

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR BEACHSIDE VILLAGE**  
**A SUBDIVISION IN GALVESTON COUNTY, TEXAS**

THE STATE OF TEXAS                   §  
   §  
 COUNTY OF GALVESTON               §

This Declaration ("Declaration"), made on the date hereinafter set forth, by **KAHALA DEVELOPMENT, LLC, a Texas Limited Liability Company**, hereinafter collectively referred to as "Declarant".

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of that certain property known as **BEACHSIDE VILLAGE**, a subdivision in Galveston County, Texas, according to the map or plat thereof recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Map Records of Galveston County, Texas (hereinafter sometimes called the "Property" or the "Subdivision"); and

**WHEREAS**, it is the desire of Declarant to place certain restrictions, covenants and conditions, stipulations and reservations upon and against the Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in the Subdivision:

**NOW, THEREFORE**, Declarant (joined herein by the lienholder upon the Property) hereby adopts, establishes and imposes upon the Property, and declares the following reservations, easements, restrictions, covenants, pattern book, and conditions (sometimes referred to herein collectively as the "Covenants") applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, which Covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property, or any part thereof, and shall inure to the benefit of each owner thereof.

**ARTICLE I.**

**Definitions**

**Section 1.** "Association" shall mean and refer to the homeowner association whose membership is composed of all of the owners of lots within the Subdivision, and its successors and assigns, as described in Article IV of this Declaration.

**Section 2.** "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those who have such interest merely as security for the performance of an obligation. For purposes of membership in the Association, each lot shall only have one Owner, and if multiple parties own a Lot they shall designate the "Owner" for purposes hereof.

**Section 3.** "Property" shall mean and refer to the Property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 4.** "Subdivision Plat" shall mean and refer to the map or plat of the Property, recorded in Volume \_\_\_\_, Page \_\_\_\_ of the Map Records of Galveston County, Texas, and any recorded replat thereof.

**Section 5.** "Lot" and/or "Lots" shall mean and refer to the Lots shown upon the Subdivision Plat (with the exception of the Common Properties).

**Section 6.** "Common Property" shall mean and refer to those areas of land within the Property as are now shown and identified on the Subdivision Plat as a park, greenbelt, public dune walkovers, open space, open space (beach access), landscape reserves and subdivision entrances and other subdivision amenities not shown or identified on the Subdivision plat such as a swimming pool, wedding chapel, and playground equipment, which are to be maintained and regulated by the Association, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of grants or dedications by Declarant or Declarant's successors in title. References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration and all Supplemental Declarations.

**Section 7.** "Town Architect" shall be a licensed architect appointed by Declarant or the Board of Directors of the Association to perform the functions set forth in Article VII hereof.

**Section 8.** "Declarant" shall mean and refer to KAHALA DEVELOPMENT, LLC, its successors, and assigns.

**Section 9.** "Board of Directors" shall mean and refer to the Board of Directors of the Association.

## ARTICLE II.

### Reservations, Exceptions and Dedications

**Section 1. Existing Easements.** The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Subdivision Plat further establishes certain dedications, limitations, reservations, certain minimum setback lines, and restrictions applicable to the Property. All (i) dedications, limitations, restrictions, minimum setback lines, and reservations shown on the Subdivision Plat and (ii) grants and dedications of easements and related rights heretofore made by Declarant and/or Declarant's predecessors in title affecting the Property and currently of record in the Official Records of Galveston County, Texas and enforceable against the Property or are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property, whether specifically referred to therein or not.

**Section 2. Utility Easements and Rights-of-Way.** Declarant reserves the easements and rights-of-way as shown on the Subdivision Plat (collectively called the "Easements" and the portion of the Property designated on the Subdivision Plat for Easements being hereinafter sometimes called the "Easement Property" for the purpose of constructing, maintaining and

repairing a system or systems of electric lighting, electric power, telegraph, cable television, and telephone line or lines, water lines, sewers or any other utility Declarant sees fit to install in, across and/or under the Easement Property.

