

**DECLARATION OF EASEMENTS, RESTRICTIONS,
COVENANTS AND CONDITIONS
OF
MATAGORDA BAYVIEW, SECTION 1
SUBDIVISION**

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF CALHOUN §

This Declaration of Easements, Restrictions, Covenants and Conditions of Matagorda Bayview, Section 1 Subdivision ("Declaration") is made as of the Effective Date (as hereinafter defined) by Matagorda View, LLC, whose address is 1819 Saint James Place, Houston, Texas 77056-4110 ("Declarant").

WITNESSETH:

Declarant is the sole owner of Lots 1 through 11, Block 1 of Matagorda Bayview, Section 1 Subdivision, a subdivision in Port O'Connor, Calhoun County, Texas, which subdivision is recorded at Instrument No. 2019-00081, Slide No. 596B, in the Deed Records of Calhoun County, Texas ("Matagorda Bayview Section 1").

WHEREAS, Declarant intends, by this Declaration, to impose mutually beneficial restrictions under a general plan of improvements for the benefit of all owners of lots in the Matagorda Bayview Section 1 (together with any additional lands which may hereinafter be annexed into the jurisdiction of the Association (as hereinafter defined), and made subject to the terms of this Declaration) and Declarant further desires to provide a flexible and reasonable procedure for the overall development of such property, and to establish a method for the administration, maintenance, preservation, use, and enjoyment thereof.

NOW, THEREFORE, Declarant hereby declares that all of other lands situated within Matagorda Bayview Section 1 (together with any other lands hereafter annexed into the jurisdiction of the Association and made subject to the terms of this Declaration), are hereby subjected to the provisions of this Declaration, and such property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I.
DEFINITIONS**

Whenever used in this Declaration, the following words and phrases shall have the following stated meanings unless expressly provided otherwise in this Declaration, or the context or use in this Declaration clearly requires otherwise.

1.1 “Architectural Review Committee” or “ARC” shall mean that certain up to three (3) member committee appointed by the Board (and who shall serve at the pleasure of the Board) and empowered to review and approve all Plans prior to construction. The ARC shall also be empowered to enforce these restrictions during construction to ensure compliance with an approved Development Plan.

1.2 “Area of Common Responsibility” shall mean the Common Area, together with those areas, if any, which by contract or agreement become the responsibility of the Association. The Private Roadway, landscaping and drainage and detention areas within the Private Roadway, or adjacent thereto, the Entry Gate and Subdivision Identification Sign may be part of the Area of Common Responsibility.

1.3 “Articles of Incorporation” means the Certificate of Formation of the Matagorda Bayview Homeowner’s Association, Inc., and any amendments thereto, as filed with the Texas Secretary of State.

1.4 “Assessments” shall mean and refer to the General Assessments (hereinafter defined), the Special Assessments (hereinafter defined), the Specific Assessments (hereinafter defined), and any other amounts or sums due by an Owner to the Association pursuant to the provisions of this Declaration or a Supplemental Declaration.

1.5 “Association” shall mean and refer to the Matagorda Bayview Homeowner’s Association, Inc., a non-profit, non-stock, membership corporation incorporated under the laws of the State of Texas, its successors and assigns.

1.6 “Association Expenses” shall mean and include the actual and estimated expenses of operating the Association, including any reserves, as may be found necessary and appropriate by the Board of Directors of the Association pursuant to this Declaration, any Supplemental Declarations, and the Association's By-Laws and Articles of Incorporation.

1.7 “Association Fence” shall mean the fence constructed by Declarant, and thereafter maintained, repaired and replaced by the Association along Third Street and Taylor Avenue within the Common Area of the Subdivision.

1.8 “Barndominium” shall mean a single steel framed and sheet metal building, functioning both as a Single Family Residence as a storage building, barn or workshop type structure. Barndominium may include oversized roll-up doors and single enclosed areas large enough to store boats and Recreational Vehicles.

1.9 “Bay” shall mean Matagorda Bay.

1.10 “Board of Directors” or “Board” shall mean the governing body of the Association whose members shall be appointed by the Declarant during the Class B Control Period and shall thereafter be elected by the Members.

1.11 “Building Guidelines” shall mean and refer to the written guidelines, as amended from time to time, for the design and construction of Improvements on the Lots within the jurisdiction of the Association, which are adopted by the ARC pursuant to this Declaration. The Building Guidelines may impose different requirements for Bay fronting Lots from Lots which are not Bay fronting.

1.12 “By-Laws” shall mean the By-Laws of the Association, as amended from time to time.

1.13 “Class A Members” shall be all Owners with the exception of the Class B Member.

1.14 “Class B Member” shall be the Declarant, which shall have five (5) votes for each Lot it owns within the Subdivision until such time as set forth in **Section 4.3(b)** hereof.

1.15 “Class B Control Period” means the period of time ending on the date on which the Declarant has conveyed the last Lot (hereinafter defined) that it owns in the Subdivision, during which period the Declarant has the exclusive right to appoint and remove the members of the Board of Directors and disapprove any action, policy or program of the Association, the Board or any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or interfere with the development, construction or marketing of any the Lots, or diminish the level of services being provided by the Association.

