

DECLARATION OF DEED RESTRICTIONS RELATING TO
OLD COTTAGE BEACH DEVELOPMENT

1. **BACKGROUND**

OLD COTTAGE BEACH DEVELOPMENT, LLC (hereinafter referred to as "Developer"), is the owner and developer of the following Property: all of Tracts 3, 4, 5 and the South 40' of Tract 6 of Live Oak Point Tracts in Rockport, Aransas County, Texas, known as 4570 Hwy. 35 North (the "Property") and described as Lots 1-59 of Old Cottage Beach Development, according to the Plat thereof as recorded in Vol. 1, page 82, of the Public Records of Aransas County, Texas (hereinafter referred to as "Lot" or "the Lots of Old Cottage Beach").

Old Cottage Beach has been platted for the purpose establishing residential dwellings and is being created as a place built for the human scale and with a view to preserving the inherent beauty the land has to offer. The intent of the Developer is to create a place of sustainable character and charm. To meet these goals, the Lots of Old Cottage Beach necessarily require that their use and placement of improvements be strictly controlled. Accordingly, the Developer desires to establish certain restrictions upon the use and placement of improvements of the Lots of Old Cottage Beach in order to encourage residential construction while strictly controlling the ultimate use and appearance of Old Cottage Beach Development in order to assure its enjoyment by all owners.

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Lots of Old Cottage Beach and improvements placed thereon, Developer hereby declares that all of the real property described above and each part thereof shall be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

To further facilitate the enhancement and protection of the Lots of Old Cottage Beach, Developer has formed Old Cottage Beach Club (herein referred to as the

"Association"), a non-profit entity to act as a property owner's association for the Lots of Old Cottage Beach.

2. DEFINITIONS

- 2.1 "Association" shall mean and refer to the Old Cottage Beach Club, its successors and assigns.
- 2.2 "Board" shall mean and refer to the Board of Directors of the Association.
- 2.3 "Bylaws" shall mean and refer to the Bylaws of the Association.
- 2.4 "Common Area" shall mean all real property or improvements, if any, which is not within the boundary of any Lot along with any easement rights specifically granted to the Association or to which the Developer may grant a right of use and enjoyment to the Association. The Common Area may include parking areas, pedestrian paths, parks and recreational areas, and any designated bay access and beach area. The Common Area is not dedicated for the use of the general public. Notwithstanding the foregoing, all or any of such grant or grants of the right of use and enjoyment may, in the sole discretion of Developer, be non perpetual or perpetual and exclusive to the Association or non-exclusive and, therefore, in common with a grant or grants of right of use and enjoyment by Developer to others.
- 2.5 "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, travel ways, landscaping, lighting, docks, swimming pools, utilities, facilities and other related improvements and fixtures for which the Association is responsible in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices

necessary to promote a healthy, weed-free environment for optimum plant growth.

- 2.6 "Member" shall mean every person or entity who holds membership in the Association.
- 2.7 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of Old Cottage Beach Development, but shall not include those holding title merely as security for performance of an obligation.

3. PROPERTY RIGHTS AND RESTRICTIONS

3.1 Owners' Easement of Enjoyment. Every owner of a Lot shall have an easement and right of use and enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to such Lot, subject to the following:

- (a) The right of the Association to suspend such right and easement after assessments against his/her lot remain unpaid for a period of 30 days; and
- (b) The right of the Association to suspend such right and easement, after hearing by the Board of Directors, for a period not exceeding 60 days for any infraction of the rules and regulations of the Association; and
- (c) The right of the Association or Developer, with or without joinder of the Owners of Lots or their lien holders or mortgagees, to dedicate, transfer, or grant easements or licenses to any local, state or federal government, agency or authority, public or private utilities; and
- (d) The right of Developer, in its sole discretion, to grant like rights and easements of use and enjoyment to all or any part of the Common Area to persons who are not Lot

Owners.

3.2 Delegation of Use. Each Owner may delegate his right of enjoyment in and to the Common Area to the members of his family, his guests, tenants, and invitees. This provision may not be modified without the written consent of the Developer and 75% of the Lot Owners.

