

**DECLARATION OF THE
COVENANTS AND RESTRICTIONS OF
LA CONCHA ESTATES**

This Declaration is made on this the 26th day of April, 2002 by FACEY ENTERPRISES, N.V., LTD., a Delaware Corporation (the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of the following described real property situated in Nueces County, Texas (the "Property"):

Being 28.074 acres out of a 43.50 acre tract described in Deed Recorded in volume 1889, Page 137, Deed Records of Nueces County, Texas; and also being out of the J.W. Waterbury Survey No. 596, Land Scrip 167, Abstract 408, Mustang Island, Nueces County, Texas.

WHEREAS, Declarant has subdivided the Property into Lots and Blocks with dedicated streets, easements, and utility facilities as set forth on the plat of La Concha Estates recorded in Volume 61, Pages 197 & 198, of the Map Records of Nueces County, Texas, (the "Subdivision"); and

WHEREAS, it is the desire of the Declarant to place restrictions, covenants, conditions, stipulations and reservations upon and against the Property, SAVE AND EXCEPT: Lot 1, Block 2, and Lot 1, Block 3, of LA CONCHA ESTATES as shown on the plat of the Subdivision, in order to establish a uniform plan for its development, improvements, and sale, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of designated lots within the Subdivision;

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon the Subdivision all of the following reservations, easements, restrictions, covenants, conditions, charges, assessments, and liens which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property, and shall hereafter be subject to the jurisdiction and assessments of the La Concha Estates Owners' Association, Inc., SAVE AND EXCEPT: Lot 1, Block 2, and Lot 1, Block 3, of LA CONCHA ESTATES as shown on the plat of the Subdivision. Those two lots are hereby expressly excluded from the restrictions, covenants, conditions, stipulations and reservations contained within this Declaration.

**ARTICLE I.
Scope of Restrictions**

The following terms and restrictions are hereby established, adopted, and imposed upon Lots Two (2) through Twelve (12), Block 2; and Lots One (1) through Forty (40), Block One (1) within the Subdivision so as to create and carrying out the uniform plan for the improvement and sale of the lots as a high quality restricted residential subdivision. All of the terms and restrictions shall constitute covenants running with the land, shall be binding upon and inure to the benefit of Declarant, its successors and assigns, and upon all persons acquiring property in the Subdivision whether by purchase, descent, devise, gift or otherwise. Each Grantee, by acquiring any lot within the Subdivision shall be deemed to have agreed, covenanted to abide by, and perform the terms and restrictions of this Declaration, and each Owner's deed to the Owners lot(s) shall be conclusively held to have been executed, delivered and accepted subject to all of the following terms and restrictions.

PLAN REVIEW CHECKLIST

PROCEDURE FOR ACA REVIEW

1. Submit to the offices of Urban Engineering 2725 Swantner, CC, TX 78404, 2 copies of construction plans (as outlined in 3.3 below) with a check in the amount of \$500.00 along with this checklist completed.
2. The official date of submission will be the date received by mail or the actual date if hard copy delivered.
3. The plans will be reviewed by the ACA. The plans will be approved or denied within 30 days of the official date of submission. In the event that the plans are incomplete or in conflict with the covenants & restrictions they will be rejected and returned to the applicant. The applicant can resubmit the plans one time per review fee. Additional reviews will require resubmission and repayment of the \$500.00 review fee.

First Review - Approved _____ Rejected _____

Resubmission
Review - Approved _____ Rejected _____

ARTICLE II.
Definitions

1.1 Certain Definitions The following words, when used in this Declaration, in any amendment or supplementary declaration, or the attached By-laws (unless the context shall otherwise clearly indicate or prohibit), shall have the following meanings:

- a. "ACA" means the Architectural Control Authority which is vested with the power to approve or deny application for proposed original construction or modification of a Improvement on any lot.
- b. "Assessment" means a regular assessment, special assessment, or other amount a Owner is required to pay the Association.
- c. "Association" means the Texas non-profit corporation organized under the name of the "La Concha Estates Owners' Association, Inc.," that will administer the operation and management of the Subdivision.
- d. "Board" means the Board of Directors of the La Concha Estates Owners Association, Inc., which shall be the governing body of the Association.
- e. "Bylaws" means the Association's Bylaws attached as Exhibit "A" and incorporated herein by reference.
- f. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners.
- g. "Common Expense Liability" means and includes all expenditures made and liabilities incurred by the Association for maintenance, repair, operation, management, and administration of the Common Area; all expenses declared common expenses by this Declaration or the Bylaws; and all sums lawfully assessed by the Association against the Owners, including all amounts assessed against a Owner for repairs made by the Association as a result of a Owner's failure to maintain the Owner's Lot or as a fine against such Owner.
- h. "Declaration" means this particular instrument together with any and all amendments or supplements.
- i. "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a Lot but does not include the transfer or release of a security interest.
- j. "Improvement" means any thing or device, including:
 - (1) any building, garage, porch, shed, greenhouse, bathhouse, cabana, coop, cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall, hedge more than two feet in height, signboard, or any temporary or permanent change to any Lot,
 - (2) any excavation, fill, ditch, diversion dam, or other thing or device which affects or alters the flow of any water in any natural or artificial stream, wash or drainage channel from, upon, or across any Lot,
 - (3) any enclosure or receptacle for the concealment, collection and/or disposition of refuse, and
 - (4) any change in the grade of any Lot more than three (3) inches from that existing at the time the original plans for construction were approved by the ACA.
- k. "Owner" means the record title owner (whether one or more persons or entities) of the surface estate of a lot located within the Subdivision, and all improvements on the lot. It shall not include those having such interests merely as security for the performance of an obligation, and shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure of a lien on a lot held by such mortgagee.
- l. "Plat" means the plat of the La Concha Estates recorded in Volume 61, Pages 197 & 198 of the Map Records of Nueces County, Texas.
- m. "Regular Assessment" means an assessment, a charge, a fee, or dues that each Owner is required to pay to the Association on a regular basis and that is designated for use by the Association for the benefit of the Subdivision as provided in this Declaration.
- n. "Restrictions" means the restrictions and covenants contained in this Declaration, the By-laws, and the Plat, including any amendments thereto or replats.