1.16 “Codes” means the regulations, ordinances or codes of any city or county in which any portion of the Property is located as well as all applicable state and federal statutes and administrative rules.

1.17 “Common Area” shall mean and refer to the Private Roadway and Fence Easement shown on the plat of the Subdivision, together with any and all real and personal property and other easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use, enjoyment and benefit of the Lot Owners and Occupants, if any.

1.18 “Declarant” shall mean and refer to Matagorda View, LLC, a Texas limited liability company, and its successors and assigns; provided, that in the case of an assign in an instrument of conveyance, or by a separate written instrument placed of record in the real property records of Calhoun County, Texas, the assignee is designated as the “Declarant” by the Declarant hereunder at such time. Upon such designation of a successor Declarant, all rights of the former Declarant in and to such status as “Declarant” hereunder shall cease. The Declarant is granted, during the Class B Control Period pursuant to the provisions of this Declaration, the right to appoint and remove members of the Board and the right to disapprove any actions, policies or programs of the Board and/or its committees.

1.19 “Declaration” shall mean this Declaration of Easements, Restriction, Covenants, and Conditions for Matagorda Bayview, Section 1, as it may hereafter be amended in accordance with the provisions hereof.

1.20 “Development Plan” shall have the meaning assigned to it in Section 1.41, hereof;

1.21 “Dock” means a structure extending alongshore of land, or out from the shore of Matagorda Bay into said Bay.

1.22 “Effective Date” means the date that this Declaration is recorded in the Real Property Records of Calhoun County, Texas.

1.23 “Entry Gate” means the security gate to be installed by Declarant and maintained by the Association, located at the intersection of Taylor Avenue and the Private Roadway.

1.24 “Extension Term” means a ten (10) year period following the expiration of the Initial Term or any preceding Extension Term, as set forth in Section 9.1 hereof.

1.25 “Fence” means a fence, wall (other than a wall of a Single Family Residence or Outbuilding), hedge, or other enclosure designed to enclose an area of land other than the Association Fence.

1.26 “Future Section 2 Lands” means all or a portion of those lands which are directly abutting and north of Matagorda Bayview Section I, which lands are more particularly described on Exhibit 1.26, attached hereto.

1.27 “Home Business Use” means use for personal professional library keeping of personal or professional records or accounts, handling of personal business or professional telephone calls and other business activity, but only if such business activity is: (a) limited to the business of the Owner (or Owner’s tenant if applicable); (b) secondary to the use of the Single Family Residence and its Outbuilding for Single Family Residential Use; (c) not detectable by sight, sound or smell from outside the Single Family Residence and any associated Outbuilding; and (d) does not generate retail traffic or patrons to a lot.

1.28 “Improvements” means Single Family Residences, Outbuildings, Docks, erosion control measures, fill materials, fill removal, drainage structures, sidewalks, driveways, parking areas, mailboxes, decks, patios, awnings, walls, Fences, exterior lights or other material structure to be constructed or installed upon a Lot.

1.29 “Industrial Use” means use for commercial manufacturing; commercial distribution; medical / infection / municipal waste collection, processing or incineration; metal salvage or reclamation; junk-yard; recycling buy-back, collection, drop off or processing center; sanitary landfill, concrete or asphalt batch plant, freight terminal, petroleum or metal product storage, refining or smelting or commercial electric generation. Notwithstanding anything to the contrary contained in the foregoing sentence, hydrocarbon based electrical generation for personal use during temporary periods of electrical outages and solar electrical generation for single family residential use are permitted, however, wind generators are not permitted.

1.30 “Initial Term” means a forty (40) year period commencing on the Effective Date, as set forth in **Section 9.1** hereof.

1.31 “Lot” shall mean and refer to an individual lot shown upon the Subdivision, and any future individual lot that may be platted or created (whether by plat or by metes and bounds description) within any lands annexed into the jurisdiction of the Association (as hereinafter defined) and made subject to the terms of this Declaration in accordance with the terms and conditions hereof.

1.32 “Lots” shall mean and refer to more than one individual Lot.

1.33 “Member” shall refer to every Person entitled to membership in the Association, as provided herein.

1.34 “Mortgage” shall mean and refer to a deed of trust, mortgage or other similar security instrument granting, creating, or conveying a lien or security interest upon a Lot or portion of a Lot.

1.35 “Mortgagee” shall mean a beneficiary or holder of a Mortgage.

1.36 “Occupant” shall mean any person occupying the building Improvements on a Lot within the Subdivision for any period of time, regardless of whether such person is a tenant of the Owner of such property.

1.37 “Owner” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to a Lot within the Subdivision, including a Person who has entered into a contract to sell his/her/its Lot, but excluding a Person having an interest merely as security for the performance of an obligation, or a Person owning an interest in the mineral estate thereof.

1.38 “Outbuilding” means a detached garage, detached barn, detached storage structure, detached workshop, detached pool house, and/or detached view tower.