3.3 Easements of Encroachment. There shall exist reciprocal appurtenant easements between adjacent Lots for encroachment of structural members of dwelling units to which another dwelling unit may be attached, which encroachments may result from minor inaccuracies in survey, construction, or reconstruction or due to settlement or movement; provided, however, that such encroachments shall not exceed one foot (1'). The encroaching improvements shall remain undisturbed for so long as the encroachment exists. There shall also exist reciprocal appurtenant easements between each Lot and any portion or portions of the common area adjacent thereto for any encroachment due to the unwillful placement, settling, or shifting of improvements constructed, reconstructed or altered thereon, provided such construction, reconstruction or alteration is in accordance with the terms of this Declaration. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an Owner but any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvements by the Owner thereof.

3.4 Other Easements.

- (a) Easements for water, sewer, gas, electric or other power source, telephone, cable, satellite dish and/or television antenna distribution and other public and/or private utility services servicing the subdivision are or will be specifically reserved in Common Areas to permit installation, maintenance and reconstruction of such facilities.
- (b) Five (5) foot easements and rights of way for installation and maintenance of utilities and drainage facilities are

expressly reserved through all Lots and, with regard to utilities, from such five (5) foot easements to improvements now or hereafter constructed on any Lot, to permit the construction and maintenance by the Developer, its successors and assigns, and/or public or private utility companies of water, gas, drainage, sewer, electricity, telephone, televisions and other services of like nature. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance and reconstruction of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each Lot and all improvements therein shall be continuously maintained by the owner of such Lot, except for improvements the maintenance for which a public authority or utility company is responsible.

- (c) No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to utility corporations, their employees and contractors, and shall also be open and accessible to Developer, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.
- (d) Developer shall and does hereby reserve unto itself, its successors and assigns, a perpetual, nonexclusive easement under, over and across the common area and that portion of

lots described in subparagraphs (a) and, (b) and (c) above for the purpose of construction, reconstruction, maintenance, repair and replacement of sewage treatment and collection facilities and water distribution and water distribution facilities.

3.5 No partition. There shall be no judicial partition of the common area, nor shall declarant or any owner or any other person acquiring any interest in the subdivision or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in cotenancy.

3.6 In no event will any residential structure be placed or permitted within ten (10) feet of a platted road or travel way.

3.7 Lot Owners may not grant easements through their property without the written approval of the Developer.

4. LAND USE

4.1 No new construction, or alteration to the exterior of any existing building of any type on any lot, shall take place without prior written approval of the Developer. Approval will be given only after construction plans have been submitted to the Developer and only if such plans are in compliance with all stipulations contained herein.

4.2 Only one (1) residential structure is permitted on each lot. No accessory building (garage, carport, utility or storage room) free standing or attached by deck or trellis, will be permitted without prior written approval of the Architectural Review Board. Two or more adjacent Lots may be used as a single building site. Such a site may accommodate more than one residence (e.g., guest house), but only with written consent of the Developer and approval of the Architectural Review Board. To the extent that a garage or carport is approved, the garage or carport shall be limited to a single bay or "one car" design. Each residential structure shall be new construction. No residential structure, already

existing in whole or in part, may be moved onto a lot.

4.3 All of the Lots in Old Cottage Beach Development shall be used exclusively for residential purposes.

4.4 No unlawful, improper or immoral use shall be made of any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Owner. No poultry, livestock or any animals of any kind shall be raised, kept, bred, or maintained, except that dogs, cats or other household pets may be kept, provided that the number of such household pets on the premises, either indoors or outdoors, shall not exceed a total of six (6), and further provided that such household pets are not kept, bred or maintained for any commercial purpose. Dogs must be kept in a kennel, dog run, or fenced area within the boundaries of the lot that confines the dog(s) to that area. The Architectural Review Board retains the right to direct the size and location on the premises of any kennel or dog run area. Each Owner shall be responsible for any and all damage caused by pets.

4.5 No structures of a temporary nature, including mobile homes, trailers, or recreational vehicles, shall be allowed. No camper or similar vehicle or boat shall be parked or kept, at any time. Commercial vehicles are not permitted. Automobiles may be parked only in designated parking areas and all automobiles shall be in good running condition. Repair of automobiles (other than emergency repair) or storage of disabled automobiles is not permitted.

4.6 No trade or business whatsoever shall be conducted on any Lot at any time. Notwithstanding the foregoing, Developer shall have the right to conduct reasonable sales and promotional activity as long as it owns any Lot or Lots offered in the ordinary course of business. Also, this provision shall not prohibit an Owner from using a portion of the premises constructed on the Lot as a home office, art studio or the like.

