

File No. 264992  
County Clerk, Aransas County, Texas

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LA BUENA VIDA**

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LA BUENA VIDA

THE STATE OF TEXAS           §  
  §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF ARANSAS           §

That this Declaration of Covenants, Conditions and Restrictions for La Buena Vida (this "**Declaration**" or these "**Restrictions**") is made on the date hereinafter set forth by LBV Development LLC, a Texas limited liability company ("**Declarant**").

RECITALS:

A.     Property. Declarant is the owner of the 95.141 acre tract described by metes and bounds on Exhibit A, which consists of (a) the 64.49 acre tract describe on the Plat which is recorded at Vol. 5, Page 29, Map Records of Aransas County, Texas ("**Property**") and (b) the property remaining after excluding said Property and the 1.134 acres described on Exhibit B from said 95.141 acre tract ("**Phase II Property**").

B.     Uniform Plan. Declarant desires to create and carry out a uniform plan for the improvement, development and use of the Property as a single-family waterfront residential community for the benefit of the present and future owners of the Lots.

C.     Purposes. The purpose of this Declaration is to preserve the natural beauty of the Property; to protect against the erection of poorly designed, disproportional or inappropriate structures and the use of unsuitable materials; to encourage and secure the erection of attractive improvements which are harmonious with one another and compatible with the waterfront uses of the Property; and to enhance the quality and economic value of the Property and each Lot therein.

D.     Property Owners' Association. LBV Property Owners' Association, Inc. (the "**Association**") has been incorporated under the laws of the State of Texas as a nonprofit corporation, and has been granted powers of administering and enforcing the covenants, restrictions, charges, and liens and disbursing the assessments and charges created in this Declaration.

E.     Conveyances. Declarant desires to convey the Lots to Persons who will build homes on their Lots, and to convey the Common Areas to the Association, all subject to the protective covenants, conditions, restrictions, lines and charges set forth below.

F.     Restrictions to Effectuate Plan and Purposes for the Property. In order to carry out its uniform plan for the improvement, development and sale of the Property, Declarant hereby adopts and establishes the following declarations, reservations, restrictions, covenants, conditions, liens, charges and easements to apply uniformly to the use, improvement, occupancy and conveyance of all of the Property, including all Lots and Common Areas therein.

NOW, THEREFORE, Declarant hereby declares: (i) that all of the Property shall be held, platted, conveyed, and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the

benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out or referred to in said contract or deed.

## ARTICLE 1.

### DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

**1.1 Architectural Committee.** "*Architectural Committee*" shall mean the committee created pursuant to these Restrictions to review and approve plans for the construction of all Improvements to and upon the Property.

**1.2 Architectural Committee Guidelines.** "*Architectural Committee Guidelines*" shall mean the rules and regulations adopted by the Architectural Committee, as the same are amended from time to time.

**1.3 Articles.** "*Articles*" shall mean the Articles of Incorporation of LBV Property Owners' Association, Inc., which have been or will be filed in the office of the Secretary of State of the State of Texas, as the same are from time to time amended.

**1.4 Assessment.** "*Assessment*" or "*Assessments*" shall mean annual and special assessments levied by the Association under Article 6 and, where the context so indicates, the Marina Assessments under Section 4.4(I), of this Declaration.

**1.5 Association.** "*Association*" shall mean and refer to LBV Property Owners' Association, Inc., a Texas non-profit corporation.

**1.6 Association Rules.** "*Association Rules*" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

**1.7 Beach.** "*Beach*" shall mean that portion of the Common Area between the Lot bulkhead line and the channel in the Lake adjacent to Lots 26 through 45 of the Property, as identified on the Plat, together with all Improvements located thereon.

**1.8 Board.** "*Board*" shall mean the Board of Directors of the Association.

**1.9 Bylaws.** "*Bylaws*" shall mean the Bylaws of the Association which may be adopted by the Board, as the same are from time to time amended.

**1.10 Channel(s).** "*Channel*" and "*Channels*" shall mean those waterways (which are intended to be 6.0' in depth) designated for ingress and egress from Lots to the Inter Coastal Canal for boats, located along the shoreline of the Lake, adjacent to Lots 10 through 16, and adjacent to Lots 17 through 25, as indicated on the Plat.

**1.11 Common Areas.** "*Common Areas*" or "*Association Property*" shall mean the Entrance, Roads, Easements, Lake, Channels, Wetlands (except wetlands on Lot 26), Beach, Marina, Perimeter Fence and other properties designated as Common Areas by Declarant and conveyed (whether in fee simple or by easement) to the Association to be owned, held and/or maintained by the Association

for the common benefit of the Owners. Common Areas may be designated by Declarant and dedicated or otherwise conveyed to the Association from time to time and at any time.

**1.12 Declarant.** "**Declarant**" shall mean LBV Development LLC, a Texas limited liability company, and its successors and assigns; provided that any assignment of the rights of LBV Development LLC as Declarant must be expressly set forth in writing and filed of record in the Official Records of Aransas County, Texas. The mere conveyance of a portion of the Property without such specific written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

**1.13 Declaration.** "**Declaration**" shall mean this instrument, as it may be amended from time to time.

**1.14 Easements.** "**Easements**" shall mean that portion of the Property running generally adjacent to the Roads across the Lots and portions of the Common Area, as indicated on the Plat, which shall be used for the installation of electrical, water, gas, telephone and other utility lines.

**1.15 Entrance.** "**Entrance**" shall mean that portion of the Common Area adjacent to State Highway 35, as so identified on the Plat.

**1.16 Improvement.** "**Improvement**" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to, houses, buildings, boat docks, boat lifts, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks and other facilities used in connection with or placed on the Property.

**1.17 Lake.** "**Lake**" shall mean that body of water designated as a Lake on the Plat.

**1.18 Lot.** "**Lot**" or "**Lots**" shall mean those parcel or parcels of land within the Property identified by Lot numbers on the Plat, together with all Improvements located thereon.

**1.19 Marina.** "**Marina**" shall mean that portion of the Common Area which is designated as the Marina (including the marina parking lot) on the Plat.

**1.20 Member.** "**Member**" or "**Members**" shall mean any Person or Persons holding membership rights in the Association.

**1.21 Mortgage.** "**Mortgage**" or "**Mortgages**" shall mean any mortgage(s) or deed(s) of trust covering any portion of the Property given to secure the payment of a debt.

**1.22 Mortgagee.** "**Mortgagee**" or "**Mortgagees**" shall mean the holder or holders of any Mortgage or Mortgages.

**1.23 Owner.** "**Owner**" or "**Owners**" shall mean the Person or Persons, including Declarant, holding a fee simple interest in any Lot or other portion of the Property, but shall not include the Mortgagee of a Mortgage. The term "**Owner**," however, shall include a Mortgagee or lienholder who acquires fee simple title to any Lot through judicial or non-judicial foreclosure or by a conveyance in lieu thereof. When matters within this Declaration require a vote of the Owners, each Owner shall be entitled to one vote for each Lot so owned. When a Lot is held jointly or in common by more than one Owner, the joinder of all such Owners shall be required to cast the one vote with respect to such Lot, unless the Owners designate in writing one or more Owner(s) among them who shall be entitled to cast such one vote and no other person shall be authorized to vote on behalf of the Lot.

1.24 **Person.** "*Person*" or "*Persons*" shall mean any individual(s), entity or entities having the legal right to hold title to real property.

1.25 **Plans and Specifications.** "*Plans and Specifications*" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.26 **Perimeter Fence.** "*Perimeter Fence*" shall mean that fence located along the west, south and north boundaries of the Property, and that portion of the Common Area upon which said fence is located.

1.27 **Plat(s).** "*Plat*" or "*Plats*" shall mean the as-constructed official map or plat of the Property which is to be filed with the County Clerk of Aransas County, Texas, following Declarant's construction of the Lots and Common Areas of the Property, as the same may be amended from time to time.