**Section 3. Changes and Additions.** Declarant reserves the right to make changes in and additions to the Easements for the purpose of most efficiently and economically installing the improvements and utilities within the Easement Property.

**Section 4. Easements and Appurtenances.** It is expressly agreed and understood that the title conveyed by Declarant to any Lot or parcel of land within the Property by contract, deed or other conveyance shall be subject to (a) the easements described in this Declaration for roadways or drainage, water, sewer, storm sewer, electric light, electric power, telegraph, cable television, telephone or other utility purposes and such conveyance shall not convey any interest in pipes, lines, poles or conduits, or in any utility facility or appurtenances thereto, constructed by or under Declarant or any easement owner, or their agents through, along or upon the Easement Property, or any part thereof, to serve the Property, and (b) the right of Declarant, its successors and assigns, to maintain, repair, sell or lease such appurtenances (subject to the provisions of this Declaration) to any municipality, or other governmental agency or to any public service corporation or to any other party (and such right is hereby expressly reserved).

**Section 5. Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, water, sewer, telephones, electricity, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, across and under the Easement Property and within any other public utility easements from time to time created, and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this Section 5 of Article II, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Property until approved by Declarant. The utility companies furnishing service shall have the right to remove all trees situated within the Easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on the portions of the Property abutting such Easements. Neither Declarant nor any utility company using the Easements herein referred to, shall be liable for any damages done by them or their assigns, their agents, employees or servants, to fences, shrubbery, trees or flowers or other property situated on the land covered by said Easements. With the exception of the utility poles with transformers located upon them, all utility systems shall be located underground.

**Section 6. Emergency and Service Vehicles.** An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, and other service vehicles to enter upon the Property (but not within buildings) in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Property (but not within buildings) to render any service.

**Section 7. Underground Electric System.** An underground electric distribution system will be installed in the entire Subdivision, herein sometimes called the Underground Residential Subdivision, which underground service area embraces all of the Lots which are platted in the Subdivision. The Owner of each Lot containing a single dwelling unit, shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property lines of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the Subdivision Plat or by separate recorded instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various Lot Owners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various Lot Owners to permit installation, repair and maintenance of each Lot Owner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit, shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 240/120 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Underground Residential Subdivision is being developed for residential dwelling units, including homes, and if permitted by the restrictions applicable to such subdivision, townhouses, duplexes and apartment structures, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent and all of which multiple dwelling unit structures are wired so as to provide for separate metering to each dwelling unit. Should the plans of the Declarant or the Lot Owners in the Underground Residential Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless Declarant has paid to the Company an amount representing the excess in cost, for the entire Underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision.

No provision of this Section 7 of Article II (the text of which is prescribed by the electric company) shall in any manner operate or be construed to permit the construction on any Lot of

any type of residential structure other than a single family residence as provided in Section 1, of Article XI.

**Section 8. Surface Areas.** The surface of Easement Property for underground utility services may be used for fencing and planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using any portion of the Easement Property shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such Easement Property.

### ARTICLE III.

#### Property Subject to this Declaration

**Section 1. Description.** The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration consists of all of the Property, according to the Subdivision Plat (or any subsequently recorded plat thereof), which real property is sometimes hereinafter referred to as the "Existing Property".

**Section 2. Mineral Exception.** There is hereby excepted from the Property and Declarant will hereafter except from all its sales and conveyances of the Property, or any part thereof, including the Lots and Common Properties, all oil, gas, and other minerals, in, on, and under the Properties; but each such reservation shall be subject to the provision and requirements of Article XIII of this Declaration.