o. "Special Assessments" means an assessment, a charge, a fee, or dues, other than a Regular Assessment, that each Owner of a lot located in the Subdivision is required to pay to the Association, according to the procedures set forth in this Declaration and the By-laws, for:

- (1) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in the Common Area, including the necessary fixtures and personal property related to the Common Area;
- (2) maintenance and improvement of Common Areas; or
- (3) other purposes approved by the Association according to this Declaration or the By-laws.

p. "Special Declarant Rights" means rights reserved for the benefit of the Declarant to exercise the following:

- (1) the option to maintain models, sales staff, management, and offices within the Subdivision, together with signs advertising the project,
- (2) the use of the Common Area as an easement for the purpose of making and maintaining improvements,
- (3) the power to appoint or remove any officer or board member of the Association prior to the first meeting of the Board,
- (5) the power to re-plat any of the Lots owned by the Declarant into larger or smaller Lot sizes,
- (6) the power to grant private non-exclusive pedestrian beach access easements over and across the following:
 - i. Lot 38, Bk. 1, of La Concha Estates,
 - ii. Lot 37, Bk. 1, of La Concha Estates, and
 - iii. the 50' Beach Private Access Easement over and across Lot 40, Bk. 1, of La Concha Estates as shown on the Plat.

The non-exclusive pedestrian beach access easements shall be for the benefit of the owners of Lot 1, Bk. 2, and Lot 1, Bk. 3 of La Concha Estates and the owners of La Concha Estates II. Should this Special Declarant Right be exercised it shall be in consideration of the grantees covenant to share and pay to the Association the grantee's pro-rata share of the cost of the real property taxes, insurance, and maintenance of the non-exclusive pedestrian beach access easement. The non-exclusive pedestrian beach access easement grantees' covenant to share and pay to the Association the grantee's pro-rata share of the expense of the easement shall be secured by a lien in favor of the Association which, if foreclosed in the same manner as the Association's lien granted by the Owners to secure assessments, shall extinguish the grantee's easement rights.

- (5) make the Subdivision and the Association part of a larger Subdivision so as to include La Concha Estates II, which is planned but need not be developed or dedicated.

q. "Subdivision" means the La Concha Estates Subdivision as shown on the Plat, and may include La Concha Estates II, which is planned but need not be developed or dedicated.

ARTICLE III.
Architectural Control

**ITEMS IN BOLD AND UNDERLINED
SHOULD BE FILLED OUT BY APPLICANT.**

3.1 The power to approve or deny applications for any original construction or modification of any existing building, structure, Improvement or landscape design is vested exclusively in the Board. The Board may delegate their authority to approve or deny applications for construction to an Architectural Control Authority (the "ACA", whether the Board or its duly appointed representative). If an ACA is appointed by the Board its member(s) shall be appointed and/or removed by a majority vote of the Board. The Board's duly appointed ACA representative may be a single engineer, architect, planner, individual, or committee composed of Board members and consultants. The ACA shall be entitled to reasonable compensation for the ACA's services as set forth in below paragraph 3.7 for reviewing submitted plans.

3.2 The purpose of the Improvement Standards contained within Article IV of this Declaration (the "Improvement Standards") is to provide for uniform standards of construction so as to enhance the aesthetic properties and structural soundness of the Improvements within the Subdivision. The decisions of the ACA in approving or denying construction applications shall be in strict compliance with the terms of the Improvement Standards unless a construction variance is granted by the Association. A construction variance:

- a. may only be granted by a majority vote of the Owners at a meeting of the Association at which a quorum is present,
- b. at least 10 days prior to the meeting the Owners must be given a written copy of the proposed construction variance and a general outline as to why it is necessary,
- c. the ACA may endorse, oppose, or abstain from any discussion regarding the construction variance at the meeting of the Owners, and
- d. must be granted on a case by case bases to deal with unforeseeable construction issues that if allowed will not conflict with the overall scheme for the development of the Subdivision.