1.28 **Restrictions.** "*Restrictions*" shall mean this Declaration, as the same may be amended from time to time, together with the Association Rules, the Architectural Committee Guidelines, and the Articles and Bylaws of the Association.

1.29 **Road(s).** "*Road*" and "*Roads*" shall mean that portion of the Common Area which is designated as a Road or Roads on the Plat, which are to be used by pedestrians and motor vehicles for ingress and egress to the Lots from State Highway 35.

1.30 **Supplemental Declaration.** "*Supplemental Declaration*" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order (i) to add the Phase II Property to this Declaration, with the same or different restrictions applicable to said Phase II Property, or (ii) to subject any area of the Property to further covenants, conditions or restrictions.

1.31 **Visible.** "*Visible*" or "visible" shall mean able to be seen by a person of not more than six feet in height standing on the natural grade of the boundary of a Lot and the adjacent Lot, street or other portion of the Property, as applicable.

1.32 **Wetlands.** "*Wetlands*" shall mean those portions of the Common Area which are designated as Wetlands on the Plat.

## ARTICLE 2.

### GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.1 **Subdividing.** No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole, be conveyed by the Owner thereof without the prior written approval of the Board.



2.2 **Hazardous Activities.** No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any Person or property.

2.3 **Insurance Rates.** Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located on the Property.

2.4 **Mining and Drilling.** No portion of the Property shall be used for the purpose of commercial mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, including but not limited to rocks, stones, sand, gravel, aggregate, earth, or water, except as may be approved by the Board. This restriction also shall not apply to the removal or deposit of sand, dirt, dredged material or earth as necessary in connection with the construction of any Improvements to the Property.

2.5 **Noise.** No exterior horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Owner of any other Lot or to their occupants.

2.6 **Nuisance.** No noxious or offensive activities shall be permitted to exist or operate upon any portion of the Property, nor shall anything be done upon the Property which may be offensive or detrimental to the Owner of any other Lot or to their occupants.

2.7 **Rubbish and Debris.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. The Board shall determine what constitutes rubbish, debris or offensive odors and what conditions render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other property or to its occupants; and the decision of the Board shall be final and binding on the parties. In the event that the Owner or permitted occupants of any Lot shall fail to keep, or cause to be kept such Lot or improvements thereon free from rubbish or debris of any kind, and such failure or refusal shall continue for 15 days after delivery of written notice thereof, then the Association or the Board acting through its Officers may, but shall not be obligated to, enter upon the Property and remove or correct the same at the expense of the Owner of such Lot and such entry shall not be deemed to be a trespass.

2.8 **Maintenance.** Each Owner shall keep all grass and landscaping on such Owner's Lot and that portion of the Beach or Channel adjacent to said Lot cultivated, trimmed and free of trash, sea weed, debris, rubbish and other unsightly material. All Improvements upon any Lot and the portion of the Beach, Channel and Road adjacent thereto, including the bulkhead, any dock, boardwalk and street, shall be maintained in good condition and repair by the Owner of such Lot. The Association, acting by and through its Board or Architectural Committee, shall have the right, but not the obligation, at any reasonable time to enter upon any Lot and adjacent portion of the Beach or Channel to replace, maintain and trim grass and other landscaping as deemed necessary, and to paint, repair or remove any trash or Improvement thereon. Any and all costs and expenses incurred by the Association to remedy an Owner's violation of this Section shall be assessed against such Owner and Lot.

2.9 **Towers/Antennas.** No tower, antenna or other device for the transmission or reception of television or radio signals (other than a small satellite dish for television reception) or any other form of electromagnetic radiation shall be placed, allowed or maintained upon any portion

of an Owner's Lot which is visible from any street, Common Area or other Lot without the prior written consent of the Association.

**2.10 Signs.** No signs of any kind shall be displayed on any Lot except as may be permitted by the Rules and Regulations or by the Board.

**2.11 Tanks.** No elevated tanks of any kind, whether for fuel, water, LPG or any other commodity, shall be erected, placed or permitted on any Lot.

**2.12 Temporary Structures.** No tent, shack, or other temporary building or Improvement shall be placed upon a Lot without the prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of the Architectural Committee, such approval to include the nature, size, duration and location of such structure.

**2.13 Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Architectural Committee or the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares.

**2.14 Mobile or Manufactured Homes.** No manufactured home, trailer or mobile home shall be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time.

**2.15 Garages.** Each residential structure located upon a Lot shall have sufficient garage space to accommodate at least two automobiles. All garages shall be maintained for the storage of automobiles and boats, and no garage may be enclosed or otherwise used for habitation except with the prior written consent of the Architectural Committee.

**2.16 Sight Distance at Intersection.** No fence, wall, hedge or shrub planting that obstructs sightlines at elevations between two and nine feet above the roadway shall be placed or permitted to remain on any corner of a Lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within the triangular area formed by the street line, a driveway or alley line and a line connecting them at points ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. All landscaping within such distances of intersections shall be maintained to meet the sight-line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, at a minimum, sight distances required by any applicable governmental authority shall be complied with.

**2.17 Compliance with the Restrictions.** Each Owner shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association, or by an aggrieved Owner.

**2.18 Livestock, Animals, Household Pets.** No animals of any kind shall be raised, bred or kept on any Lot, other than dogs, cats or other small and domesticated household pets which are not kept, bred or maintained for any commercial purpose. Pets must be on a leash when outside their Owner's Lot.

**2.19 Hunting and Fishing.** No hunting or discharge of firearms shall be allowed on the Property. No one shall be allowed to fish from any motor boat in the Lake or Channels, or by using any net or fixed line in the Lake or Channels.

**2.20 No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

### ARTICLE 3.

#### USE AND CONSTRUCTION RESTRICTIONS

**3.1 Approval for Construction.** No Improvements shall be constructed upon any Lot or on the Beach or Channel adjacent to said Lot without the prior written approval of the Architectural Committee. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area, including, but not limited to, trees and landscaping, without the prior written approval of the Architectural Committee. Each Owner shall be responsible for upkeep and maintenance of any Easement crossing his/her Lot and the Beach property adjacent to said Lot. Each Owner shall be liable to the Association for any and all damages to (i) the Common Area, or (ii) any Improvements constructed on any Lot if the maintenance thereof has been assumed by the Association, which damage is caused by the neglect, misuse or negligence of such Owner, any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectible in the same manner as provided in Article 4 hereof, including but not limited to foreclosure of such lien.

**3.2 Residential Use.** All Lots shall be improved and used solely for single family residential use, inclusive of a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. Nothing in this Declaration shall prevent the rental of an Owner's house for residential purposes, on either a short or long-term basis. Both the Owner and the tenants shall be responsible for compliance with these Restrictions and all Rules and Guidelines adopted by the Board and Architectural Committee.

**3.3 Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior written approval of the Architectural Committee. Every detached accessory building shall be compatible with the design of and materials utilized in the residential structure located upon the Lot.

**3.4 Building Height.** No Improvement greater than 35 feet in height may be constructed on Lots 1 through 10, and no Improvement greater than 35 feet in height may be constructed on any other Lot without the prior written approval of the Architectural Committee. For purposes of this paragraph, height shall be measured from the top of the foundation slab or floor of the first floor living area to the mid-point of the highest ridge line of the roof.

**3.5 Obstruction of Views.** No Improvement may be constructed on any Lot which (i) would unreasonably obstruct the view from other portions of the Property, or (ii) unreasonably interfere with the privacy of an adjoining Lot Owner. The location of any Improvement upon a Lot

shall be approved, prior to construction, by the Architectural Committee. Approval by the Architectural Committee may be conditioned upon setbacks which are greater than the setback requirements set forth on any Plat of a Lot or other portion of the Property or established by any municipal ordinance. The Architectural Committee may, but shall not be required to, prevent or allow the construction of a proposed Improvement based upon the effect it will have on (i) the view from another Lot, (ii) the privacy of an adjoining Lot Owner, or (iii) its effect on the Property as a whole. Each Owner acknowledges and agrees that neither the Association, its Board or Architectural Committee, nor any member thereof shall be liable to any Owner for monetary damages or otherwise due to the construction of any Improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots or an effect on such Owner's privacy.

