to their respective employees, agents, representatives or contractors), or (b) performing maintenance, repairs or construction on a Lot or the Addition Common Area for the Declarant, the Association or a Lot Owner (or for their respective employees, agents, representatives or contractors). As used in this Section, the term "commercial trucks, vans, tractor-trailers or trailers" means any truck or van having a manufacturer's rated carrying capacity of two (2) tons or more, any truck-tractor, any tractor-trailer or any trailer that is owned, leased or operated for commercial purposes and that bears some indicia (whether by way of a sign, logo, color scheme or distinctive markings) that it is owned, leased or operated for commercial purposes, including any such vehicle that is owned, leased to or operated by the Owner of a Lot in the Addition.

Section 9. Limitation on Driveway Locations. No driveway(s) on any Lot shall open onto Biscayne Beach Boulevard. No driveway (s) on Lot Nos. 31, 37, 40, 45, 49, 55, 59, 65, 68, 73, 76, and 81 shall open onto Biscayne Beach Road without the prior approval of the Committee.

Section 10. Temporary Structures. No structures of a temporary character, mobile home, manufactured home, trailer, tent, garage or other outbuilding or accessory building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 11. New Construction Only. No existing or used dwelling or other structure shall be moved onto or placed on any Lot in the Addition from another location, and all dwellings and other structures must be of new construction. No modular or mobile homes shall be located on any Lot in the Addition. The term "modular home" shall, for the purposes hereof, mean and refer to a prefabricated home which is constructed in a number of parts or sections off the Lot and then brought upon the Lot to be assembled.

Section 12. Signs. No sign of any kind shall be displayed to public view on any Lot in the Addition, except (a) one sign of not more than five feet (5') square advertising a property for sale, or (b) a sign used by Declarant, a Builder or a commercial lender to advertise the property during the construction phase or sales period. Further, no fountains or other yard decorations shall be constructed, installed or placed on any Lot without the prior approval of the Committee. No permanent rental signs shall be constructed, installed, or placed on any Lot without the prior approval of the Committee. Permanent cabin names may be installed or placed on a Lot with prior approval of the Committee.

Section 13. Oil and Mining Operations. No gas or oil drilling, gas or oil development operations, oil refining or storage, quarrying or mining operations, or like activities of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot, nor shall any derrick or other structure or machinery designed for use in boring or drilling for gas or oil be erected, maintained or permitted on any Lot.

Section 14. Antennas. No antenna or other device for the transmission or reception of "ham radio", citizen's band or short wave radio signals is permitted on any Lot. Except as provided below in this Section, no antenna of any type, including, but not limited to, a dish-type satellite signal receiver, shall be erected on any Lot until Plans for the installation and location of such antenna have been submitted to and approved by the Committee in the same manner as for the construction of a residence and other improvements on an Lot. Without the prior submission to and approval by the Committee of Plans for its installation and location, a dish-type satellite signal receiver not exceeding twenty-four inches (24") in diameter may be installed on a dwelling or other structure on an Lot. Except as provided in the preceding sentence of this Section, the Committee, in its absolute discretion and unless precluded by applicable law

from so doing, shall have the right to absolutely refuse the approval of the placement of any such dish-type receiver on any Lot in the Addition.

Section 15. Livestock, Poultry and Household Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot in the Addition, except that dogs, cats and other household pets, not to exceed two (2) in number for any residence, may be kept provided (i) they are not kept, bred or maintained for any commercial or breeding purposes, (ii) they do not become a nuisance, and (iii) they are not allowed to roam or wander unattended in the Addition.

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. 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 an 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.

Section 17. Yard Landscaping. The front yard, side yards and rear yard of an Lot must be planted with grass and landscaped in a manner acceptable to the Committee before any dwelling constructed on the Lot may be occupied as a residence. The Committee has adopted, or will adopt, guidelines and minimum standards for landscaping, and such guidelines and minimum standards will be utilized by the Committee as the basis for approval (or disapproval) of landscaping plans.