Unless a variance has been granted, the judgment of the ACA rejecting any plans shall be final, conclusive, binding, and presumed reasonable unless a court determines by final judgment that the exercise of the ACA's discretionary authority was arbitrary, capricious, or discriminatory.

3.3 No building, fence, wall, structure, or Improvement may be constructed within the Subdivision; nor shall any exterior addition, change, alteration or demolition of any existing Improvement be made; nor shall any landscaping on any lot that would affect drainage or utility easements be undertaken until the plans (in duplicate) showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing by the ACA. All plans for any anticipated construction shall:

- a. designate, by reference to the Plat, the lot for which the plans are submitted,
- b. include an exterior elevation plan showing the nature, exterior color scheme, kind, shape, height and location of all proposed construction,
- c. include a site plan drawn to one-quarter inch scale showing the location and size of all existing and proposed improvements, including the lot's front, rear, and side setbacks, and all existing and proposed parking spaces, driveways and sidewalks,
- d. include reasonably detailed construction plans of the proposed improvements,
- e. include a description of the materials (including color and finish) to be incorporated in the proposed improvements
- f. the contractors name, address, and phone and cell number(s), and
- g. supplemented by such other information as may be requested by the ACA.

NAME OF APPLICANT: _____

ADDRESS: _____

TELEPHONE #: _____

FAX #: _____

2 Copies of Plans - see 3.5 _____

Date of Approval/Rejection: _____

1. **LOT(S)** _____ **BLOCK(S)** _____

2. Exterior Elevations: shown _____

3. Color Scheme: provided _____

4. Height: shown _____

5. Site Plan: Scale 1/4" or greater _____

6. Parking/Driveway: _____

7. Finishes Shown: _____

8. **CONTRACTORS**

ADDRESS: _____

PHONE #: _____

Official Date of Submittal: _____

3.4 The ACA shall reject plans whenever the ACA's determines that the following circumstances exists:

- a. the plans, or any Improvement or use covered by the plans are not in compliance with the provisions of this Declaration, or
- b. the plans do not contain enough information to allow the ACA to determine whether the Improvement or use covered by the plans will either comply or violate the provisions of this Declaration.

3.5 All plans must be submitted in duplicate to the ACA for approval. Plans that have been approved will be marked "APPROVED" and signed by a member of the ACA. Plans that have not been approved will be marked "REJECTED" and signed by a member of the ACA. Whether approved or rejected, one marked set will be retained by the ACA and the other returned to the Owner. Any proposed modification or change to a set of plans which have already been approved must be re-submitted (in duplicate) to the ACA for re-approval before the proposed modification or change may be incorporated into the proposed Improvements. The re-submitted plans will be marked "APPROVED" or "REJECTED" and signed by a member of the ACA in the same manner as the original set of submitted plans.

3.6 In the event the ACA fails to approve or reject any plans within thirty (30) days after they have been submitted, and if no request has been made by the ACA for supplements to the plan or if no suit to enjoin the construction is commenced prior to the completion of such construction, then approval of the plans shall be presumed. No construction of the proposed Improvements may be commenced until the plans for the Improvements or use have been approved. Construction of any Improvements prior to the approval of the plans shall result in a fine to the Owner of \$500.00 a day for each day the violation continues. All fines will be assessed by the Board as provided in the Bylaws.

3.7 The fee of the ACA shall be paid by the Owner who is submitting the plans to the ACA. A deposit fee shall be paid at the time of the submission, and the final fee will be paid upon final approval. Failure to pay the deposit or final fee shall result in the automatic rejection of the plans notwithstanding anything in this Article to the contrary. The Board and the ACA shall agree on the amount of the deposit and the ACA's fee prior to the Board appointment of the ACA. Once a fee structure has been agreed upon it can not be changed without the Board's prior written approval. The ACA's fee may be based upon (a.) the time involved in reviewing the plans; (b.) a flat fee based upon the type of improvement; or (c.) a combination of both.

3.8 The ACA has the authority to determine whether plans for anticipated Improvements and use are in compliance with the provisions of this Declaration, and no construction shall be commenced until a complete set of the plans has been marked "APPROVED" and signed by a member of the ACA. No act, failure to act, or refusal to act on the part of the ACA, however, to challenge a real or threatened violation of this Declaration shall be deemed to constitute a waiver of any right or duty of the ACA at any time or from time to time thereafter to initiate such action and/or enforce compliance with this Declaration. The ACA may act or refuse to act in any real or threatened violation of this Declaration, all in the exercise of its sole discretion.

3.9 The Declarant will appoint the ACA until the first meeting of the Association, at which meeting the Declarant shall transfer the power of appointment to the elected Board. All rights and obligations of Declarant to appoint the ACA shall then terminate, and shall thereafter be vested in the Board.

3.10 It shall be the prerogative of the Association to grant variations to the Improvement Standards of this Declaration, not the ACA. Variations from the Improvement Restrictions may be granted only by a majority vote, either in person or by proxy, of the Owners at a meeting of the Association at which a quorum is present. It is the desire and hope of the Declarant that variations shall be granted when and only when the proposed Improvements or use do not in any way detract from the appearance of any lot within the Subdivision, and are not in any way detrimental to the welfare or to the property of the Owners.