**3.6 Fences.** No fence on a Lot shall be higher than 4.0' from the property setback line to the adjacent Beach or Channel. No fence shall be constructed on any portion of such Beach adjacent to an Owner's Lot. All fences (other than the Perimeter Fence) shall be of brick, stucco, wrought iron, aluminum or masonry construction; no exterior chain link or wooden fences will be allowed. Additional fence requirements may be established by the Architectural Committee.

**3.7 Landscaping.** It is the intent of this Declaration to recognize, utilize and supplement the natural character of the site, ensuring consistent quality and visual harmony throughout the Property. Each Lot Owner shall be required to have a sod yard, and to plant at least 6 palm trees with a minimum height of 10' and a minimum diameter of 4".

**3.8 Building Materials; Dwelling Size.** All homes constructed on the Lots shall be of recognized standard construction quality. Homes shall have least 3,000 square feet of air conditioned living area, exclusive of porches, terraces, patios, driveways, carports and garages. The minimum finished floor elevation for any home constructed shall be 9.0' above sea level on Federal Emergency Management Agency ("FEMA") 'A Zone' Lots and 12.0' above sea level on FEMA 'V Zone' Lots. The architectural style of all buildings and walls shall be Spanish or Mediterranean, with tile roofs, with the color approved by the Architectural Committee. All exterior walls shall be constructed of stucco, brick, masonry or other material specifically approved in writing by the Architectural Committee.

**3.9 Alteration or Removal of Improvements.** Any construction, alteration, or addition, other than normal maintenance, which in any way alters the exterior appearance of any Improvement (including a change in paint color), or the removal of any Improvement, shall be performed only with the prior written approval of the Architectural Committee.

**3.10 Driveways.** The Architectural Committee shall have the right to impose limitations on driveway design, including materials, aprons, location, and point of contact with the Road. Driveways shall be constructed so that they have a sufficient rise in elevation to allow for the surface water drainage along the curb line of the street to continue without interruption or change in direction of flow.

**3.11 Garbage Containers.** The Architectural Committee shall have the right to require each Owner to utilize a specific trash service, in common with other Lot Owners, and to utilize such containers and placement of containers as may be required.

**3.12 Underground Utility Lines.** The installation method, including but not limited to, location, type of installation equipment, trenching method, and other aspects of installation, for both temporary and permanent utilities, shall be subject to review and approval by the Architectural Committee.

**3.13 Drainage; Slopes.** All drainage shall adhere to current Aransas County flood damage prevention orders and onsite sewage facility requirements. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Committee. All drainage structures under private driveways shall be constructed out of metal, concrete or PVC and have drainage opening areas of sufficient size to permit the free flow of water without backing up. All drainage structures shall be subject to the approval of the Architectural Committee. Owners are responsible for the construction, upkeep and repair of drainage structures or culverts under their driveways, regardless if such structure is located in a Common Area.

**3.14 Construction Activities.** No buildings shall be left in a partial state of completion without the prior written approval of the Architectural Committee. All homes and related Improvements must be completed within 12 months of the beginning date of construction. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner upon any Lot within the Property. During construction, each Owner shall make reasonable efforts to erect barriers to prevent dirt and sand from blowing or eroding into the Lake or Channels. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area of the Property. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Architectural Committee, the Architectural Committee in its sole judgment shall have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to it or any other Lot on the Property, then the Architectural Committee may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith.

**3.15 Setback Requirements.** No Building shall be located on any of the Lots nearer than 60 feet from the Beach or Channel property line, nor nearer than 40 feet from the Road property line, nor nearer than 10 feet from either side property line or (with respect to Lots 26 and 45), any Wetlands or Entrance area, or such other distance as may be set by the Architectural Committee for any particular Lot or Lots, except as indicated on the Plat. However, if a single Owner owns two adjacent Lots, the side property line referred to herein shall mean the outside property lines, and not the common boundary line of the two adjacent Lots.

**3.16 Identification of Lots.** Each Owner shall post the street address number for his or her residence in a manner and location designated by the Architectural Committee.

**3.17 Wastewater and Electric Service.** No dwelling or other structure shall be occupied unless and until connected to an on-site septic tank or waste water system that has been approved by applicable governmental authorities and the Architectural Committee. Each Owner shall also install and maintain an underground electrical connection from its residence to the meter installed for its Lot by the electrical company. Each Lot Owner shall be solely responsible for obtaining, at its own expense, all permits and approvals required for all utilities and waste water systems.

**3.18 Docks and Boats.** Owners (other than Owners of Lots 1 through 9) shall be entitled to construct docks and boat lifts on the Lake or Channel sides of the Beach or Channel areas adjacent to their Lots during or after construction of their homes, provided that (i) no dock shall be permitted to protrude more than 19 feet into any Channel or 19 feet into the channel (deeper) portion of the Lake, (ii) all such docks within a given area shall be constructed substantially alike in size, material and design, and (iii) shall only be constructed in accordance with plans and specifications and at

locations as are approved by the Architectural Committee. No boat which is used for commercial fishing purposes shall ever be moored at any such dock. Each Owner shall insure (a) that no jet-ski or motor boat is used in any portion of the Lake which is not designated as a channel (deeper) to the Intercoastal Canal, (b) that no boat exceeds a speed of 5 miles per hour while in said channel or Channel and (c) that such boats comply with all navigational signs and any rules promulgated by the Board. No water skiing or kite boarding shall be permitted on the Lake or Channels, although sail boards, sunfish, canoes, kayaks and similar shallow non-motor powered craft shall be permitted.

#### ARTICLE 4.

#### THE ASSOCIATION

**4.1 Organization.** LBV Property Owners' Association, Inc. has been chartered as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws and in this Declaration. Neither the Articles nor Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with the provisions of this Declaration.

**4.2 Membership.** Any Person, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged or alienated, except together with the title to the Lot.

**4.3 Voting Rights and Assessments.** The Owner of each Lot shall have one vote as a Member of the Association. The Board shall keep a roster the individuals designated by each Lot Owner to cast votes on behalf of such Lot.

**4.4 Powers and Authority of the Association.** The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association shall have the power and authority at all times as follows:

(a) **Rules and Bylaws.** To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, the Association Rules and Bylaws. The content of the Association Rules and Association Bylaws may be established by the Board, provided the same are not in conflict with this Declaration.

(b) **Insurance.** To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.

(c) **Records.** To keep books and records of the Association's affairs.

(d) **Assessments.** To levy assessments as provided herein.

(e) **Right Of Entry and Enforcement.** To enter at any time in an emergency or, after 24 hours written notice in a non-emergency, without being liable to any Owner, upon any Lot and into any Improvement thereon, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the

maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided herein for regular and special assessments. The Association or Declarant shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association or Declarant is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

(f) **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) **Manager; Consultants and Contractors.** To retain and pay for the services of a person or a firm (the "**Manager**") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Members of the Association hereby **release** the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated. Additionally, the Board shall have the authority to hire consultants, including engineers, architects and contractors, to assist it in its duties hereunder.

(h) **License Agreements.** To enter into such license agreements, contracts or other agreements with governmental authorities, utilities and private Persons for such services and arrangements as are deemed appropriate by the Board.

(i) **Conveyances.** To grant and convey to any person or entity any Association Property and/or any interest therein, including fee title, leasehold estates, licenses, easements and rights-of-way out of, in, on, over, or under any of same, for the purpose of operating, constructing, erecting or maintaining thereon, therein, or thereunder: (1) marinas, boat and fishing servicing facilities, boat launching ramps and parking lots; (2) lines, cables, wires, conduits, pipelines or other devices for utility or cable purposes; and (3) sewer, wastewater and water systems, storm water drainage systems, sprinkler systems, and pipelines; or any similar Improvements or facilities.