Section 18. No Construction on Less Than a Platted Lot. No dwelling shall be constructed on a building site consisting of less than one (1) platted Lot. No Lot shall be subdivided (that is, "split") in any manner. Nothing contained herein shall prohibit the construction of a dwelling on a building site consisting of two (2) or more full platted Lots. Any such composite building site, if same meets the foregoing requirements, shall be deemed to constitute a "Lot" under the terms and provisions of this Declaration. However, for the purposes of assessments by the Association pursuant to Article VI of this Declaration, any such composite building site (even though considered a "Lot" for other purposes hereunder) shall be assessed on the number of originally platted Lots, or portions thereof, comprising the building site, and not as a single Lot.

Section 19. Exterior Christmas Lights. No exterior Christmas lights or Christmas decorations shall be erected, placed, installed or displayed on any Lot in the Addition between February 1 and October 31 of any calendar year. Whether exterior lights or decorations constitute "Christmas lights" or "Christmas decorations" shall be determined by the Committee in its sole discretion.

Section 20. Minimum Set Back Lines. No dwelling structure or other accessory building, constructed on any Lot shall be located nearer to the front lot line or nearer to a side lot line than the building set back line shown on the recorded plat or plats of the Addition.

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 – 29 and less than one thousand four hundred square feet (1,400 sq. ft.) for Lots 30 - 83. No dwelling shall be permitted on any Lot in which the covered deck area will be less than two hundred square feet (200 sq. ft.) 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.).

Section 22. Fences, Walls, Etc. No fence, wall, hedge, structure or other improvements (including, without limitation, a swimming pool, tennis court or other recreational facility) shall be constructed, erected, placed, altered or permitted in the front building setback line and no rear yard



fencing shall be higher than four feet (4'). No building or structure of any type shall be built, constructed, erected, placed, altered or permitted to remain on any portion of a Lot designated as "Dune Protection Area" on the recorded plat or plats of the Addition.

Section 23. Mechanical Equipment Screening. Meters for utilities shall be screened from view from any Public Street in the Addition. Air conditioning compressors and other external mechanical equipment must be screened from view from the Private Streets in the Addition in a manner acceptable to the Committee. The use of window units is expressly prohibited.

Section 24. Conflict Between Ordinances and Restrictions. In the event of any conflict between the restrictions contained in this Article VIII and any ordinances, laws, rules or regulations of municipal or other governmental authorities having jurisdiction over the Addition or the construction of improvements therein, then such ordinances, laws, rules and regulations shall control, except, however, that if the restrictions contained herein are in any respect more restrictive than such ordinances, laws, rules or regulations, then the restrictions contained herein shall control.

Section 25. Paving. The ground area between the piling and directly underneath the living area of the house shall be paved using a minimum of four (4) inches of three and one-half (3.5) sack Portland ready-mix concrete.

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 permitted provided they are constructed in accordance with all laws, ordinances, rules and regulations of the Texas Commission on Environmental Quality and other governmental agencies having jurisdiction over the Dune Protection Area. In addition, no crosswalk shall be constructed until the plans and specifications of same shall have been submitted to and approved in writing by the Committee. All crosswalks shall be constructed in conformance with one (1) of three (3) designs to be provided by the Committee upon request.

Section 27. Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be kept, raised or bred on any Lot in the Addition. Not more than two (2) dogs and/or cats may be kept on a Lot, provided they are kept only for the use and pleasure of the Owner and are not kept, bred, or maintained for commercial purposes.

Section 28. Drainage Structures. Drainage structures under private driveways shall be either of two (2) types: (1) where the drainage ditch is of sufficient size to accommodate the culvert as described herein without causing the driveway to be elevated above the street level, drainage structures shall be buried underneath the private driveway, and shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater, and shall be a minimum of 1-3/4 square feet (18-inch diameter pipe culvert); (2) where the drainage ditch is of insufficient size to accommodate the culvert above described, the drainage structure may be a dip in the private driveway that will allow the free flow of water over the driveway. All culverts shall be constructed of reinforced concrete. No metal culverts shall be permitted.