ARE ANY VARIANCES REQUIRED: _____

3.11 The ACA or its agents may at any reasonable time enter upon and inspect the exterior and exterior of any construction site without being deemed to have committed any trespass or any wrongful act if such entry is to ascertain whether the maintenance, construction, or alteration of the Improvements or proposed use thereof are in compliance with the provisions of this Declaration.

3.12 The ACA may from time to time adopt certain reasonable building and construction standards that supplement but do not conflict with the Improvement Standards. In the event the ACA adopts supplemental standards it will make copies available to the Owners upon request. The ACA may modify or amend its building standards from time to time as the ACA deems appropriate to accommodate the needs of the Subdivision. Should the supplemental standards appear to conflict with or change the Improvement Standards as provided in this Declaration, then they must be approved by a majority vote, either in person or by proxy, of the Owners at a meeting of the Association at which a quorum is present before they may be enforced.

3.13 Neither the Board or the ACA will be liable to any Owner for claimed damages, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans; (ii) the construction or performance of any work, whether or not in compliance with the plans or the Improvement Standards; or (iii) the development of any Lot within the Subdivision.

ARTICLE IV.
Improvement Standards

4.1 Residential. No lot in the Subdivision shall be used other than for single family residential purposes and no building shall be designed for, or erected, placed occupied, altered, or permitted to remain on any lot or portion thereof other than a single family residence with a attached or detached garage. No trailer, mobile home, motor home, modular home, geodesic dome, tent, shack, lean-to or other outbuilding may be placed, moved, erected or permitted to remain on any lot in the subdivision, temporarily or permanently by either an Owner or any guest of an Owner. No structure shall be occupied or used as a residence, temporarily or permanently, until a certificate of occupancy has been issued by the City of Corpus Christi, Nueces County, Texas.

Residential: _____

4.2 Building Location. All Improvements shall comply with the building and set back lines:
 a. shown on the Plat,
 b. required by the City of Corpus Christi, Nueces County, Texas building Code, and
 c. required by La Concha Large Scale Dune Construction Permit as adopted by the Nueces County Commissioner's Court on August 23, 1995.

Building is located within
 Accordance with:
 1. Building Lines: _____
 2. Building Codes: Reviewed by the City of
 Corpus Christi Build. Dept.
 3. Dune Permit: _____

4.3 Fences or Walls. No fence or wall shall be erected, placed, altered or maintained nearer to the front lot line than the minimum building setback line shown on the Plat, or in any event, forward of the front wall line of the main building. No fence or wall shall be erected, placed, altered or maintained on any lot in such a manner that it will affect or impair the Subdivision's drainage areas. No perimeter privacy fence shall exceed six (6) feet in height.

Fences: _____

4.4 Minimum Floor Area and Garage Space. The single family dwelling constructed on the Owner's Lot must have not less than one thousand eight hundred (1,800') square feet of air conditioned space, exclusive of the garage, attic, open or screened porches, terraces, patios, driveways. All driveways and parking areas must be concrete (no asphalt driveways or parking areas are allowed). An enclosed two (2) car garage whether attached or detached must be constructed simultaneously with the single family dwelling. Garage doors may not exceed 14 feet (14') in height.

FLOOR AREA: _____
A/C SPACE (SF): _____
 2 Car Garage: _____
 Garage Door Less than 14' High: _____

4.5 Minimum Grade Elevation and Foundation and Maximum Number of Stories. The minimum grade elevation for all the floors of each structure within a lot must be approved the ACA so as to be reasonably compatible with the other Improvements within the Subdivision, but in no event will any dwelling, garage, or appurtenant building exceed three (3) stories in height.

LOWEST HABITABLE FLOOR ELEVATION: _____
 3 Stories or Less: _____

4.6 Exterior Walls. The finishes of the exterior of walls of each main dwelling shall be of natural stone, stucco, brick, fibrous cement board, or any combination thereof. Materials used on the main building or any outbuilding and their color must be in harmony with the general architectural design of the main building. No vinyl or asbestos siding may be used for walls or trim.

EXTERIOR WALL MATERIAL: _____
COLOR OF WALLS: _____

4.7 Roof. The pitch of the roof of each main building and all out buildings, either attached or detached, shall not be less than 5/12 pitch. All roofs must be constructed out of the following materials:

- a. 320 pound weight self-sealing composition roof;
- b. tile; or
- c. "gavaloom" or its equivalent.

ROOF PITCH: _____
ROOF MATERIAL: _____

4.8 Topographic Alterations. Under no circumstances shall any Owner be permitted to alter the topographic conditions of a Lot in any way that would alter the natural drainage patterns.

Topo Altered: _____

4.9 Completion Time. Any house, structure, or improvement commenced on any lot must be completed within nine (9) months after the beginning of construction, or within such additional time as may be approved in writing by the ACA. No partially completed house, structure or improvement of any type shall be permitted to remain on a Lot beyond the time approved by the ACA.