(j) **Borrowings.** To borrow money and to mortgage, pledge or hypothecate the Assessments or other Association Property.

(k) **Common Expenses.** To incur and pay for all common expenses incurred by the Association in carrying out its duties, including but not limited to repairs, maintenance and replacement of improvements, construction of utilities, roads, and improvements, insurance costs, consultant and contractor's fees, utilities, garbage removal.

(l) **Marina Operations.** To operate a marina for the Owners of Lots 1 through 9, and for any other Owner or Person who uses the Marina portion of the Common Area; *provided, however*, that charges and special assessments ("**Marina Assessments**") shall be made to users of the Marina for improvements, expenses and maintenance of the Marina, which funds shall be segregated in a special account and only used for such Marina purposes.

**4.5 Common Area and Facilities.** Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

(a) **Own, Operate and Maintain.** To accept, own, operate and maintain all Common Areas, together with all Improvements of whatever kind and for whatever purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real or personal, conveyed to it, and to maintain in good repair and condition all lands, Improvements and other Association Property owned by or leased to the Association. Such maintenance shall include, but not be limited to, mowing and removal of rubbish or debris of any kind.

(b) **Taxes.** To pay all real and personal property taxes and other taxes and Assessments levied upon or with respect to the Common Areas or any other property owned by or leased to the Association, to the extent that such taxes and Assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality of the amount of such taxes and Assessments.

(c) **Insure.** To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Areas. Such insurance shall be in an amount as the Board shall deem appropriate.

**4.6 Obligations under License Agreements.** The Association shall take and perform all obligations and actions required or permitted pursuant to the terms and provisions of any license agreement entered into by the Association, and to levy and collect Assessments for the costs and expenses therefor.

**4.7 Indemnity.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant or agent of the Association, the Architectural Committee or the Board, against all claims and expenses including attorney's fees reasonably incurred by such person in connection with such action, suit or proceeding, if it is found and determined by the Board or a Court that such person (i) acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association, or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that such person did not act in good faith or in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, the Architectural Committee or the Board, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

## ARTICLE 5.

### **ARCHITECTURAL COMMITTEE**

**5.1 Membership of Architectural Committee.** David K. Becker, C. Clifton Hoskins and Byron W. Fields shall serve as the Architectural Committee until the time when a home has been constructed on each of the Lots, or earlier if they unanimously decide to resign and have the Board appoint a new committee. If one member of said Architectural Committee resigns, the remaining committee members shall appoint a replacement for the resigning member. After homes have been constructed



on all of the Lots, the Board is authorized to appoint three new members to act as the Architectural Committee with respect to the Lots, or to substitute itself as said Architectural Committee. However, in the event a Supplemental Declaration is filed to include the Phase II Property, David K. Becker, C. Clifton Hoskins and Byron W. Fields shall serve as an Architectural Committee for the Phase II Property unless other persons are named as the Phase II Architectural Committee in said Supplemental Declaration, in the same manner as provided with respect to the Architectural Committee for the Property herein.

**5.2 Action by Architectural Committee.** Items presented to the Architectural Committee shall be decided by a majority vote of its members. The Architectural Committee may hire consultants, including engineers, architects and contractors to assist it in its duties hereunder. The Architectural Committee may establish fees and charges payable by Owners to the Association seeking approvals or variances from the Architectural Committee, including requiring reimbursement for all costs incurred in reviewing and processing such requests.

**5.3 Term.** When members of the Architectural Committee are appointed by the Board (subsequent to the resignations of the three members designated in Section 5.1 hereof), such members shall hold office for a term of three years, appointed in staggered terms over a three year period, or until such time as he or she resigns or is removed, and his or her successor is appointed. In the event of death or resignation of member of the Architectural Committee, the remaining member or members shall have full authority to act until a replacement member or members are appointed.

**5.4 Adoption of Architectural Committee Guidelines.** The Architectural Committee may adopt such procedural and substantive rules and guidelines, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, a housing code and other similar codes as it may deem necessary and desirable. Each Owner shall comply with said rules and guidelines as the same may be amended from time to time, and failure to comply with said rules and guidelines shall constitute a default of this Declaration, and any Owner and/or the Board may seek any of the remedies set forth herein for default of this Declaration.

**5.5 Review of Proposed Construction.** Whenever in this Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, two complete sets of the final Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications and all change orders submitted for its review pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee may review Plans and Specifications submitted for its review and such other information as it deems proper. The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Until receipt by the Architectural Committee of any information or documents deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with development within the Property. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the

Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes. At the option of the Architectural Committee, one complete set of the Plans and Specifications will be retained by the Architectural Committee, and one complete set of Plans and Specifications will be marked "Approved" and returned to the Owner or its designated representative. If found not to be in compliance with the Restrictions, one set of such Plans and Specifications shall be marked "Disapproved," accompanied by a reasonable statement of items found not to comply with the Restrictions.

The Architectural Committee may require a construction deposit of \$1,000 or such other amount as it determines to be reasonable ("**Construction Deposit**") to secure the obligation of an Owner, its contractors and their respective agents, employees, subcontractors and suppliers during the construction of Improvements against damage to Association Property ("**Construction Damage**"). The Construction Deposit shall be held in an account established by the Association, without liability to the Owner for any interest on the Construction Deposit. Each Owner shall be responsible for and shall at such Owner's sole cost and expense repair any Construction Damage prior to the occupancy of the Improvements constructed on such Owner's Lot. If an Owner fails to so repair all Construction Damage, the Association may cause the Construction Damage to be repaired and may use the Construction Deposit to pay the cost incurred by the Association in repairing the Construction Damage. Each Owner shall be liable for the costs to repair all Construction Damage in excess of the Construction Deposit, and such Owner's Lot shall be subject to a special Assessment levied against such Owner's Lot for such excess costs in addition the liens provided for herein. The Construction Deposit shall be returned to the Owner upon the Board confirming that all Construction Damage has been repaired by the Owner.

Any party requesting approval of a set of Plans and Specifications for use with a particular Lot shall submit a site plan showing the position of all Improvements on the Lot, and brick, mortar and exterior trim colors or samples as a part of those Plans and Specifications. The party submitting such plans shall be required to point out to the Architectural Committee, and the Architectural Committee shall have the right to review and approve, any material changes to or deviations from any previously approved set of Plans and Specifications. The Architectural Committee shall have the right to prevent the construction of any Improvements which have, in the Architectural Committee's sole opinion, material changes to or deviations from any previously approved set of Plans and Specifications.

**5.6 Actions of the Architectural Committee.** The Architectural Committee may, by written resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of the majority of all of the members of the Architectural Committee taken without a meeting, documented in accordance with Article 1396-9.10A of the Texas Non-Profit Corporation Act, shall constitute an act of the Architectural Committee. Notwithstanding anything to the contrary, in the event the Architectural Committee fails to respond to a request for approval of Plans and Specifications within 30 days of receipt of all required information, the Architectural Committee shall be deemed to have accepted such Plans and Specifications. Notwithstanding any other provision contained herein, any Improvements erected or placed on the Property shall be deemed to comply with the building requirements of these Restrictions unless the Architectural Committee notifies the Owner otherwise in writing within 18 months from the completion thereof. This provision, however, shall not be deemed a waiver of the right of the Architectural Committee or the Association to enforce the continuing restriction of the use contained herein. The Architectural Committee shall have the authority to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any Improvements, where such actions have not first been reviewed and approved or otherwise constitute a violation of

the Restrictions. The violating Owner shall remove such violating Improvements or site work at its sole expense and without delay, returning same to its original condition, or bring the property into compliance with the Restrictions and any Plans and Specifications approved by the Architectural Committee. If an Owner proceeds with construction that is not approved by the Architectural Committee or that is a variance of the approved Plans and Specifications, the Association may assess fines and may continue to assess such fines until Architectural Committee approval is granted or the violation is removed. The Architectural Committee or its agents or assigns shall have the right, but not the obligation, to enter any Lot to determine if violations of the Restrictions exist. In so doing, the Architectural Committee shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry, nor in any way shall the Association or its agent be liable for any accounting or other claim for such action. The Architectural Committee shall have the right to set reasonable time constraints for both the commencement and completion of construction, which shall be no more than 12 months to complete construction. If construction fails to start before the designated commencement date or is not completed before the designated completion date, the plans shall be deemed not approved.