4.7 No Owner shall maintain an outdoor clothes line.

4.8 Owner shall erect fences in accordance with the direction of the Architectural Review Board. Fences shall be of white vinyl material and of such height and style as directed by the Architectural Review Board. No wood fences

or chain link fences shall be allowed. In general, the Architectural Review Board will require a "picket" fence along the front of the house and a privacy fence across the back of the Lot.

4.9 No private wells may be drilled.

4.10 Each Owner shall provide receptacles for garbage in a screened area not generally visible from the common travel ways.

4.11 Owners may rent their residences to others when not used by them. However, such rentals may be arranged only through the Owner himself or the Developer as his agent. To this end, Developer will establish a rental agency service, to be known as Old Cottage Beach Rentals, which agency shall be entitled to collect a fee for such rental agency services.

4.12 No Owner or guest shall bring or use any motorized mechanical conveyance. Specifically prohibited are go-karts and all terrain vehicles. This provision shall not preclude the use of bicycles and similar mechanical conveyance. Golf carts and similar vehicles may be permitted within the discretion of the Developer subject to such reasonable rules and regulations as may be promulgated by the Developer. Motorcycles of a cruising style shall be permitted but motorcycles of a dirt bike style are prohibited.

4.13 No Owner will be allowed to erect an exterior aerial or antenna for television or radio reception, except that a mini-dish satellite system (e.g., Direct-TV) may be installed provided that the dish is located so as to not be generally visible from the common travel ways.

4.14 Natural or manmade drainage facilities shall not be installed, altered or interfered with in any way by Owners without prior approval of the Developer.

4.15 No exterior antenna of any type shall extend above the highest point of the roof of the dwelling. Vapor security lights shall not be permitted.

5. ARCHITECTURAL REVIEW AND APPROVAL

5.1 Developer shall form an Architectural Review Board and appoint to it members in such numbers as Developer deems appropriate.

5.2 Basis for Decision. The Architectural Review Board shall approve or disapprove the application in its discretion, based on the nature, kind, shape, height, materials and location of the proposed improvements, harmony with surrounding structures and topography, and other factors, including purely aesthetic considerations, which in the sole opinion of the Architectural Review Board will affect the desirability or suitability of the construction. The Architectural Review Board shall also have the right to determine the type and number of structures which may be constructed on a Lot. The Architectural Review Board shall use as a guide the Architectural Style Guidelines set forth herein. The Architectural Review Board will strictly control the exterior appearance of any structures built in Old Cottage Beach Development. This may result in disapproval of designs that would be appropriate in other locations. It is specifically understood and agreed to by each Owner that the Developer, in its sole discretion, acting through the Architectural Review Board, has the right to approve or disapprove the design and color of any structure on any basis whatsoever. The Developer specifically reserves the right to require a specific color or shade of stain or paint if necessary to preserve the appearance or harmony of a given cluster of structures within the Old Cottage Beach Development.

5.3 Since individual Lots vary in size and location, standard setback regulations are not specified. However, in general, structures will be placed on the Lot in a "zero lot line" location. The absence of setback regulations allows the flexibility to ensure that the location of each structure will be optimum for the particular circumstances at hand. The Developer reserves the right to control absolutely and solely the precise location of any house, dwelling, or other structure upon any Lot. This responsibility will be invoked without hesitation to assure that the overall objectives of the Old Cottage Beach Development are met, provided, however, that this will be done only after a reasonable opportunity has

been afforded the Owner to recommend a specific location of the dwelling on the Lot. Further, the Developer reserves the right to specify the exterior location of any air conditioning equipment. Yet further, detached storage or other units may not normally be built on the Lot. Permission to do so will not be given unless the design hides such a structure from the view of other Owners.

5.4 Construction. If approval is given or deemed to have been given, construction of the improvements applied for may be begun, provided that all such construction is in accordance with the submitted plans and specifications. The Developer and the Association shall have the right to enjoin any construction not in conformance with approved plans and specifications, and shall have all other remedies available at law or equity.

5.5 Liability. Approval by the Architectural Review Board shall not constitute a basis for any liability of the Developer or any officer, member or employee thereof as regards failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements.