Section 29. Docks. Only the Owners of those Lots that front the Lake as shown on the 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 four (4) in width, and not more than twenty (20) feet in length shall be permitted for each Lot fronting the Lake. 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.

Section 30. Pond. No boats or other watercraft shall be permanently anchored, moored or docked in the Pond. No motors may be used in the Pond, except for electric powered motors.

Section 31. Excavation of Filling. The excavation or the removal of any soil from any Lot is prohibited except where necessary in conjunction with landscaping or construction being done on such Lot. No filling material which will have the effect of changing the grade level of any Lot shall be placed on such Lot without the prior approval in writing of the Committee, the County of Galveston, and any other governmental agencies having jurisdiction thereof.

Section 32. Hunting. No hunting or discharge of firearms shall be permitted in, on, or from, any part of the property.

Section 33. Gardens. No gardens shall be constructed or maintained on any Lot unless approved in writing by the Committee.

## **ARTICLE IX ENFORCEMENT OF COVENANTS**

Section 1. Enforcement. In the event of any violation or breach, or attempted violation or breach, of any of the terms or provisions of this Declaration, Declarant, either Association or any Owner shall be authorized to enforce the terms, covenants and restrictions hereof by any proceedings at law or in equity against the person(s) violating or breaching, or attempting to violate or breach, the same, including actions for prohibitive or mandatory injunctive relief; and it shall not be a prerequisite to the granting of any such injunctive relief that there be any showing that irreparable damage or harm will result if such injunctive relief is not granted. Additionally, any person or entity entitled to enforce the terms, covenants or restrictions of this Declaration may recover such damages, both actual and punitive, as such party may show that he or it is entitled by reason of any such violation or breach. In any action for enforcement of the terms, covenants or restrictions hereof, whether for injunctive relief or damages, if the party prosecuting such action is successful, he or it shall be entitled to recover, in addition to any damages awarded, reasonable attorney's fees and all costs of court.

Section 2. Forbearance Not a Waiver. The forbearance of enforcement of any restriction herein contained for any violation or proposed or attempted violation of any restriction herein contained shall not constitute a waiver of the right of Declarant, the Associations or any Owner to thereafter enforce such restriction as to any subsequent violation or proposed or attempted violation.

Section 3. Time for Enforcement. Any action for enforcement of the restrictions or other covenants contained herein shall be commenced within one (1) year after such violation, or attempted violation, began or first occurred, and not thereafter.

## **ARTICLE X TERM AND AMENDMENT OF COVENANTS**

Section 1. Term of Covenants. The covenants and restrictions contained in this Declaration shall be binding for a period of twenty (20) years from the date of this Declaration. Upon the expiration of such twenty (20) year period, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each.

Section 2. Amendment or Termination of Covenants. This Declaration may be amended, or the covenants and restrictions herein contained may be terminated, in whole or in part as follows:

- (a) During the initial twenty (20) year period, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than eighty

percent (80%) of the Lots in the Addition and duly recorded in the office of the County Clerk of Galveston County, Texas.

(b) At any time after the initial twenty (20) year period, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots in the Addition and duly recorded in the office of the County Clerk of Galveston County, Texas.

For the purposes of calculating the foregoing respective percentages of Lots in the Addition, there shall be taken into account not only the Lots in The Biscayne, Section One, but also any additional Lots brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of Article II of this Declaration.

**ARTICLE XI  
SEVERABILITY**

Section 1. Severability. In the event that any provision of this Declaration, or any portion thereof, shall be held to be invalid or unenforceable by judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect, invalidate or impair any other provision, or parts of a provision, hereof, and all remaining provisions, or parts of provisions, shall remain valid and in full force and effect in accordance herewith

**ARTICLE XII  
JOINDER OF LIENHOLDER**

Section 1. Joinder of 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 Declaration for the purposes of (a) consenting to and adopting the Plat of the Addition, (b) consenting to the grant or dedication by Declarant of all easements for Private Streets and all easements for utilities and drainage shown and reflected on the Plat, together with all other easements granted or reserved by Declarant in this Declaration, (c) subordinating its lien to all of the aforementioned easements and easement rights, and (d) subordinating its lien to the restrictions, covenants and conditions imposed by Declarant on the Addition by this Declaration. However, Lienholder joins herein solely as a lienholder and only for the purposes set forth above in this Section, 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 Declaration to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2003.