**Section 3. Additions to Existing Property.** Additional lands may become subject to the scheme of this Declaration in the following manner:

(a) **Additions by Declarant.** The Declarant, and its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of development ("Additional Property") in its sole discretion. Any additions of Additional Property authorized under this and the succeeding subsection of this Declaration shall be made by filing of record in the Official Records of Galveston County, Texas, an amendment to this Declaration with respect to the Additional Property which shall extend the scheme of the Covenants of this Declaration to the Additional Property. Any such amendment to this Declaration must impose an annual maintenance charge assessment on the Additional Property, on a uniform, per lot basis, substantially equivalent to the maintenance charge and assessment imposed by this Declaration, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the Additional Property.

(b) **Mergers.** Upon a merger of consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the other association as

one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the Covenants established by this Declaration or any amendment thereto.

#### **ARTICLE IV.**

##### **The Association**

**Section 1. Organization.** The Declarant will cause the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas by September 1, 2003.

**Section 2. Purpose.** The purpose of the Association in general is to provide for and promote the health, safety, and welfare of the members ("Members" or "Owners"), to collect the annual maintenance charges and to administer the Maintenance Fund (as defined herein), to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Property and such other purposes as are stated in the Articles of Incorporation and By-Laws consistent with the provisions of this Declaration and all amendments thereto.

**Section 3. Directors.** The Association shall act through a three (3) member Board of Directors, which shall manage the affairs of the Association. The initial Directors of the Association will be selected by Declarant by September 1, 2003. Each initial Director shall serve for a term of one (1) year from date of appointment, and thereafter, until his successor is duly elected and qualified. Upon the expiration of the term of the initial Directors, the Members shall elect a Board of Directors as provided for in the By-Laws. Any vacancy, from whatever cause, occurring in the Board of Directors during the initial one (1) year term shall be filled by appointment made by the remaining Director or Directors. The person appointed by the remaining Director or Directors to fill such vacancy shall serve for the remainder of the initial one (1) year term and until his successor is duly elected and qualified. The Directors shall have the power to select one or more advisory directors from the residents of the Subdivision to serve for such periods of time as the Board of Directors shall deem appropriate, for the purpose of providing advice and counsel to the Board of Directors, provided that such advisory directors shall have no right to act on behalf of the Association.

**Section 4. Members.** Each Owner, whether one or more persons or entitles, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease, but there shall only be one (1) vote per Lot. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

**Section 5. Title to Common Property.** The Declarant may retain the legal title to the Common Property until such time as: (i) Declarant no longer owns any portion of the Property; or (ii) in the sole opinion of Declarant, the Association is able to operate and maintain the same, whereupon title to the Common Property shall be conveyed to the Association. Until title to such Common Property has been conveyed to the Association by Declarant, Declarant shall be

entitled to exercise all rights and privileges relating to such Common Property granted to the Association in this Declaration and all amendments thereto.

## ARTICLE V.

### Property Rights in the Common Properties and Common Facilities

**Section 1. Members' Easements of Enjoyment.** Subject to the provisions of Section 2 of this Article V, every Member shall have a common right and easement of enjoyment in and to the Common Property, and such right and easement shall be appurtenant to and shall pass with the title to each Lot.

**Section 2. Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in its discretion, to make, publish, and enforce reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Property by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Property or any part thereof at the same time; and
- (b) The right of the Association to grant or dedicate easements in, on, under or above such Common Property or any part thereof to any public or governmental agency or authority or to any utility facility or equipment situated in any part of such Common Property and owned by the Association to any public or political authority or agency or to any utility company rendering or to render service to the Subdivision or any part thereof; and
- (c) The right of the Association to enter management and/or operating contracts or agreements relative to the maintenance and operation of such Common Property in such instances and on such terms as its Board of Directors may deem appropriate; and
- (d) The right of the Association to suspend the voting rights of a Member or his right to use any recreational Common Property during the period he is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against his Lot; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in this Declaration and any amendment thereto or in its By-Laws or at law or in equity on account of any such default or infraction; and
- (e) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II and Article VI hereof, in this Declaration and in all amendments thereto;
- (f) The restrictions as to use of the Common Property provided for in Article IX hereof.
- (g) Any contract entered into by the Association with Declarant or any affiliate of Declarant shall be at market terms no less favorable to the Association than would be available from a third party. No contract with Declarant or any affiliate of Declarant shall be for a term in excess of one (1) year.