Construction Schedule Provided: _____

4.10 Plumbing and Sanitary Facilities. The plumbing in all Improvements shall comply with all local building codes, laws, rules and regulations of governmental authorities having and asserting jurisdiction over the Subdivision. No outside toilet shall be installed or maintained on any Lot, and all plumbing shall be connected to the sanitary sewer system.

4.10 Plumbing and Sanitary Facilities:
 Reviewed by City of
 Corpus Christi Building Department

4.11 Electrical. All sources of electrical energy shall comply with all local building codes, laws, rules, and regulations of governmental authorities having and asserting jurisdiction over the Subdivision.

4.11 Electrical:
 Reviewed by City of
 Corpus Christi Building Department

4.12 Water. Each residential dwelling constructed on any lot shall be connected to the water system installed in the subdivision. As each residence is completed and occupied in the Subdivision, each Owner shall be required to purchase water from the owner of the water system within the Subdivision, and shall pay a reasonable amount for the use of such water as the owner of such water system shall from time to time charge. No individual water wells shall be allowed on any lot.

4.12 Water:
 No Water Well: _____

4.13 Hunting and Pet Restrictions No hunting shall be allowed in the Subdivision and any discharge of firearms is strictly prohibited. No livestock other than household pets may be kept or raised on any lot, and no household pets shall be bred or maintained on any lot for commercial purposes or for sale. All pets must be kept within the Owner's lot except when the Owner or the Owner's guest has the pet on a leash and is walking the pet. Any pet unattended is a nuisance and may be impounded at the pet owner's expense. Any pet excretion left by a pet outdoors must be picked up immediately and disposed of in a sanitary manner by the person walking the pet.

NOT REVIEWED

4.14 Nuisances. No noxious nor offensive, unlawful, or immoral activity shall be carried on upon any lot, nor shall anything be done thereon which shall become an annoyance or nuisance. The period of time from 10:00 p.m. to 7:00 a.m. each day shall be observed as the quiet hours of the Subdivision. Discharge of air pistols, rifles, firearms or fireworks within the Subdivision is prohibited at all times.

NOT REVIEWED

4.15 Appearance of Lots. No Lot shall be used or maintained:

- a. As a dumping ground for rubbish or any other material. Trash, garbage or other waste or materials shall not be kept except in sanitary containers, which containers shall be kept in the garage or a storage box attached to the main structure on the lot. No incinerators shall be kept within the Subdivision or on any lot. Equipment for the storage or disposal of waste material shall be kept in a clean and sanitary condition and all such items shall be maintained in a neat and attractive manner.
- b. No boats, trailers, campers, recreational vehicles, vehicles in a non-operating condition, motor coaches, or fifth wheels shall be permitted to remain on any Lot or on the street adjacent to any Lot for more than a total of 14 days in any calendar year. Boats, trailers, campers, recreational vehicles, and vehicles in a non-operational condition may remain longer if they are housed in the Lot Owner's garage. No vehicle maintenance may be performed outside of the Lot Owner's garage.
- c. No outside radio antennas, television antennas, satellite disks in excess of twenty four inches (24") in diameter, or any other type of electronic device for the transmission or reception of electronic signals are allowed.
- d. No clotheslines or mailboxes are permitted.
- e. A Owner may not install and must remove any outdoor lighting and patio lights which the Board determines to be a nuisance to adjoining Owners, unsightly, or not in keeping with the aesthetics of the Subdivision.

NOT REVIEWED

NOT REVIEWED

NOT REVIEWED

NOT REVIEWED

NOT REVIEWED

4.16 Signs. No sign of any kind shall be kept or displayed to the public view (except by the Declarant or its assigns) other than name and street number signs or other than one professional sign no larger than five square feet square advertising the property for sale.

NOT REVIEWED

4.17 Drilling and Excavations. No oil well drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on a lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any lot. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted on any lot.

NOT REVIEWED

4.18 Grass and Weeds. Each Owner shall keep all grass and vegetation trimmed or cut so that the same shall remain in a neat, orderly, and attractive condition. In the event a Owner fails to maintain their lot in a neat and orderly manner, the Board and/or the ACA shall have the right, through its agents and employees, to enter upon and perform all necessary yard maintenance. The cost of any yard maintenance performed by the Board or the ACA shall be at the expense of Owner, and shall be secured by a lien against the lot which may be enforced in the same manner as provided in Article VIII, below.

NOT REVIEWED

4.20 Shrubs and Trees. No shrub or tree planting which obstructs sight lines between two feet and six feet above the roadway shall be planted or permitted to remain on any corner lot within the triangular area formed by the curb lines of such intersecting streets and a line connecting such curb line at points twenty-five feet from their intersection or, in the case of rounded corner, from the intersection of the curb lines as extended. The same sight line limitations shall apply on any lot within ten feet of the intersection of a street curb line and the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six feet above ground level.

NOT REVIEWED

4.21 Swimming Pools and Hot Tubs. Swimming pools and hot tubs shall be permitted provided (i) that the construction and maintenance of the swimming pool and/or hot tub is in compliance with all applicable health and safety codes, laws, rules, regulations and ordinances of state, county and/or municipal authorities asserting jurisdiction; and (ii) that all swimming pools and hot tubs are completely enclosed with a suitable fence of a minimum height of six (6') feet.