5.6 Construction Subject to Review. No construction, modification, alteration or improvement of any nature whatsoever (except interior alterations not affecting the external structure or appearance of a house, other residential lot or commercial building) shall be undertaken on any Lot unless and until a plan of such construction or alteration shall have been approved in writing by the Architectural Review Board. Modifications subject to Architectural Review Board control specifically include, but are not limited to, painting or other alteration of a building (Including doors, windows and roof): installation of antennas, satellite dishes or receivers, solar panels or other devices; construction of fountains, swimming pools, whirlpools or other pools: construction of walls or fences: addition of awnings, gates, flower boxes, shelves, statues or other outdoor ornamentation or patterned or brightly colored window coverings: and any alteration of the landscaping or topography of the Lot, including without limitation any planting, cutting or removal of trees or plants.

5.7 Procedures. The plans to be submitted for approval shall include (a) the construction plans and specifications, including all proposed landscaping, (b) an elevation or rendering of all proposed improvements, and (c) such other items as the Architectural Review Board may deem appropriate. If the Architectural Review Board fails to approve or disapprove the plans within ninety (90) days after submission of all requested plans and specifications, approval shall be deemed to have been granted unless the applicant agrees to an extension. The Architectural Review Board shall have the right to charge a reasonable fee for its review of plans.

5.8 Completion. Upon commencement of construction of any improvement, the Owner shall diligently and expeditiously carry same to completion in accordance with the approved plans and specifications. Generally, such construction must be completed within a period of twelve (12) months, except where such completion would result in great hardship to the Owner due to strikes, fires, natural calamities or due to personal circumstances beyond the Owner's control. Upon request made in writing to the Developer, including specific identification of the reasons therefor, an Owner may seek an extension of time for completion beyond the twelve months period.

6. ARCHITECTURAL STYLE AND LANDSCAPE GUIDELINES

6.1 The general style of the structures in Old Cottage Beach shall be that of a cottage or carriage house as exemplified by the characteristics of a compact footprint that does not necessarily sacrifice a sense of spaciousness in the floor plan, a human-scale entry, well-crafted architectural details, high pitched roofs, and the presence of porches, patios, decks. More specifically, the style shall be that of a coastal cottage with architectural arrangements and details influenced by or adopted from the architectural vernacular styles of and found in and around the Caribbean; the West Indies; Old Florida; Key West, Florida; St. Augustine, Florida; Charleston, South Carolina; Beaufort, South Carolina "Low-Country"; and the Creole cottages of coastal Louisiana. The Architectural Review Board

will endeavor to maintain exemplary design materials to assist Owner in complying with the Architectural Style Guidelines for Old Cottage Beach.

Compatible landscaping for the architectural style of Old Cottage Beach shall be observed. In general, compatible landscaping shall be low maintenance and include such materials as ground cover, shrubs, palm trees of various species, and flowering plants (e.g., hibiscus and bougainvillea). Such landscaping as gravel and cactus, for example, does not constitute compatible landscaping and will not be approved by the Architectural Review Board. In addition, grass is considered inconsistent with the low maintenance landscape concept deemed appropriate for Old Cottage Beach. Each Lot owner shall be required to install an automatic landscape irrigation facility subject to approval of the Architectural Review Board.

6.2 The general statement of architectural style in paragraph 6.1 is intended to leave the latitude for individual decisions as to design. However, such designs must adhere to the following specific guidelines:

- (a) Construction shall be of wood and all wood exposed to weather shall be pressure treated or of a species that is generally considered decay resistant, however styles adopting features of two-story St. Augustine, Florida architecture may use concrete block and stucco construction on the first floor level.
- (b) Siding pattern may be rough or smooth and may be vinyl or wood selected from lapsiding, shingle siding, and vertical board and batten siding (brick and stone siding shall not be used and will not be approved).
- (c) Roof cladding shall be standing seam metal sheeting of an approved color. No tile or composition shingle roofing is permitted.
- (d) Main rooflines shall be symmetrical about their peaks and will be a hip or gable only. A shed type roof will be permitted only as applied to dormers extending from the

main roofline and a flat roof shall be permitted only when accessible from an adjacent enclosed space.

- (e) Roof pitch above the main body of the structure and above wrap around porches and ancillary structures shall be from 4/12 to 10/12 depending upon the particular architectural style chosen.
- (f) Exterior doors may be wood or fiberglass and may be French doors with or without divided lites. Front entry exterior doors may not be solid without glass. Windows may be casement or double-hung made of vinyl, wood or wood with cladding. Awning type windows of horizontal proportions may be used at clerestories. Individual windows and porch openings, when rectangular shall be square or of vertical proportions not less than 1 to 1.5 (no more squat than square). Aluminum or other sliding glass doors and windows are not permitted.
- (g) Driveway surfaces shall be gray brick pavers.