**5.7 No Waiver of Future Approvals.** The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

**5.8 Variances.** The Architectural Committee may grant variances from compliance with any of the provisions of Article 3 and Article 4, when, in the opinion of the Architectural Committee, in its sole and absolute discretion, such variance will not impair or detract from the quality of the development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument, in recordable form, and must be signed by at least two of the members of the Architectural Committee. If a variance is granted, no violation of the restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these Restrictions for any purpose except as to the particular Lot and in a particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

**5.9 No Implied Waiver or Estoppel.** No action or failure to act by the Architectural Committee or by the Board shall constitute a waiver or estoppel with respect to future action by the Architectural Committee or Board with respect to the construction of any Improvements. Specifically, the approval by the Architectural Committee or the Board of any such construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar construction or any similar proposals, plans, specifications or other materials submitted with respect to any other residential construction by such person or other Owner.

**5.10 Non-liability.** Neither the Architectural Committee nor any member thereof, nor the Board, nor any member thereof, shall be liable to the Association or to any Owner or to any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's or the Board's respective duties under this Declaration, unless due to the willful misconduct or gross negligence of such person. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the approval or disapproval of any Plans and Specifications or the construction of any Improvement.

5.11 **Work in Progress.** The Architectural Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

5.12 **Address.** Plans and Specifications shall be submitted to the Architectural Committee at 800 N. Shoreline, Suite 2500 South, Corpus Christi, Texas 78401, to the attention of David K. Becker, or such other address as may be designated from time to time.

5.13 **Effect of Approval of Plans.** The Architectural Committee, and its agents and employees, shall not be responsible for inspecting any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval of any Improvement as to structural safety, engineering soundness or conformance with any building or other codes, regardless of the hiring by the Architectural Committee of any consultants to assist it in its duties hereunder.

## ARTICLE 6.

### FUNDS AND ASSESSMENTS

#### 6.1 **Assessments.**

(a) **Levy.** The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal and uniform between all Lots. In addition, the Board may from time to time levy Marina Assessments as provided in Section 4.4(l) hereof, which shall be used for the purposes set forth therein.

(b) **Proration.** Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

(c) **Liability and Lien.** Each unpaid Assessment (including special and Marina assessments) and late charges, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which such Assessments fell due, and shall become a vendor's lien against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

6.2 **Maintenance Fund.** The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

6.3 **Regular Annual Assessments.** The Owner of each Lot shall pay to the Association a regular annual Assessment of \$1,000. The amount of said Assessment shall be reevaluated and established by the Board annually thereafter. Prior to the beginning of each year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including but not limited to the cost of all maintenance of Common Areas and facilities, the costs and expenses incurred in connection with any license agreement, the costs and expenses of administering the Association and performing its duties under this Declaration, insurance premiums, accounting, legal and other professional fees, the costs, fees and charges of any Manager, the cost of enforcing the Restrictions, the costs of the Architectural Committee, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund, and shall set a regular annual Assessment sufficient to pay such

estimated net expenses for the coming year. The level of Assessments set by the Board shall be final and binding, unless the amount established by the Board is more than 10% higher than the amount established during the preceding year, in which event such increase shall not be effective until it has been approved by a majority of the Members voting, in person or by proxy, at a meeting called for that purpose. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments due on the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

**6.4 Special Assessments.** In addition to the regular annual Assessments and Marina Assessments provided for herein, the Board may also levy special Assessments for special purposes whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under this Declaration; provided, however, that no special Assessment shall become effective until approved by a majority of the Members voting, in person or by proxy, at a meeting called for that purpose.

**6.5 Late Charges.** If any Assessment (including special and Marina assessments) is not paid before it is delinquent, the Owner responsible for the payment thereof may be required by the Board to pay a late charge equal to 5.0% of the amount of such delinquent Assessment, and such late charge (and any reasonable handling costs) shall be a charge upon the Lot owned by the Owner to which such Assessment relates, collectible in the same manner as herein provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

**6.6 Owner's Personal Obligation for Payment of Assessments.** The regular and special Assessments and any Marina Assessment provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1.5% per month), together with all costs and expenses of collection, including reasonable attorneys' fees.

**6.7 Assessment Lien and Foreclosure.**

(a) **Prior Lien.** All sums assessed in the manner provided in this Article but unpaid shall, together with interest as provided herein and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The obligation to pay assessments hereunder is part of the purchase price of each Lot when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment of the assessments or charged hereby levied, and is hereby transferred and assigned to the Association, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of such assessments. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens, all sums unpaid on a Mortgage lien of record, or sums borrowed for the improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by a duly authorized officer of the Association. The sale or transfer of any Lot shall not affect the assessment lien.

(b) **Filing of Lien Affidavit.** To evidence the aforesaid Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and may be recorded in the office of the County Clerk of Aransas County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same.

(c) **Notice to Mortgagees.** Upon the written request of any Mortgagee, the Association is authorized to report to said Mortgagee any unpaid Assessments remaining unpaid for longer than 30 days after the same are due.

(d) **Power of Sale.** As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Property, by such party's acceptance of a deed thereto, hereby grants the Association acting by and through its President as Trustee, and such successor or substitute Trustees as may be appointed by the Board, a lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Official Records of Aransas County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall first send to the defaulting Owner written notice by certified mail stating that such Owner is in default with respect to the payment of said Assessments under this Declaration and giving such Owner twenty (20) days to cure the default, and if said default is not cured within said time, to then send to the defaulting Owner a copy of the notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be posted at the courthouse door of Aransas County, Texas, and also filed for record in the Official Records of Aransas County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

(e) **Additional Remedies.** In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, upon 10 days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

(f) **Enforceability.** No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of its Lot. In addition to the above, rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

(g) **Binding on Owner.** Each Owner further, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce such lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to applicable law, and each Owner hereby grants to the Association a power of sale in connection with such lien.

(h) **Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

- (1) liens for taxes, assessments and other levies by governmental and taxing authorities which, by applicable law, are made superior to the Association's lien;
- (2) liens for all sums unpaid under a first and superior mortgage, vendor's lien, deed of trust or home equity security instrument made in good faith and for value and duly recorded prior to the date on which Assessments against the Lot were levied; and
- (3) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien.

All other lienors acquiring liens or encumbrances on any Lot after recordation of this Declaration shall be deemed to consent that such liens or encumbrances are inferior to the lien provided for herein to secure the payment of future Assessments, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. Notwithstanding the foregoing, the Assessment lien provided for herein shall be prior and superior to any declaration of homestead recorded after recordation of this Declaration, unless such priority over homestead shall be prohibited by law. Any sale by a prior lien holder shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment. This subordination shall not apply where the first mortgage or deed of trust is used as a device, scheme or artifice to evade the obligation to pay Assessments or to hinder the Association in performing its functions hereunder.

## ARTICLE 7.

### EASEMENTS

7.1 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights, made prior to the Property becoming subject to this Declaration 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. The Board is hereby granted the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Declarant reserves, creates, grants and dedicates (without warranty) to the Association a non-exclusive easement upon, over and across each Lot for ingress and egress for any and all of the purposes stated in this Declaration and to exercise, enjoy and carry out any and all of the rights and powers granted herein, on and subject to the terms and conditions of this Declaration. Entry upon any Lot as provided in this Section shall not be deemed to trespass, and the Association and Declarant shall not be liable for any damage so created unless damage is caused by the willful misconduct or gross negligence of the party against whom damages are sought to be collected.