NOT REVIEWED

4.22 Dune Conservation Area. No activity or use may violate the covenants, conditions and restrictions of the Declaration Creating the Dune Conservation Area recorded under Clerk's file Number 2002019772 on 4-29-02, in the Official Real Property records of Nueces County, Texas.

NOT REVIEWED

4.23 Fines for Violation of any Improvement Standards. In addition to the remedies provided by law and in equity, Violation of any Improvements Standards may result in a fine to the Owner of \$500.00 a day for each day the violation continues. All fines will be assessed by the Board as provided in the Bylaws.

ARTICLE V.
Easements and Utilities

Declarant reserves a right-of-way and easement for utilities and drainage, including without limitation, electric, water, telephone, sewage, television and/or communication, internet, and data cables, optics, or wiring conduit, as are shown on the Plat or as may be designated by the ACA by appropriate instrument filed for record in Nueces County, Texas. Declarant further reserves an easement under, on and above all road and streets in the subdivision for the purpose of installing, operating and maintaining any and all improvements in connection with the utility and drainage easements. Declarant reserves the right to assign, dedicate, and/or convey any utility or drainage easements and any rights and interests therein at any time and from time to time in Declarant's sole discretion may be necessary for the development of the Subdivision. This Declaration shall never be deemed to obligate Declarant to furnish, construct or maintain or cause to be furnished, constructed or maintained any road, street, utility and/or drainage easement and/or any improvements on any of the foregoing. Within these easements, no structure, fences, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels. The easements include, without limitation, the right of ingress and egress thereon at reasonable times to such easements for construction, maintenance, repair and replacement purposes, without consent or approval of the lot Owner and without compensation or redress to the Owner. Any improvements placed in the easement area by the Owner may be removed and replaced by the Declarant or by any person or entity having any right, title or interest in the easement, including any public authority or utility company, all without liability to and at the expense of the owner of the lot. The easement area of each lot and all improvements thereon shall be maintained continuously by the Owner of the lot, except for those improvements which are owned by the owner of the easement, such as the applicable public authority or utility company. Owners shall have no cause or action against

Declarant, its successors, assigns, employees and/or agents, or any utility company, water district, cable company, or other authorized entity using any of the easements within the Subdivision either at law or in equity, for any damage caused by the installing, operating, maintaining, repairing and/or replacing the improvements within the easement. All utility connections including but not limited to telephone, electric power service, and cable service shall be underground and no owner of any lot shall erect any poles on any lot for aerial erection of power or telephone lines.

ARTICLE VI.

Re-plats

No lot within the Subdivision may be divided by the Owner into smaller lots, whether for lease, sale or rental purposes, provided however, that the Owner(s) of three (3) or more lots may re-plat them for the purpose of establishing a larger lot or lots. Any re-plat of three (3) or more lots shall not affect or be deemed to reduce the maintenance assessments provided for in Article VII. Declarant reserves the right at any time and from time to time to re-plat any or all lots which are then owned by Declarant into smaller lots if and to the extent Declarant deems such action desirable even though Declarant shall have previously sold and/or contracted to sell other lots within the Subdivision.

ARTICLE VII.

Property Owners' Association

The Association shall be formed when twenty four (24) of the lots within the Subdivision have been conveyed by warranty deed to the purchasers thereof, unless sooner formed at the discretion of the Declarant. All lot Owners, including the Declarant shall be members of the Association, and shall be entitled to one (1) vote for each lot owned. When more than one (1) person holds an interest in any lot, all such persons shall be members, but there shall be only one (1) vote permitted for each lot owned. The Association shall be a corporation organized under the Texas Non-Profit Corporation Act. The association shall have a Board of Directors (the "Board") and shall act and vote in accordance with its procedures established by this Declaration and in accordance with the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any lot. By acceptance of a deed to any lot or lots within the Subdivision, the Owner shall become bound by the terms, provisions and covenants of this Declaration, and shall be a member of the Association. The Declarant shall be a member of the Association for so long as Declarant owns any lot or lots within the Subdivision, including any lots which are subject to option contracts, and shall be entitled to one (1) vote for each lot owned.

ARTICLE VIII.

Covenant for Maintenance Assessments

8.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned by it within the subdivision, hereby covenants, and each Owner of any lot in the subdivision covenants and agrees and is deemed to covenant and agreed to pay to the Association, when formed: (1) Regular Assessments, and (2) Special Assessments as provided in the By-laws. All Regular Assessments and Special Assessments, together with interest, costs and reasonable attorney's fees, shall, to the full extent permitted by law, be a charge on the Owner's lot, and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of lot at the time when the assessment fell due.

8.2 Purpose of Assessments The Regular Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners in the Subdivision and for the improvement and maintenance of any Common Area and Common Area improvements or any property dedicated to the public within the Subdivision which is not being maintained by a public entity. Special Assessments shall be used to defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in the Common Area, including the necessary fixtures and personal property related to the Common Area; maintenance and improvement of Common Areas; or other purposes approved by the Association according to the By-laws.