7. MAINTENANCE

7.1 Each Owner shall be responsible for the maintenance of the exterior and interior maintenance of his home and improvements. Rubbish, trash or garbage shall be regularly removed and shall not be allowed to accumulate. If the Association determines in its discretion that any Owner has failed to maintain any part of his Lot, including improvements, in good order and repair, free from debris, the Association, by a majority vote of the Board and ten (10) days after notice to the Owner, shall have the right without liability to enter upon such Lot to correct, repair, restore, paint and maintain any part of the home and improvements, and to have any objectionable items removed. All costs related to such action shall be assessed to the Owner as an Individual Lot Assessment.

7.2 Landscape Maintenance. The Association shall maintain all landscaping for the Lots, including, but not limited to, trees and shrubs. In addition, walks, roads, parking areas, bay front area, painting and other maintenance and repair of improvements and equipment located in the Common Area shall be provided by the Association. More specifically, the Association shall provide turn-key landscape maintenance for which Lot owners will pay a Landscape Maintenance fee set by the Association.

7.3 Garbage Disposal. Garbage pick-up shall be provided by the Association and Lot owners will pay a Garbage Disposal fee set by the Association. The Association shall have the right to promulgate such rules and regulations relating to garbage disposal as deemed appropriate, including times and conditions of garbage pick-up.

7.4 Damage. If any Common Area or part thereof is damaged through the negligent or willfull acts of an Owner, his family, guest or invitee, the cost of any necessary repair shall be assessed to that Owner as an Individual Lot Assessment.

4 ASSOCIATION MEMBERSHIP AND ASSESSMENTS

8.1 Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

8.2 Management Agreements. The Association shall employ professional management, and each Owner agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled at any time by an affirmative vote of a majority of the Members of the Association voting in person or by proxy at a meeting for which notice is given and a quorum present in the same manner as is described Paragraph 8.7. In no event shall a management agreement be cancelled prior to

the Board effecting a new management agreement to become operative immediately upon the cancellation of the preceding management agreement. The Board shall also be responsible for effecting a new management agreement prior to the expiration of any prior management agreement. All management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

8.3 Obligation for Assessments The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following (to be known collectively as "Assessments"):

- (a) Annual General Assessments.
- (b) Special Assessments for the purposes provided in this Declaration.
- (c) Individual Lot Assessments for any charges particular to that Lot.
- (d) Property Tax Assessments for real property taxes on the Common Area, unless such taxes are included in the individual Lot tax assessments by the assessing authority, together with a late fee, interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought.

8.4 Purpose of Assessments. The General Assessments levied by the Association, both Annual and Special, shall be used exclusively for the improvement, maintenance and operation of the Common Area and the management and administration of the Association. Such expenses may include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and reasonable amounts, as determined by the Board, for working capital and for reserves. Each Owner shall be responsible for the improvement, maintenance and repair of his Lot or Lots and all improvements, including both the interior and exterior of buildings, and no such costs may be included within

the Annual or Special General Assessments. An Owner who fails to keep his Lot and all improvements in good order and repair shall be subject to an Individual Lot Assessment for any expenses incurred by the Association in performing such duties.

8.5. Maximum Annual General Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum Annual General Assessment shall be \$600. For each succeeding year, the Board of Directors shall determine the Annual General Assessment. If, within 30 days of receiving notice of a proposed increase in the Annual General Assessment, members representing a majority of the votes of the Association disapprove of the increase in writing, the Board may not exceed the greater of the following two maximum assessment levels:

- (a) An increase of not more than 15% above the assessment for the previous year, or
- (b) An increase in conformance with the rise, if any, of the Consumer Price Index, as published the preceding July.

8.6 Special Assessments. In addition to the Annual General Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year and not more than the next four succeeding years for the purpose of defraying; in whole or in part, the following:

- (a) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or
- (b) the cost of any unusual or emergency matters (including, after depletion of any reserves, any unexpected expenditures not provided in the budget or unanticipated increases in the amounts budgeted).

The Board's decision to levy a Special Assessment shall be deemed approved, by the membership unless, within 30 days of receiving notice of the proposed Special Assessment, members representing a majority of the votes of the Association disapprove in writing.