Declarant reserves, creates, grants and dedicates (without warranty) for the benefit of any Owner building or constructing any Improvements on such Owner's Lot, and their respective employees, subcontractors, successors and assigns, a non-exclusive easement of ingress and egress over, within and upon the Entrance, Roads and Easements, and that portion of the Beach and Channels which is adjacent to such Owner's Lot, as may be expediently necessary for the construction, servicing, and completion of Improvements and landscaping upon such Owner's Lot.

**7.2 Installation and Maintenance.** There is hereby created an easement upon, across, over, and under all of the Easements for installing, replacing, repairing and maintaining all utilities, including but not limited to, water, gas, telephones and electricity lines 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 line, or other utility facilities or appurtenances thereto, on, across and under the Property. Notwithstanding any provision contained in this section, no electrical lines, water lines, or other utilities or appurtenances thereto may be located or relocated on any Easement until approved by the Architectural Committee.

**7.3 Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require.

**7.4 Surface Areas.** The surface of easement areas for underground utility services shall be maintained by the Owner of the Lot which such easement overlays and such Owner may use the surface of such easement areas for planting of landscaping. Trees with large root systems shall not be planted directly over utility lines. Neither the Association nor any supplier of any utility service using any easement area shall be liable to any Owner for any damage done by 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 area.

**7.5 Damages.** Each Owner and each lessee of any Owner shall be liable to the Association for any damage to Common Areas which may be sustained by reason of the negligent or intentional misconduct of such persons or his family, guests or invitees.

**7.6 Roads and Other Common Areas.** Declarant reserves for itself, the Association, each Owner, and the respective employees, agents, representatives, guests, contractors, and other invitees of the Association and the Owners the right to use and enjoy the Common Areas for the purposes indicated herein. No Common Area user is authorized in any way or manner to remove, alter, damage or destroy any portion of the Common Areas. The Association shall have the power and authority to promulgate Rules regarding the use of the Common Areas, and shall have the power and authority to enforce these Restrictions and such Rules regarding the use of the Common Areas.



The Association shall be responsible for the maintenance, repair, replacement, management, operation and condition of the Entrance, Roads, Marina and Perimeter Fence, and for such dredging as may be necessary for the Lake and Channels, and for regulation of the use of all Common Areas.

## ARTICLE 8.

### MISCELLANEOUS

**8.1 Term.** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until May 26, 2029, unless amended as herein provided. After said date, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten years each, unless amended or extinguished by a written instrument executed by at least 80% of the then Members of the Association, including any Owners of Phase II Property if said property has been made subject to this Declaration by Supplemental Declaration..

**8.2 Amendment.** This Declaration may be amended by the recording in the Official Records for Aransas County of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the requisite number of Members of the Association.

**8.3 Notices.** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given to the Association. Such address may be changed from time to time by notice in writing given by such Person to the Association.

**8.4 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

**8.5 Assignment of Declarant.** Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person, and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights, and duties hereunder, which assignment shall be effective only if in writing and recorded in the Official Records for Aransas County, Texas.

**8.6 Enforcement and Nonwaiver.** Except as otherwise provided herein, any Owner at his own expense, Declarant, the Architectural Committee and/or the Association shall have the right to enforce all of the provisions of these Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any provision of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said Restrictions. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

**8.7 Construction.** The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a

contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof. In the event of a conflict in a decision of the Architectural Committee and a decision of the Board, the Architectural Committee's decision shall control.

**8.8 Disclaimer of Warranty.** DECLARANT MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, OR THE DEVELOPMENT OR ANY IMPROVEMENT TO OR WITHIN THE PROPERTY OR THE LOTS, THE CONDITION OF THE PROPERTY OR THE LOTS, THE SUFFICIENCY OF UTILITIES, THE WORKMANSHIP, DESIGN OR MATERIALS USED IN EVERY IMPROVEMENT, INCLUDING WITHOUT LIMITATION COMMON AREAS, AND INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, LIABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE OR USE, OR ANY WARRANTY OF QUALITY. WHILE DECLARANT HAS NO REASON TO BELIEVE THAT ANY OF THE COVENANTS, TERMS OR PROVISIONS OF THIS DECLARATION ARE OR MAY BE INVALID OR UNENFORCEABLE FOR ANY REASON OR TO ANY EXTENT, DECLARANT MAKES NO WARRANTY OR REPRESENTATION AS TO THE PRESENT OR FUTURE VALIDITY OR ENFORCEABILITY OF ANY SUCH COVENANT, TERM OR PROVISION. ANY OWNER ACQUIRING A LOT IN RELIANCE ON ONE OR MORE OF SUCH COVENANTS, TERMS OR PROVISIONS SHALL ASSUME ALL RISKS OF THE VALIDITY AND ENFORCEABILITY THEREOF, AND BY ACQUIRING SUCH LOT AGREES TO HOLD DECLARANT HARMLESS THEREFROM.

**8.9 Mediation and Arbitration ("ADR").**

(a) **Initiation.** Except for temporary restraining orders, other injunctive relief and the judicial foreclosure of liens, to the maximum extent allowed by law and irrespective of the form of relief sought, any claim, litigation, proceeding, controversy or dispute (each a "*dispute*") with respect to the Restrictions as between any of the following Persons: Owners; Members; the Board; the Architectural Committee, officers of the Association; or the Association (including, without limitation, any alleged tort related hereto) or the activities associated herewith, shall be submitted to and resolved by ADR as herein provided. Such ADR shall be the sole remedy with respect to such dispute.

(b) **Mediation.** Prior to arbitration, the parties shall attempt in good faith following notice by one party to the other of a dispute, which notice is entitled "*Notice of Dispute*," to resolve the dispute, and the parties agree to use the following mediation procedures prior to either party pursuing arbitration. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. The Board shall maintain a list of potential Facilitators, but the parties will be in no way limited to their choice by this list. If, within 10 days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "*Facilitator*"), seeking assistance in such regard from the American Arbitration Association ("*AAA*") if they have been unable to agree upon such appointment within 10 days from the initial meeting.

The fees of the Facilitator shall be shared equally by the parties. In consultation with the Facilitator, the parties will select or devise an alternative dispute resolution procedure ("*ADR*") by which they will attempt to resolve the dispute. The Facilitator shall make the decision as to the ADR procedure, and the place and time of the ADR, not later than 10 days after selection of the Facilitator, unless circumstances require otherwise. The parties agree to participate in good faith in ADR to its conclusion as designated by the Facilitator. All meetings and proceedings shall be in Aransas or Nueces County at a location mutually selected by the Facilitator.

(c) **Arbitration.** If the parties are not successful in resolving the dispute through Mediation, then the parties agree that the dispute shall be settled by binding arbitration. The party invoking arbitration shall do so by sending to the other party a notice called "**Notice of Arbitration.**" In such cases, the dispute shall be settled and finally determined by arbitration in accordance with the Rules of Commercial Arbitration of the American Arbitration Association. Any arbitration pursuant to this Section shall be conducted by one (1) arbitrator, and the arbitration proceeding shall be held in Corpus Christi, Texas. The parties shall mutually select the arbitrator. If the parties are unable to agree upon an arbitrator within 10 days of the sending of a Notice of Arbitration, the arbitrator shall be chosen in accordance with the AAA Rules from a panel of individuals, each of whom shall be required to have at least 10 years of real estate experience in Corpus Christi or Rockport, Texas, and none of whom may have or had an affiliation, past or present, with the parties.

The costs of the arbitration shall be allocated as determined by the arbitrator. The arbitration shall begin as promptly as possible after the designation of the arbitrator, and the parties agree to use their best efforts to effectuate a resolution of the claim within 90 days from the date of the designation of the arbitrator. A copy of the decision of the arbitrator shall be signed and given to each of the parties thereto. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party may bring an action to compel arbitration of any dispute in any court having jurisdiction over such matter. All statutes of limitations that would otherwise be applicable shall apply to any disputes asserted in any arbitration proceeding.