**Section 3. Delegation of Use.** Any member may delegate his right of use and enjoyment of the Common Property in the Subdivision, together with all easement rights granted to Members in this Declaration and all amendments thereto, to the members of his family, his tenants, guests (subject to Section 2 (a) above), or contract purchasers who reside on his Lot. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

## ARTICLE VI.

### Annual Assessments

**Section 1. The Maintenance Fund.** All funds collected by the Association from the common area maintenance charges provided for in this Article VI, together with all funds collected by the Association from the regular annual maintenance charges imposed on the Lots in the Subdivision by this Declaration and all amendments thereto, shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members for the following purposes, to-wit: to promote the health, safety, recreation, and welfare of the Members, including, without limitation, the installation, construction, erection, maintenance and relocation of improvements related to the enhancement and beautification of the Common Property, and any other areas provided by this Declaration or any amendment thereto to be developed or maintained by the Association, such as shrubbery, trees, walkways and street lights, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1 of Article VI preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

**Section 2. Covenant for Assessments.** Subject to the provisions set forth below in Sections 3 and 4 of this Article VI relating to the rate at which the maintenance charge and assessments imposed herein shall be paid on unimproved Lots, each and every Lot is hereby severally subjected to and impressed with a regular annual maintenance charge or assessment in the amount of Six Hundred and No/100 Dollars (\$600.00) per annum per Lot (herein sometimes referred to as the "Maintenance Charge") which shall run with the land, subject to increase and decrease and payable as provided in Section 5 below. Notwithstanding anything to the contrary contained herein, owners of vacant or unimproved Lots shall be charged and shall pay an additional mowing fee of Two Hundred Twenty and No/100 Dollars (\$220.00) per annum for each year that their Lot is unimproved.

In addition to the Maintenance Charge and mowing fee set forth above, each and every Lot is hereby severally subjected to and impressed with a "Beach and Dune Improvement, Maintenance and Management" charge or assessment in the amount of Five Hundred and No/100 Dollars (\$500.00) per year if a Lot is a "beachfront" Lot, and Two Hundred and No/100



Dollars (\$200.00) per year if it is not "beachfront" for the purpose of creating a "Beach and Dune Improvement, Maintenance, and Management Fund" which will be used to provide funds for maintenance of any geotube installed to protect the Property or Subdivision from storm surge and wave action and to provide matching funds to secure government grants for erosion response and beach maintenance projects.

Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership, thereof, as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such assessment accrued, but no Member shall be personally liable for the payment of any assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charge or assessment by waiver of the use or enjoyment of the Common Properties, or any part thereof, or by abandonment of his Lot or his interest therein.

With respect to those lots located in Section 2 of the Property, neither Declarant nor any other lot owner shall have the obligation to pay maintenance fees until such time as the City of Galveston accepts dedication of the streets and utilities in such section.

**Section 3. The Annual Maintenance Charge.** The annual assessments provided for herein shall commence on July 1, 2004. The first annual assessment shall be payable on the day fixed for commencement. The assessments for each calendar year, including the first year, shall be due and payable to the Association in advance, in quarter-annual installments, on the 1<sup>st</sup> day of January, April, July, and October of each year. Provided, however, that, upon the purchase of his Lot (as evidenced by the date of his contract of sale or deed, or his occupancy, whichever is earlier), each Member shall be obligated to pay to the Association a pro rata part of the applicable percentage (as determined pursuant to the terms hereof) of the regular annual maintenance charge assessed on such Lot, which shall bear the same ratio to the applicable percentage of the full annual maintenance charge as the number of full calendar months remaining in the current quarter year of the year of purchase bears to three (3), and which shall be payable in full upon such purchase.