8.7 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 8.5 or 8.6 shall be sent to all members not less than fourteen (14) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast a majority of all of the votes of each class of membership 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 the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the first meeting.

8.8 Rate of Annual and Special General Assessments. Annual maintenance and special assessments shall be fixed at a uniform rate for all Lots.

8.9 Date of Commencement of Annual General Assessments: Due Date. (a) First Year. The Annual General Assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot. The first Annual General Assessments shall be adjusted according to the number of months remaining in the calendar year. (b) Subsequent Years. The Board shall fix the amount of the Annual General Assessment for each Lot at least thirty days in advance of each calendar year and send notice of the assessment level to each Owner. The due dates shall be established by the Board, and unless the Board determines otherwise, each Owner shall be required to pay the stated assessment in a single, annual installment. The failure or delay of the Board in setting the Assessment level shall not constitute a waiver or release of an Owner's obligation to pay Annual General Assessments whenever the amount of such assessments is finally determined, and in the absence of notice of the new assessment level, each Owner shall continue to pay the assessment at the previous rate until notified otherwise.

8.10 Individual Lot Assessments. The Association may levy at any time an Individual Lot Assessment against a particular Lot for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the specific Lot, other special services to such Lot or any other charges designated in this Declaration as an Individual Lot Assessment.

8.11 Property Tax Assessment. Unless such taxes are included in the individual Lot Owner's tax assessment by the assessing authority, the state and local real property taxes assessed on the Common Area shall be paid by the Association, which shall charge to each Owner its pro-rata share on a per-lot basis. Any such tax assessments shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. Upon transfer of title to a lot, the real property taxes shall be adjusted and apportioned. In addition to the adjustment of taxes at the time of transfer of title to a Lot, the new Owner shall deposit, in escrow with the Association, a sufficient sum to pay his pro rata share of the next due property taxes on the Common Area.

8.12 Effect of Nonpayment of Assessments: Remedies of the Association. (a) Late Fees: Interest. Any Assessment not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of delinquency at the maximum rate allowed by law (or such lower rate approved by the Board), plus late fees determined by the Board. (b) Nature of Obligation. All Assessments, along with any late fee, interest, and costs of collection when delinquent (including a reasonable attorney's fee, whether or not Suit is brought) shall be charged on the land and shall be a continuing lien upon the Lot to which the charges relate. In addition, all such Assessments and charges shall be the personal obligation of the person or entity who was the Owner of such Lot at the time when the Assessment was levied, and of each subsequent Owner. Each Owner, by acceptance of title, expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of the charges as a debt and to enforce the charges by all methods available for the enforcement of liens, including

foreclosure by an action brought in the name of the Association in a like manner as a foreclosure of a mortgage lien on real property. No Owner may waive or otherwise escape liability by non-use of the Common Area or abandonment of the Lot to which the Assessments or charges relate. (c) Action on Lien. The lien provided for in this Paragraph shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient for an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting owners' portion of the premium. Each Owner hereby expressly grants to the Association a power of sale in connection with such lien. (d) Transfer of Title Certificates. To assist the Association in maintaining a current list of Owners, any Owner (other than Declarant) who wishes to convey title to a Lot shall, at least thirty (30) days prior to the conveyance, provide the Association with the name and address of the intended purchaser. Failure to so notify the Association shall make the Owner liable for a fine of up to \$250, which may be assessed to the Owner as an Individual Lot Assessment. The Association shall have the right but not the obligation to notify the intended purchaser of any unpaid assessments relating to the Lot being conveyed. In addition, the Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments for the specified Lot have been paid. Such certificates shall be conclusive evidence of payment of assessments therein stated to have been paid.

8.13 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the first mortgage lien of any bank, savings and loan association or other institutional mortgagee. Sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to foreclosure of such a mortgage or any proceeding in lieu thereof shall extinguish the lien of such Assessments which became due prior to such sale or transfer. No sale or transfer shall relieve the transferees of

such Lot from liability for any Assessments thereafter becoming due or from the lien for such new Assessments.

9. ASSOCIATION INSURANCE OBLIGATIONS

9.1 Insurance on Common Area. The Board shall obtain casualty insurance for all Common Area improvements to cover the full replacement cost, which coverage may include extended coverage, vandalism, malicious mischief and windstorm endorsements and other coverage deemed desirable by the Board.