8.3 Uniform Rate of Assessment Both Regular Assessments and Special Assessments must be fixed at a uniform rate for all lots and paid by the Owners on a pro-rata basis regardless of the size of the Owner(s) lots.

8.4 Effect of Non-payment of Assessments A Regular Assessment or Special Assessment by the Association is a personal obligation and a personal liability of the Owner of the lot at the time of the assessment, and is secured by a continuing lien on the Owner's lot and on the rents, insurance proceeds, condemnation and any and all other proceeds received by the Owner relating to the lot. By acquiring a Deed to a lot, the Owner hereby grants to the Association a power of sale in connection with and in enforcement of the Association's lien. The priority and the Associations foreclosure of its lien shall be as follows:

- a. The Association's lien for assessments is created by recordation of this Declaration which shall constitute record notice and perfection of the lien. No other recordation of a lien or notice of lien is required.
- b. The Board may from time to time appoint, by a majority vote, an officer, agent, trustee, or attorney for the Association to exercise the power of sale on behalf of the Association.
- c. The power of sale and foreclosure of the Association's lien shall be exercised as provided by Section 51.002 of the Texas Property Code. The debt secured by the Association's lien for delinquent assessments shall include all interest on the delinquent assessment at the highest rate permitted by law, together with costs of collection and all reasonable attorney's fees incurred as a result of its enforcement.
- d. The Association's lien shall be prior to other liens, except that the Association's lien shall be subordinate, secondary, and inferior to: (1) all valid liens for taxes or special assessments levied by the city, county, and the state, or any political subdivision or special district thereof; and (2) valid liens securing amounts due or to become due under any purchase money vendor's lien, mechanic's and materialman's construction contracts and deeds of trust, and/or home equity deed of trust filed for record prior to the date payment of such assessment for common expenses or fines become due.
- e. The Association shall have power to bid at the foreclosure sale, and to acquire, hold, lease, mortgage and convey the lot together with its improvements on behalf of Association. Any unpaid balance of the Assessment remaining after application of the foreclosure proceeds shall be deemed to be common expenses collectible on a pro-rata basis from all of the Owners, including the purchaser at the foreclosure sale.

8.5 Non-Abatement of Assessments No diminution or abatement of assessments shall be allowed or claimed for inconveniences or discomfort arising from the making of repairs or improvements within the Common Area or to any property dedicated to the public within the Subdivision which is not being maintained by a public entity, or from any action taken to comply with any law, ordinance or order of a governmental authority.

ARTICLE IX.

Maintenance

9.1 Delegation of Maintenance. The Association, acting through its Board, shall improve, maintain, repair and otherwise care for the Common Area and the Common Area Improvements and any property dedicated to the public within the Subdivision which is not being maintained by a public entity. The Owner of each lot is responsible for the maintenance, repair, and care of the Owner's lot and all improvements.

9.2 Willful or Negligent Acts. In the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, guests or invitees, the ACA, or the Association shall add the cost of such maintenance, as a Special Assessment, to the Regular Assessment of the Owner.

ARTICLE X

Right to Grant Easements and Annex Additional Properties

10.1 Adding and Removing Property Owned by Declarant. Declarant reserves as a Special Declarant Right, and shall at all times have the right, without the consent or approval of any other Owner to:

- a. the power to grant a private non-exclusive pedestrian beach access easement over and across the following:
 - i. Lot 38, Bk. 1, of La Concha Estates,
 - ii. Lot 37, Bk. 1, of La Concha Estates, and
 - iii. the 50' Beach Private Access Easement over and across Lot 40, Bk. 1, of La Concha Estates as shown on the Plat.

The non-exclusive pedestrian beach access easements will be for the benefit of the owners of Lot 1, Bk. 2, and Lot 1, Bk. 3 of La Concha Estates and the owners of La Concha Estates II. Should this Special Declarant Right be exercised it shall be in consideration of the grantees covenant to share and pay to the Association the grantee's pro-rata share of the cost of the real property taxes, insurance, and maintenance of the easement. Each of the grantees' covenant to share and pay to the Association the grantee's pro-rata share of the expense of the easements shall be secured by a lien in favor of the Association which, if foreclosed in the same manner as the Association's lien granted by the Owners for assessments, shall extinguish the grantees' easement rights.

(Special Note) The Plat shows the words "Beach Access" on Lot 37, Block 1. Those words were placed on the Plat to show the Special Declarant's Right to locate a non-exclusive private beach access easement over Lot 37, Block 1, the exact location of which was not known at the time of the Platting. Once the easement has been located one of the following options shall occur: either (a.) the Association shall release the remainder of Lot 37, Block 1 to the Declarant, or (b.) the Declarant shall convey the remainder of Lot 37, Block 1 to the Association reserving the located easement.

- b. make the Declarant's real property located adjacent to the Subdivision (proposed as La Concha Estates Phase II) subject to this Declaration. However, the Declarant makes no representation or warranty that any such adjacent properties will be annexed to this Declaration or that the development of such adjacent properties will be developed in accordance within the scheme of this Declaration.