The Board of Directors may decrease or increase the amount of the regular annual maintenance charge or assessment provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing or decreasing the annual maintenance charge assessment shall become effective prior to the expiration of ninety (90) days from the date of its adoption, and the Owner of each Lot shall, within thirty (30) days from such effective date, pay to the Association or be credited by the Association for the proportionate part of such increase or decrease for the balance of the year in which such resolution is adopted;

provided, however, that no resolution of the Board of Directors which fixes the amount of the regular annual maintenance charge or assessment at less than eighty-five percent (85%) of the amount assessed in the preceding calendar year, or in excess of one hundred fifteen percent (115%) of the amount assessed in the preceding calendar year, shall become effective unless and until such resolution is ratified by the written assent of the Members of the Association who in the aggregate then own at least seventy-five percent (75%) of the votes of the Members of the Association who are present and voting in person or by proxy at a special meeting of the membership of the Association called for his purpose and at which a quorum is present. The written assent or the vote of the Member must be given prior to the effective date of the resolution of the Board of Directors. No increase or decrease in the annual maintenance charge or assessment shall take effect retroactively.

If any resolution of the Board of Directors which requires ratification by the assent of the Members of the Association as above provided shall fail to receive such assent, then the amount of the regular annual maintenance charge or assessment last in effect shall continue in effect until duly changed in accordance with the above provisions.

**Section 4. Quorum for any Action Authorized Under Section 3.** The Quorum required for any action authorized by Section 3 of this Article VI hereof shall be as follows:

At the first meeting called, as provided in Section 5 of this Article VI hereof, the presence at the meeting of Members, or of proxies, entitled to cast twenty percent (20%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any such subsequent meeting shall be one-half (1/2) the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

**Section 5. Special assessment for Capital Investments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only 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 Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall fix the date of commencement and the amount of the assessment against each Lot or Owner for each assessment period at least thirty (30) days in advance for such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association (or its agent) shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 7. Liens to Secure Assessments.** The regular annual maintenance charges or assessments, as hereinabove provided for, shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements thereon, for the benefit of the Association and all Members. The lien hereby created shall be subordinate and inferior to:

(a) All liens for taxes or special assessments levied by the City, County, and State governments, or any political subdivision or special district thereof, and

(b) all liens securing amounts due or to become due under any term contract of sale, or any mortgage, vendor's lien, or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable, and

(c) all liens, including, but not limited to, vendor's lien, deeds of trust, and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Lot and the improvements thereon, if improved, when the same is purchased, or for any part of the cost of construction, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot.

Any foreclosures of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

**Section 8. Effect of Non-Payment of Assessment.** If any such annual charge or assessment is not paid within thirty (30) days from the date thereof, the same shall bear interest from the due date until paid at the highest interest rate allowed under the laws of the State of Texas, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount, but not less than ten (10%) per cent of the amount owing, as attorney's fees. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against his Lot. All such actions may be instituted and brought in the name of the Association and may be maintained and prosecuted by the Association in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

**Section 9. Collection and Enforcement.** Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

**ARTICLE VII.****Architectural Control**

**Section 1. Approval of Plans.** No building, structure, dune walkover, fence, wall, or Other improvements shall be commenced, erected, constructed, placed or maintained upon a Lot, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications therefore shall have been submitted to and approved in writing as to compliance with minimum structural and mechanical standards, location and situation on the Lot, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building with respect to the Lot lines), and full compliance with the Beachside Village Pattern Book by the Town Architect. The Town Architect may reasonably require structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, and location of the proposed improvements or alterations thereto which will insure compliance of any proposed improvement or alteration with the Beachside Village Pattern Book. Without limitation of the powers herein granted, the Town Architect shall have the right to specify requirements for each Lot as follows: minimum setbacks; the location, height, and extent of fences, walls, or other screening devices; color schemes; and the orientation of structures with respect to garage access and major entry and frontage. The Town Architect also shall have full power and authority to reject any plans and specifications that do not comply with the Beachside Village Pattern Book and the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in the sole discretion of the Town Architect, with the design or overall character and aesthetics of the Property. The Town Architect may require a reasonable fee for performing the functions herein prescribed, and may disapprove plans, specifications, designs and plot plans for failure to pay such fee. The initial Town Architect shall be appointed by the Declarant.