9.2 Public Liability. The Board may obtain public liability insurance in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Area. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, Board or other Owners. The Board shall review limits of coverage once each year.

9.3 Director Liability Insurance. The Board may obtain liability insurance insuring against personal loss for actions taken by members of the Board in the performance of their duties. Such insurance shall be of the type and amount determined by the Board in its discretion.

9.4 Other Coverage. The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Board may determine or as may be requested from time to time by a majority of the Members.

9.5 Lots. The Board has the right but not the obligation to obtain comprehensive insurance for all Lots, and each Owner by acceptance of a deed for his Lot is deemed to authorize the Board to act as his agent for the obtaining of insurance if the Board elects to obtain coverage for all Lots. If the Board does not so elect, each Owner shall obtain and maintain at his own expense fire insurance and insurance against the perils customarily covered by an extended coverage endorsement in an amount not less than the full insurable value of the

improvements, based upon replacement, and if an Owner fails to do so, the Board has the right but not the obligation to purchase such insurance for Owner and assess the cost to him as an Individual Lot Assessment. Owners are responsible for insuring against personal property damage and loss, personal liability for that Lot and any other type of insurance the Owner may desire.

9.6 Premiums. The cost of all insurance stated above, except coverage of Lots, shall be an Association expense and shall be included in the Annual General Assessments. If the Board obtains comprehensive insurance for all Lots, each Lot's ratable share shall be assessed to that Lot Owner as an Individual Lot Assessment.

9.7. Repair and Reconstruction after Fire or Other Casualty.

- (a) Common Area. If fire or other casualty damages or destroys any of the improvements on the Common Area, the Board shall arrange for and supervise the prompt repair and restoration of such improvements substantially in accordance with the plans and specifications under which the improvements were originally constructed, or any modification approved by the Architectural Review Board. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhaustion of insurance and reserves.
- (b) Lots. If fire or other casualty damages or destroys a house, commercial building or any other improvements on a Lot, the Owner of that Lot shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Architectural Review Board. If such Owner refuses or fails to begin to repair and

rebuild any and all such damage within thirty days or fails to continue such repair or restoration in an expeditious manner, the Association, by and through its Board, is hereby irrevocably authorized by such Owner to repair and rebuild any such improvement, the cost of which shall be charged to the Owner as an Individual Lot Assessment.

- (c) Insurance Proceeds: Performance of Work. All insurance proceeds received by the Association shall be deposited in a bank or other financial institution, the accounts of which are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature authorized by the Board or an agent authorized by the Board. The Board may advertise for sealed bids with any licensed contractor, and may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair or reconstruction.

10. GENERAL PROVISIONS

10.1 Enforcement. The Association, Developer or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Developer or any Owner to enforce any provision shall not be deemed a waiver of the right to do so thereafter. If the Association fails or refuses to enforce any of its rights under this Declaration, including without limitation the right to require all Owners to keep their Lots in good order and repair, Developer shall have the right but not the obligation to act on behalf of the Association and shall have all rights and remedies permitted the Association, including but not limited to the right to assess the Owner for the Developer's costs and to secure that charge in the same manner

as an Individual Lot Assessment. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Association or the Developer in the enforcement of any of the provisions of this Declaration, regardless of whether such enforcement requires judicial action, shall be assessed as an Individual Lot Assessment to the Owner against whom such action was taken.

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

10.3 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners holding 75% of the voting power in the Association and the Developer shall have been recorded, agreeing to terminate all of said provisions as of a specified date, which shall be not earlier than the expiration of an extended term of one (1) year from the date of such recording. Unless this Declaration is so terminated, the Association shall rerecord this Declaration or other notice of its terms at intervals necessary under Texas law to preserve its effect. This Declaration may be amended at any time by an instrument in writing signed by owners holding two-thirds of the total voting power of the Association, which amendment shall become effective upon recordation in the public records of Aransas County, Texas; provided, however:

- (a) As long as Developer is an Owner of any unsold Lot, no amendment shall become effective without the written consent of Developer,
- (b) No amendment may modify rights of the Developer without its written consent; and
- (c) Developer specifically reserves the absolute and unconditional right, so long as it owns any Lot, to amend

this Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the purchase and sale of home loan mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, or (iii) to clarify the provisions herein.