The arbitrator shall have the right to award monetary damages, to grant temporary or permanent injunctive relief, to require specific performance, and to award any remedy or relief which a court could order as to the dispute. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The arbitrator may adjourn a hearing from time to time as the arbitrator deems necessary. All parties agree to cooperate fully to have the arbitration completed as expeditiously as possible. All parties shall have the right to representation by counsel at any stage of the proceedings. The arbitrator shall require witnesses to testify under oath administered by any duly qualified person. The parties may provide the arbitrator with briefs on matters which they believe to be beneficial to the arbitrator. Copies of any such briefs provided to the arbitrator shall be provided by the party to the opposing party or his counsel. The arbitrator shall determine the period of time in which parties will have to respond to any such brief filed by their opponent. The arbitrator will preside at the hearing and rule on the admission and exclusion of evidence as well as questions of procedure. The arbitrator may exercise all powers conferred by statute and by these Restrictions. The hearing will be conducted as if it were an informal court trial. At the arbitration hearing, the parties shall be entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing. The evidence will include testimony of persons having knowledge of relevant facts any expert witnesses. Deposition testimony may be offered in lieu of live testimony. Deposition testimony of parties or witnesses may be admitted for evidentiary or impeachment purposes. Documentary evidence, compilations, charts, photographs and other demonstrative exhibits may also be presented at the hearing. Witnesses may be called live or via telephone. The Texas Rules of Evidence and Procedure regarding the presentation and admissibility of evidence will generally but not strictly govern the arbitration proceeding, and the arbitrator may consider any relevant and material evidence, at the arbitrator's discretion. The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered, and the arbitrator may consider all material and testimony presented, as the arbitrator shall consider appropriate. The provisions of Chapter 171 of the Texas Civil Practice and Remedies Code will apply to the arbitration and the arbitrator may issue subpoenas for the attendance of witnesses. Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of this arrangement in advance of the hearing. The requesting party shall pay the cost of the record. If the transcript is agreed by all parties, or determined by the arbitrator, to be the official record of the proceeding, the record must be made

available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator, but in that event, the parties shall share in the costs as determined by the arbitrator. The arbitrator and the parties shall maintain the privacy of the arbitration. The arbitrator shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person at a hearing. It is not necessary that the arbitrator make a specific and detailed findings of fact and conclusions of law. All monetary awards or grants of other affirmative relief shall be paid or satisfied within 30 days from the date of the issuance of the award. If any dispute subsequently arises from and relating to the arbitration or regarding the arbitrator's award or the enforcement thereof, the parties agree to submit said dispute to the arbitrator for resolution.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this the 26th day of May, 2004.

**DECLARANT:**

LBV DEVELOPMENT, L.L.C.

By: *David K. Becker*  
David K. Becker, Member

By: *C. Clifton Hoskins*  
Clifton Hoskins, Member

By: *Michael L. Mintz*  
Michael L. Mintz, Member

By: *Howard Mintz*  
Howard Mintz, Member

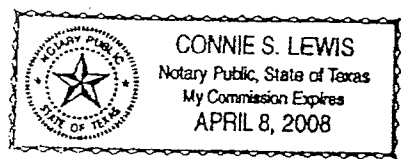
FIELDS FAMILY INVESTMENTS, LTD.

By: Fields Management Trust-1997,  
a general partner

By: *Byron W. Fields*  
Byron W. Fields, Trustee

THE STATE OF TEXAS       §  
  §  
COUNTY OF NUECES       §

The instrument was acknowledged before me on May 21, 2004, by David K. Becker, C. Clifton Hoskins, Michael L. Mintz, Howard Mintz, as members of LBV Development, L.L.C., a Texas limited liability company, as the act of said limited liability company.



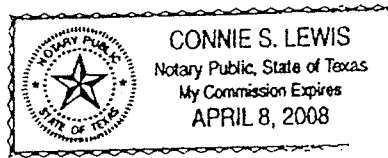
*Connie S. Lewis*  
Notary Public Signature

264992

File No. \_\_\_\_\_  
County Clerk, Aransas County, Texas

THE STATE OF TEXAS       §  
  §  
COUNTY OF NUECES       §

The instrument was acknowledged before me on May 21, 2004, by Byron W. Fields, as the Trustee of Fields Management Trust – 1997, general partner of Fields Family Investments, Ltd., which is a member of LBV Development, L.L.C., a Texas limited liability company, as the act of LBV Development L.L.C.



*Connie S. Lewis*  
\_\_\_\_\_  
Notary Public Signature

AFTER FILING, RETURN TO:

Henry Nuss  
Welder, Leshin & Mahaffey, LLP  
800 N. Shoreline, Suite 300N  
Corpus Christi, Texas 78401

offered, and the arbitrator may consider all material and testimony presented, as the arbitrator shall consider appropriate. The provisions of Chapter 171 of the Texas Civil Practice and Remedies Code will apply to the arbitration and the arbitrator may issue subpoenas for the attendance of witnesses. Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of this arrangement in advance of the hearing. The requesting party shall pay the cost of the record. If the transcript is agreed by all parties, or determined by the arbitrator, to be the official record of the proceeding, the record must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator, but in that event, the parties shall share in the costs as determined by the arbitrator. The arbitrator and the parties shall maintain the privacy of the arbitration. The arbitrator shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person at a hearing. It is not necessary that the arbitrator make a specific and detailed findings of fact and conclusions of law. All monetary awards or grants of other affirmative relief shall be paid or satisfied within 30 days from the date of the issuance of the award. If any dispute subsequently arises from and relating to the arbitration or regarding the arbitrator's award or the enforcement thereof, the parties agree to submit said dispute to the arbitrator for resolution.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**DECLARANT:**

LBV DEVELOPMENT, L.L.C.

By: \_\_\_\_\_  
David K. Becker, Member

By: \_\_\_\_\_  
C. Clifton Hoskins, Member

By: \_\_\_\_\_  
Michael L. Mintz, Member

By: \_\_\_\_\_  
Howard Mintz, Member

FIELDS FAMILY INVESTMENTS, LTD.

By: Fields Management Trust-1997,  
a general partner

By: \_\_\_\_\_  
Byron W. Fields, Trustee

**RECORDER'S MEMORANDUM:**  
All or part of the text on  
this page was not clearly legible

**Lien Holder Approval**

The Frost National Bank

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

RECORDED  
INDEXED  
FEB 2 2007

THE STATE OF TEXAS       §  
  §  
COUNTY OF NUECES       §

This instrument was acknowledged before me on May 24, 2004 by Chuck Miller,  
(title) MARKET PRESIDENT of The Frost National Bank on behalf of said banking corporation,  
in the capacity therein stated and as the act and deed of said banking corporation.

Lana D. Anton  
Notary Public Signature

 Notary Public  
STATE OF TEXAS

\*\*\*\*\*  
LANA D. ANTON  
Notary Public  
STATE OF TEXAS  
EXP. 03.22-2007  
\*\*\*\*\*

**RECORDER'S MEMORANDUM:**  
All or part of the text on  
this page was not clearly legible

## EXHIBIT 'A'

File No. **264992**  
County Clerk, Aransas County, Texas

### FIELD NOTE DESCRIPTION 95.141 ACRES

Being 95.141 acres of land situated in the John Phillips Survey, A-175, Aransas County, Texas, and being all of Farmlots One (1) and Two (2), of Landblock Two Hundred Forty-two (242), a portion of Farmlot Three (3), Landblock Two Hundred Forty-two (242) and a portion of Farmlot Four (4), Landblock Two Hundred Forty-three (243) of Burton and Danforth Subdivision, Aransas County, Texas, according to the map recorded in Volume 1, Pages 62-63, Map Records of Aransas County, Texas, and being those same Nine tracts of land as conveyed from David Becker to LBV, L.P., a Texas Limited Partnership according to Clerk's File No. 254441 of Aransas County, Texas, and also including all of that certain 1.90 acre tract of land as conveyed from Union Pacific Railroad Company to LBV, L.P., a Texas Limited Partnership according to Clerk's File No. 252057 of Aransas County, Texas, said 95.141 acres being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch diameter iron rod in the Southeast R.O.W. line of Texas State Highway No. 35 Business Route (120.0' R.O.W.) and being the Northwest Right-of-Way line of an abandoned Southern Pacific Railroad, further being the Southwest corner of the herein described tract;