**Section 2. Replacement.** In the event of death or resignation of the Town Architect, the Board of Directors of the Association shall, within thirty (30) days of the death or resignation, appoint a successor Town Architect, and until such successor Town Architect has been so appointed, no one shall have authority to approve or disapprove plans, specifications and plot plans submitted.

**Section 3. Changes to the Beachside Village Pattern Book.** Upon the recommendation of the Town Architect and the approval of a majority of the Board of Directors, the Beachside Village Pattern Book may be amended.

**Section 4. Variances.** Where circumstances, such as topography, location of property lines, location of trees, or other matters require, the Town Architect may allow reasonable variances as to any requirement of the Beachside Village Pattern Book on such terms and conditions as he or she shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property.

## ARTICLE VIII.

### Other Easements

**Section 1.** The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer and water, electricity, telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, or telephone and cable television lines or drainage facilities are installed within the Property, which connection lines or facilities or any portion thereof, lie in or upon Lots owned by the Association or any entity other than the Owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his Lot.

**Section 2.** Easements over the Lots and Common Property for the installation and maintenance of electric, telephone, cable television, water, and sanitary sewer lines and drainage facilities within the Easement Property are hereby reserved by Declarant, together with the right to grant and transfer same.

**Section 3. Public Streets.** All Lots within the Subdivision shall abut and have access to a public street. Public street rights-of-way are shown on the Subdivision Plat.

## ARTICLE IX.

### Utility Bills, Taxes and Insurance

**Section 1. Obligations of the Owners.**

(a) Each Owner shall have his separate electric, gas (if and when available) and water meter and shall directly pay at his own cost and expense for all electricity, gas (if and when available), water, sanitary sewer service, telephone service, cable television and other utilities used or consumed by him on his Lot.

(b) Each Owner shall directly render for taxation his own Lot and improvements thereon, and shall at his own expense and cost directly pay all taxes levied or assessed against or upon his Lot and his improvements and property thereon.

(c) Each Owner shall be responsible at his own cost and expense for his own property insurance on the building and contents of his own residence, and his additions and improvements thereto, including decorations, furnishings and personal property therein; and also for his personal liability not covered by liability insurance for all Owners which may be obtained by the Association as part of the common expense in connection with the Common Property.

**Section 2. Obligation of the Association.**

(a) The Association shall pay as a common expense of all Owners, for all water, electricity and other utilities used in connection with the enjoyment and operation of the Common Property or any part thereof. The Association shall maintain the property shown on the Subdivision Plat as parks, greenbelts, public dune walkovers, open space, open space (beach access), landscape reserves, subdivision entrances, and other subdivision amenities not shown or identified on the Subdivision Plat such as a swimming pool, wedding chapel, and playground equipment, and shall pay the cost of such maintenance as a common expense of all Owners.

(b) The Association shall render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon the Common Property and the improvements and the property appertaining thereto.

(c) The Association shall have authority to obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities in the Common Property and the contents thereof and the Association against the risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Property.

(d) All costs, charges and premiums for all utility bills, taxes, and any insurance to be paid by the Association as hereinabove provided shall be paid out of the Maintenance Fund as a common expense of all Owners and shall be a part of the maintenance assessments.

**ARTICLE X.**

**Maintenance and Repairs**

**Section 1. By the Owners.** It shall be the duty, responsibility and the obligation of each Owner at his own cost and expense to care for, maintain and repair the exterior and interior of his residence house and improvements on his Lot and the fixtures, appliances, equipment and other appurtenances thereto and also including the private, dune walkover and the private driveway appurtenant to his residence house and situated on his Lot. The Association shall have no duty or obligation to any Owner in this regard.