10.4 Annexation of Additional Property. As development of Old Cottage Beach continues, it may be efficient to annex additional properties to the Property subject to this Declaration, so that the Property and the additional property would be considered as a single property, subject to this Declaration and administered by the Association. Alternatively, it may be desirable to combine the Association with other similar associations within Old Cottage Beach (either by consolidation or merger) so that the resulting single Association would administer two or more properties, each of which would be subject to separate declarations. Such annexation, merger or consolidation may be accomplished in either of the following ways:

- (a) By Developer. Developer shall have, the right, but not the obligation, for a period of thirty (30) years from the date hereof, from time to time in its sole discretion, to annex to the Property other properties within Old Cottage Beach, or to merge or consolidate the Association with other similar associations within Old Cottage Beach. In the event of such annexation, consolidation or merger, Developer shall have the right to change the name of the Association or the Developer or both to more accurately reflect the interests of the resulting Association or Property. Developer's right to annex property specifically includes the right (but not the

obligation) to contribute additional Common Area or easement rights contiguous with the Property, or with a reasonable relationship to the Property.

- (b) By Owners. Additional property may be annexed, or the Association merged with other similar associations, by the assent of a majority of the Members. The majority vote of Members shall be comprised of those Members present in person or by proxy at a regular meeting or a special meeting duly called for that purpose, or the consent in writing of Owners of a majority of the Lots.

10.5 Notices. Any notice required to be sent to the Owner of any Lot under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Lot and, if different, to the last known address of the person who appears as Owner of such Lot as that address is stated on the records of the Association at the time of such mailing.

10.6 Action Without Meeting: Telephone Conferences. Any action required under this Declaration to be taken by vote or assent of the Members may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of the requisite percentage of the Membership. Any action so approved shall have the same effect as though taken at a meeting of the Members, and such approval shall be duly filed in the minute book of the Association. Members present by telephone conference shall be considered as present at a meeting for the purposes of a quorum, and may vote in any matters presented for a vote of the membership.

10.7 Gender and Number. The singular shall include the plural, wherever the context so requires, and necessary grammatical changes required to make the provisions of this Declaration apply either to individuals, corporations or other entities, masculine or feminine, shall in all cases be assumed as though in each case fully expressed.

10.8 Violation of Restrictions. The Developer, its successors and assigns, or the Association, shall have the right to proceed at law or in equity

against any person or persons who shall violate or attempt to violate these covenants and restrictions, and may enjoin or recover damages for such violations. In the event the Developer or the Association fails to take such action, then an Owner may commence such action.

10.9 Non-enforcement and Invalidation. Failure to enforce any of the foregoing restrictions shall not be deemed a waiver to do so thereafter, and the invalidation of any one or more of said restrictions by judgment or court order shall in no way affect any of the remaining restrictions and covenants which shall remain in full force and effect.

10.10 Duration of Restrictions. These restrictions shall continue for a period of twenty (20) years from the date of recording hereof, and shall automatically be extended for an additional twenty (20) years unless 80% or more of the Owners of all of the Lots and their mortgagees shall evidence their desire to terminate or change said restrictions in whole or in part by an instrument or instruments in writing executed with the formality of a deed pursuant to the laws of the State of Texas.

10.11 Right to Modify. The Developer may modify these restrictions prior to the time all Lots are sold. Additionally, after all Lots are sold, the Developer may modify these restrictions with the approval of 51% of the Owners.

OLD COTTAGE BEACH DEVELOPMENT, LLC

By: Richard D. Dias
Richard D. Dias, Member and Manager

Date: October 16, 2001

STATE OF TEXAS)
) SS:
COUNTY OF ARANSAS)

243148

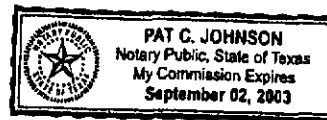
FILE NO.
County Clerk, Aransas County, Texas

I, Pat C. Johnson, a Notary Public in and for said County and State, do hereby certify that Richard D. Dias, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged and swore that the statements set forth in the foregoing instrument are true and correct and that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 16 day of Oct., 2001.

Pat C. Johnson
Notary Public

My commission Expires: 9/2/03



FILED FOR RECORD
At 2:00 P M.

OCT 16 2001

INDEXED

Peggy L. Friesele
PEGGY L. FRIESELE
COUNTY CLERK, ARANSAS CO., TEXAS

Filed By + Return to
Richard Dias
P.O. Box 279
Tulsa Ok.
74135