**THENCE**, North 89°57'58" East, crossing said abandoned Southern Pacific Railroad, passing at 116.84 feet a 5/8 inch diameter iron rod found for the Southeast Right-of-Way of said Railroad and the West Right-of-Way line of a 40-foot wide County roadway closed and abandoned by the Commissioner's Court of Aransas County January 30, 1949, passing at approximately at 164 feet the East R.O.W. line of said 40-foot wide County roadway and being the Southwest corner of said Farmlot 3, Landblock 242 and the Northwest corner of Farmlot 4, Landblock 242 of said subdivision and continuing for an overall distance of 1,874.58 feet (call, 1,874.81'), to a point for an exterior corner of the herein described tract, said point being the Southwest corner of that certain 0.252 acre tract of land as conveyed from Elton Jones to David Becker according to Clerk's File No. 231426 of Aransas County, Texas;

**THENCE**, North 00°02'02" West, with the common line of said 0.252 acre tract a distance of 24.62 feet (call, 25.0'), to a point for an interior corner of the herein described tract;

**THENCE**, in a Northeasterly direction along and with a circular curve to the left whose radius bears North 1°44'45" West a distance of 195.0 feet with a central angle of 42°26'19", a radius of 195.0 feet, a chord of 141.16 feet, an arc distance of 144.43 feet to a point for an interior corner of the herein described tract, said point being the North corner of said 0.252 acre tract;



264992

File No. \_\_\_\_\_  
County Clerk, Aransas County, Texas

THENCE, South 59°23'00" East, with the common line of said 0.252 acre tract a distance of 157.19 feet (call, 156.92'), to a point for an exterior corner of the herein described tract, said point being the East corner of said 0.252 acre tract;

THENCE, North 89°57'58" East, passing at approximately 150 feet the Northwest corner of that certain 2.813 acre tract as conveyed from Elton Jones to David Becker according to Clerk's File No. 231426, Aransas County, Texas, and continuing with the North line of said 2.813 acre tract for an overall distance of 319.77 feet (call, 320.72'), to a 5/8 inch diameter iron rod found for an interior corner of the herein described tract, said iron rod being in the North line of said 2.813 acre tract;

THENCE, South 58°04'56" East, with the Northeast line of said 2.813 acre tract a distance of 230.54 feet (call, 230.00'), to a point on the West Right-of-Way line of the Texas Gulf Intracoastal Waterway (400' R.O.W.) and being the Southeast corner of the herein described tract, said point being the East corner of said 2.813 acre tract;

THENCE, North 31°51'51" East, with the West Right-of-Way line of said Texas Gulf Intracoastal Waterway a distance of 1,095.64 feet (call, 1,095.14') to a point on the Easterly projection of the common line between Farmlots 1 and 2 of said Landblock 242 and being an angle point of the herein described tract;

THENCE, North 31°54'29" East, continuing along with the West Right-of-Way line of said Texas Gulf Intracoastal Waterway a distance of 820.80 feet to a point for the Northeast corner of the herein described tract, said point being the Southeast corner of that certain 33.756 acre tract as conveyed to Bullet Concrete Materials according to Clerk's File No. 144666 of Aransas County, Texas;

THENCE, North 89°41'56" West, with the South line of said 33.756 acre tract, passing at approximately 406 feet the Southeast line of said Farmlot 4, Landblock 243, passing at approximately 1,290 feet the Southeast corner of that certain 20.669 acre tract out of Mattie Ives portion of Barber 160 acres, passing at 2,614.66 feet a 5/8 inch diameter iron rod found for the Northeast corner of said 1.90 acre tract, and continuing for an overall distance of 2,732.46 feet to a 5/8 inch diameter iron rod found in the Southeast Right-of-Way line of said Texas State Highway No. 35 Business Route, said iron rod being the Northwest corner of the herein described tract and the Northwest corner of said 1.90 acre tract;

THENCE, South 31°35'13" West, (Basis of Bearing), with the Southeast Right-of-Way line of said Texas State Highway No. 35 Business Route and the Northwest line of said 1.90 acre tract, passing at approximately 824 feet the Southwest corner of said 1.90 acre tract and continuing for an overall distance of 1,785.20 feet (call, 1,785.63'), to the PLACE OF BEGINNING and containing 95.141 acres of land, more or less.

1.134 ACRES (49,408 SQ. FT.)

Being a 1.134 acre (49,408 sq. ft.) ... in the John Phillips Survey, A-175, Aransas County, Texas, and being a portion of Farmlots One (1) and Farmlot Four (4), Landblock Two Hundred Forty-three (243) of Burton and Danforth Subdivision, Aransas County, Texas, according to the map recorded in Volume I, Pages 62-63, Map Records of Aransas County, Texas, said 1.134 acre easement also being a portion of that same tract of land conveyed from David Becker to LBV, L.P., a Texas limited partnership according to Clerk's File No. 254441 of Aransas County, Texas, said 1.134 acre (49,408 sq. ft.) being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch diameter iron rod found for the northwest corner of said 1.131 acre tract, said iron rod being in the southeast right-of-way line of Texas State Highway No. 35 Business Route (120.0' R O W.), and also being the northwest corner of said LBV, L.P. tract;

THENCE, South 89°41'56" East, with the north line of said LBV, L.P. tract, passing at 2,402.22 feet a 5/8 inch diameter iron rod with yellow plastic cap stamped "Landtech Consultants" set, and continuing an overall distance of 2,565.76 feet to a point for the northeast corner -

THENCE, South 30°23'12" West, crossing said LBV, L.P. tract, a distance of 34.67 feet to a point for the southeast corner -

THENCE, North 89°41'56" West, passing at 177.15 feet a 5/8 inch diameter iron rod with yellow plastic cap stamped "Landtech Consultants" set, and continuing an overall distance of 710.55 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "Landtech Consultants" set for an exterior corner -

THENCE, North 59°41'56" West, a distance of 30.00 feet a 5/8 inch diameter iron rod with yellow plastic cap stamped "Landtech Consultants" set for an interior corner

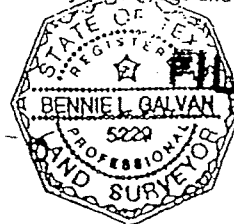
THENCE, North 89°41'56" West, a distance of 1,820.96 feet a 5/8 inch diameter iron rod with yellow plastic cap stamped "Landtech Consultants" set for the southwest corner, said iron rod being in the northwest line of said LBV, L.P. tract and the southeast right-of-way line of said Texas State Highway No. 35 Business Route;

THENCE, North 31°35'13" East, with the northwest line of said LBV, L.P. tract and the southeast line of said Texas State Highway No. 35 Business Route, a distance of 17.55 feet to the PLACE OF BEGINNING and containing 1.134 acres (49,408 sq. ft.) of land, more or less, along with a 15 feet easement for construction and maintenance along the entire south boundary of the above described tract.

A survey drawing of even date herewith accompanies this legal description

The foregoing Fieldnote Description is based on an actual survey made under my supervision in May 2004 and is true and correct to the best of my knowledge and belief

*Bennie L. Galvan*  
Bennie L. Galvan  
Registered Professional Land Surveyor  
Texas No. 5229



**FILED FOR RECORD**  
**AT 3:20 P.M.**

JUN 15 2004

*Peggy L. Friebel*  
PEGGY L. FRIEBELE  
COUNTY CLERK, ARANSAS CO., TEXAS

RECORDER'S MEMORANDUM:  
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