10.2 Procedure for Granting Easements and Adding Property Owned by Declarant.

The easements and additions authorized pursuant to Article 10.1(a.) and 10.1(b.) above shall be effectuated by the recordation in the Deed Records of Nueces County, Texas, of a Supplementary Declaration of Covenants and Restrictions (the "Supplementary Declaration").

10.3 Contents of Supplementary Declaration. The Supplementary Declaration shall describe the easement granted and/or properties to be annexed to the scheme of this Declaration; shall state that it is being made pursuant to the terms of this Declaration for the purpose of granting the easement and/or annexing the property described in the Supplementary Declaration to the scheme of the Declaration and extending the jurisdiction of the Association to cover the property so

described in such Supplementary Declaration; and shall be signed only by the Declarant or the assignee of the Special Declarant's Right to grant the easement and/or add the Property. The Supplementary Declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the real property being annexed provided the additions are not inconsistent with the general scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants and agreements established by this Declaration with regard to any real property subject to the Declaration prior to the recordation of such Supplementary Declaration.

ARTICLE XI.
General Provisions

11.1 Term. This Declaration shall be binding upon all owners of such lots and all persons claiming under them for a period of twenty (20) years from the date this Declaration is filed of record in the Deed Records of Nueces County, Texas; after which time these Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument of termination in writing, executed and acknowledged by seventy-five (75%) percent of the Owners of the lots in the Subdivision is filed of record in the Deed Records of Nueces County, Texas.

11.2 Amendments. This Declaration and any or all of the conditions set out herein may be amended by an instrument of amendment meeting the following requirements:

- a. The amendment must be in writing, must be approved by seventy-five percent (75%) of all of the lot Owners, (excluding lien holders, contract purchasers, and the owners of mineral interests), and may be adopted as follows:
 1. by a written ballot that states the substance of the amendment and specifies the date by which a ballot must be received to be counted, or
 2. at a meeting of the Association if written notice of the meeting stating the purpose of the meeting is delivered to each Owner, or
 3. by door-to-door circulation of a petition by the Association or a person authorized by the Association, or
 4. by a combination of the three methods described above.
- b. The adoption of the amendment by multiple Owners of a lot must comply with the voting procedures as set forth in the by-laws, but such adoption by multiple Owners by may be reflected by the signature of a single co-owner, and
- c. Once approved, the Amendment must be filed as a dedicatory instrument in the official real property records of Nueces County, Texas.
- d. Any variance to the Improvement Standards granted to an Owner by the Association shall not constitute an Amendment to this Declaration. Variances are deemed necessary by the Declarant so as to provide Owners with a viable method of dealing with unforeseeable construction issues. Variances should only be granted on a case by case bases, and then only if they do not conflict with the overall scheme for the development of the Subdivision. Accordingly, variances as provided in Article III and Article IV shall be exempt from the 75% Owner approval requirement for Amendments to this Declaration.

11.3 Correction and/or Compliance Amendments. Notwithstanding anything in paragraph 11.2 above to the contrary the Declarant reserves and shall at all times have the right to amend this Declaration without the consent of any other person for the purpose of correcting any typographical or other error in this Declaration. The Board may amend this Declaration for the

limited purpose of complying with United States Department of Housing and Urban Development or United States Department of Veterans Affairs requirements for subdivision property to qualify for insured or guaranteed mortgage loan if:

- a. The Amendment indicates that it is adopted under authority of this paragraph of the Declaration by specifically referencing this paragraph,
- b. The Amendment must be signed by a majority of the Board members, and
- c. Once approved, the Amendment must be filed as a dedicatory instrument in the official real property records of Nueces County, Texas.

11.4 Severability. In the event that any of the provisions of this Declaration conflict with any other provisions hereof and/or with the applicable Plat, the more restrictive provisions shall govern. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been imposed and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses and phrases shall become or be illegal, null or void.

11.5 Declarant. The term "Declarant" shall mean the above named Declarant, its successors and assigns, and shall include any person or entity to which Declarant may assign and/or delegate its rights and privileges, duties and obligations hereunder, which rights and privileges, duties and obligations are and shall be assignable. In this connection, Declarant shall have the right but not the obligation to assign its rights and privileges, duties and obligations, in whole or in part, to any person or the Association. Declarant shall be relieved of any and all responsibility under this Declaration if and to the extent Declarant shall make such assignments.

11.6 Enforcement. If any Owner of any lot shall violate or attempt to violate this Declaration or any of the conditions or covenants herein, it shall be lawful for Declarant, the Association, the ACA, or any Owner to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate this Declaration or any such conditions or covenants and to prevent such violation or threat of violation and/or to recover damages for such violation or threat of violation, including reasonable attorney's fees and in general to pursue and seek such other remedies and/or relief as may be permitted at law and/or in equity, including, without limitation, specific performance. Without limitation, in order to enhance and protect the value of the lots, the right to prosecute any proceeding at law or in equity against any person or persons violating or attempting to violate any conditions either to prevent such violations or to recover damages or other dues for each violation is also expressly reserved to Declarant; however, this Section shall never be deemed to obligate Declarant to threaten or prosecute any proceeding in law or equity or otherwise enforce this Declaration or the conditions.