**Section 2. By the Association.** The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Property and all parts thereof, including but not limited to, any entrance structure, public dune walkovers and any facilities owned by the Association, except that it shall be the obligation of each Owner, and not the obligation of the Association, to pay for the cost of repair and maintenance of private driveways, sidewalks, and fence or fences which are located upon his Lot.

**ARTICLE XI.****Restrictions of Use**

**Section 1. Single Family Residential Construction.** No building shall be erected, altered or permitted to remain on any single Lot, other than one detached single-family residential dwelling. No such residence shall be constructed on less than the equivalent of one (1) full Lot as defined on the Subdivision Plat.

**Section 2. Commercial Use.** No part of the Property, except that portion of the Property shown on the Plat as a Commercial Reserve, shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non residential purposes.

**Section 3. Number of Dwellings and Driveway.** No more than one (1) dwelling shall be built on any one (1) Lot. Each Lot must be served by a private driveway.

**Section 4. Prohibition of Offensive Activities.** No noxious or offensive trade or activity shall be conducted, whether for profit or not, on any Lot. No activity which may become an annoyance or nuisance to the other Owners, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance, or which will degrade property values, or distract from the aesthetic beauty of the Subdivision, shall be conducted.

**Section 5. Temporary Structures.** No structures of a temporary character, trailer, tent, shower, garage, barn, construction trailer, or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any Lot at any time as a residence or other use, either temporarily or permanently except such buildings or structures as may be hereafter permitted.

**Section 6. Animal Husbandry.** Dogs, cats, or usual and ordinary household pets (excluding horses or livestock) may be kept in any dwelling unit upon a Lot, (not to exceed a total of two (2) pets, provided they are not kept, bred, or maintained for any commercial purpose.) Notwithstanding the foregoing, no animals or fowl may be kept on the Property which results in any annoyance or are obnoxious to residents' of the Subdivision.

**Section 7. Parking or Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment.** No motorcycle, moped, boat, boat and trailer, trailer, house trailer, mobile home, recreational vehicle, camper or any other similar transportation vehicle or device shall be parked on any roadway overnight. No such vehicle shall be allowed to be stored within any lot unless within a garage and shielded from view.

No mobile home, trailer, camper, boat, truck larger than a three-quarter (3/4) ton pickup, or similar equipment shall be parked or stored permanently or semi-permanently on any street, right-of-way or on driveways. Permanent or semi-permanent storage of such vehicles or items must be screened from public view or kept within a garage. The Board of Directors of the Association may adopt rules for the regulation of the admission and parking of vehicles within the Common Property, including the assessment of charges to Owners who violate, or whose invitees violate, such rules. Under no circumstances may repairs to any vehicles or equipment be made on the Property except when screened from public view within a garage.

**Section 8. Visual Screening on Lots.** The drying of clothes in public view is prohibited. Similarly, all yard equipment, woodpiles or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, as to conceal them from view from neighboring Lots.

**Section 9. Lot Maintenance.** All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupants of all improved Lots shall keep all weeds and grass thereon cut and shall in no event use any Lot for storage of material and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish except by use of an incinerator approved by Declarant, and then only during such condition as is permitted by law. The Association shall be responsible for mowing all unimproved Lots. The expense of such mowing shall be paid by the Association from the \$220.00 fee paid by the Owner of each unimproved Lot pursuant to Article VI, Section 2. In the event of default on the part of the Owner or occupant of any improved Lot in observing the above requirements, or any of them, such default continuing for ten (10) days after the mailing of written notice thereof to the Owner at the address for the Owner shown on the Association's records, the Declarant, the Association, or its assignee or designee, may without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot, cut, or cause to be removed, such grass, weeds, garbage, trash and rubbish, or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant, as the case may be, for said services, and the Owner or occupant agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's lien is herein and hereby retained against the Property in favor of Declarant or their assignee but inferior to purchase money liens or mortgages. Such vendor's lien shall be applicable and effective whether mentioned specifically in each deed or conveyance by Declarant or not.