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.

Wells Fargo Bank Texas, N.A., a national banking  
association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS                   §  
   §  
COUNTY OF GALVESTON       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, 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 said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF GALVESTON       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, \_\_\_\_\_ of Wells Fargo Bank Texas, National Association., a national banking association, on behalf of said national banking association.

\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT A

### (Description of Land)

A tract of land situated in the Samuel Parr and the Abraham Van Nordstrand Surveys in Galveston County, Texas, and being more fully described by metes and bounds as follows:

TRACT ONE: Being 534.95 acres of land, more or less, situated in the Samuel Parr Survey, Abstract No. 162 and the Abraham Van Nordstrand Survey, Abstract No. 203 in Galveston County, Texas, and being a part of that certain 1143 acre tract of land conveyed to E. W. Boyt by the Texas Guarantee and Trust Company, dated April 30, 1919 and recorded in Volume 315, Page 529 of the Deed Records in the office of the County Clerk of Galveston County, Texas, and also being a part of the Simpton 100 acre tract conveyed to E. W. Boyt by Helen Simpton, et al, dated May 14, 1919 and recorded in Volume 315, Page 531 in said County Clerk's office, said 534.95 acres being all that portion of said tracts lying between State Highway No. 87 and the Gulf of Mexico and being more particularly described by metes and bounds as follows;

BEGINNING at the point of intersection of the West line of said 1143 acre tract with the Southerly right-of-way line of State Highway No. 87 for the Northwest corner of this tract, said beginning point also being in the East line of the A. J. Johnson, et al, 904-3/4 acre tract described in Book 48, Page 232 of the Deed Records of Galveston County, Texas;

THENCE North 41° 07' 10" East, along and with the Southerly right-of-way line of State Highway No. 87, a distance of 6,313.70 feet to point of curve;

THENCE along and with a curve to the right having a radius of 5,669.58 feet, and continuing along said right-of-way line, a distance of 215.12 feet to point for Northeast corner of this tract in the East line of said 1143 acre tract, same being in the West line of the Nuckols Tract as described in Volume 305, Page 652 of the Deed Records of Galveston County, Texas;

THENCE South 29° 45' 56" East, along and with the East line of said Boyt tract and the West line of said Nuckols tract, a distance of 3,681.86 feet to point for the Southeast corner of this tract in the shoreline of the Gulf of Mexico;

THENCE in a Southwesterly direction, along and with the Shoreline of the Gulf of Mexico and along a curve to the left having a radius of 40,000 feet, a distance of 6,684.71 feet to point for the Southwest corner of this tract in the West line of said Boyt tract;

THENCE North 29° 24' West, along and with the West line of said Boyt tract and the PLACE OF BEGINNING and containing 534.95 acres of land, more or less.

Subject to Public's right to use easement, under the Texas Open Beaches Act, the Southerly 25.18 acres of beach.

## EXHIBIT B

### (Description of Future Development Tract)

**Future Development Tract:** Being 451.627 acres, more or less, out of and part of Tract One described in Exhibit A attached hereto, **save and except** that certain 83.323 acres of land which has been subdivided and platted into an Addition to Galveston County, Texas, known and to be known as "THE BISCAYNE, SECTION ONE, an Addition to Galveston County, Texas," in accordance with the Final Plat of said Addition prepared by Sidney Bouse, a registered professional Land Surveyor of the State of Texas, and recorded under Clerk's File No. GAC2003024231 of the Plat Records of Galveston County, Texas, consisting of eighty-three (83) lots, twenty (20) reserves, two (2) blocks and 83.323 acres, situated in the A. Van Nordstrand Survey, Abstract No. 203, Galveston County, Texas.

**EXHIBIT C**  
**(Assessment Percentages for Lots)**