**Section 10. Removal of Dirt and Trees.** The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such Lot. No trees shall be cut except to provide room for construction of improvements or to remove dead or unsightly trees.

**Section 11. Right of Inspection.** During reasonable hours and after reasonable notice, the Association shall have the right to enter upon and inspect the Property or any portion thereof and the exterior portions of improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reasons thereof.

**Section 12. New Construction.** All buildings or structures on the Property shall be constructed of new or like new materials. All buildings or structures must be completed within one (1) year of start of construction or such reasonable time thereafter, subject to force majeure. The Contractor shall furnish trash containers and, at all times, keep the premises free from accumulation of trash and scrap caused by construction. Construction activities shall not take



place before noon on Saturdays, Sundays and Holidays. Radios and domestic animals are not allowed on construction sites.

**Section 13. Rental of Dwellings.** Dwellings may be rented, subject only to rules and regulations established by the Homeowners Association. Rental of such dwellings will only be allowed if managed by a professional rental agency.

## ARTICLE XII.

### General Provisions

**Section 1. Enforcement.** The Association or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions shall in no wise affect any other provisions, which shall remain in full force and effect.

**Section 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. This Declaration may be amended during the first thirty (30) year period by an instrument signed by no less than seventy-five percent (75%) of the Owners, and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Owners. Any amendment must be recorded to be effective.

**Section 4. Amendments by Declarant.** The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration, and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

**Section 5. Books and Records.** The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any member or members will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association where copies may be purchased at reasonable cost.

## ARTICLE XIII.

### Reservation of Minerals

There is hereby excepted from the land encompassed by the boundaries of this Subdivision, and Declarant will hereafter except from all its sales and conveyances of said land, or any part thereof, including the Common Property, all oil, gas and other minerals, provided that

Declarant hereby retains and reserves and by each conveyance will retain and reserve the right to pool the land with other lands; however, Declarant hereby waives the right to use the surface of the Property, or any part thereof, for development of oil, gas and other minerals. Such exceptions and such retained rights and reservations shall inure to the benefit of Declarant and their heirs, executors, administrators, successors, and assigns and this waiver of surface rights by Declarant shall be effective even if Declarant fails to so state in any instrument or deed conveying an interest in the Property.

IN WITNESS WHEREOF, the undersigned, being the Declarant and the Lienholder, has hereunto set his/her/its hand this 22<sup>ND</sup> day of August, 2003.



KAHALA DEVELOPMENT, LLC

Bruce Reinhart

By: BRUCE REINHART  
Title: Declarant

Debbie Reinhart

By: DEBBIE REINHART  
Title: Declarant

THE FROST NATIONAL BANK

Albert P. Shannon

By: ALBERT P. SHANNON  
Title: Market President

THE STATE OF TEXAS

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§  
§

COUNTY OF GALVESTON

Before me, the undersigned authority, on this day personally appeared BRUCE REINHART and DEBBIE REINHART, Managers of KAHALA DEVELOPMENT, LLC, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 22<sup>ND</sup> day of August, 2003.



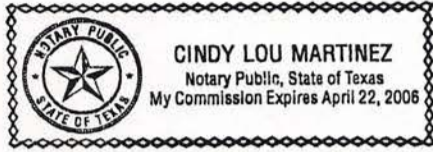
Harriet A. Dues  
Notary Public in and for the State of Texas

THE STATE OF TEXAS

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COUNTY OF GALVESTON

This instrument was acknowledged before me on this the 22 day of August, 2003, by ALBERT P. SHANNON, Market President of The Frost National Bank, a National Banking Association, on behalf of said Association.



*Cindy Lou Martinez*  
Notary Public in and for the State of Texas

Bruce Reinhart  
3312 Thousand Oaks Cove  
Austin, TX 78746

PAID

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Daigle*

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Mary Ann Daigle, COUNTY CLERK  
GALVESTON, TEXAS