1.39 “Permitted Signs” means: (a) one (1) sign advertising a particular Lot or portion thereof for sale, lease or rent, but only during such periods of time when such Lot or portion thereof is, in fact, for sale, lease or rent; (b) security service signs as provided by a professional security service company; (c) political signs, to the extent permitted by applicable Codes, with all signs being no larger than 2 foot by 2 foot (2' x 2'); (d) marketing signs belonging to Declarant or its brokers advertising Lots for sale until such time as all Lots within the Subdivision, or any lands annexed into the Subdivision, have been conveyed to Owners her than Declarant; and (e) the Subdivision Identification Sign.

1.40 “Person” shall mean any natural person, corporation, joint venture, partnership, association, trust or other legal entity.

1.41 “Plans” shall mean and refer to any or all of the following, as the same shall be submitted, revised, and/or resubmitted to the ARC for approval:

- (a) a "Development Plan", which shall include:
- (i) a "Site Plan" showing the location, dimensions, and orientations of the proposed Residence, Outbuildings and other proposed structures or Improvements, parking areas and driveways in relation to Lot boundaries and required setback lines, and also depicting fencing;
 - (ii) design elevations, together with the height and size of each structure, including the proposed gross building area of the proposed Residence and any Outbuilding;
 - (iii) a description and sample of the proposed exterior materials and colors for the proposed Residence or Outbuilding;
 - (vii) grading and drainage plans, including the elevation of all proposed potable water, septic, sanitary sewer and storm sewer connections and the location of all proposed utility connections, and the depth or size of driveway drainage culverts; and

(b) an "Exterior Plan", which shall include drawings and detail of all exterior surfaces, including the roof (showing elevations) and describing the color, quality, and type of all proposed exterior construction materials.

1.42 "Private Roadway" means that certain 70' Private Road and Utility Easement shown on the plat of the Matagorda Bayview Section 1 Subdivision and any extension thereof that may be platted within all or any portion of the Future Section 2 lands, provided all or such portion of the Future Section 2 lands have annexed into the jurisdiction of the Association and made subject to the terms of this Declaration.

1.43 "Real Property Records" shall mean and refer to those records of the County Clerk of Calhoun County, Texas, in which conveyances of real property, which are part of the lands burdened by this Declaration, are recorded.

1.44 "Signs" means any signs, billboards, posters, banners, pennants or advertising devices of any kind, including without limitation, business, professional, promotional, or institutional signs.

1.45 "Single Family Residence" means a dwelling structure designed primarily for habitation, including sleeping areas, food preparation and indoor sanitation facilities together with one Outbuilding, a Dock (as to Lots adjacent to the Bay) and a Swimming Pool. Single Family Residence excludes: (a) mobile homes, manufactured homes (as defined under Texas law), trailer homes and recreational vehicles (RVs) and campers parked on a Lot for a period longer than fourteen (14) consecutive days within any eighteen (18) consecutive day period; (b) duplex or triplex dwelling structures, apartment homes, condominiums or other types of structures designed for multi-family dwellings; (c) group-home facilities, half-way homes, rehabilitation centers, treatment facilities, or residences for unrelated individuals who are engaging in, undertaking or participating in any group living, rehabilitation, treatment, therapy or training with respect to

previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness or other similar matters; and (d) boarding or rooming houses for transients, motels, and hotels. The term Single Family Residence shall include a Barndominium.

1.46 “Single Family Residential Use” means use of the Single Family Residence by either: (a) husband and wife, their dependent children and their dependent parents, grandparents, grandchildren, brothers and sisters who are maintaining a common household and who are members of a single family related by blood, marriage or adoption; or (b) one or more natural persons not so related but who are maintaining a common household in a Single Family Residence on a nonprofit, noncommercial basis with a common kitchen and dining area. Single Family Residential Use excludes any activity or use of the Property that is associated with use by the public generally for business or professional related purposes (other than a Home Business Use), commercial or manufacturing uses, or Industrial uses.

1.47 “Subdivision” means Matagorda Bayview Section 1, together with any additional lands which may hereafter be annexed into the jurisdiction of the Association and made subject to the terms of this Declaration.

1.48 “Subdivision Identification Sign” means a monument sign or other permanent sign situated within the Common Area identifying the Subdivision generally as “Matagorda Bayview”.

1.49 “Supplemental Declaration” shall mean a separate declaration of covenants, conditions and restrictions which is imposed on property within the jurisdiction of the Association and which may be enforced by the Association or an instrument which imposes additional restrictions on the Subdivision.

1.50 “Spa” means a non-commercial underground or above ground jacuzzi tub, whirlpool, hot tub or spa, whether free-standing or attached to a Swimming Pool.

1.51 “Swimming Pool” means an underground non-commercial pool together with its associated hardscape, decking and equipment. No above ground pools are permitted in the Subdivision.

1.52 “Term” means the Initial Term, together with any Extension Term, as set forth in **Section 9.1** hereof.

1.53 “Utilities” means electric lighting, electric power, telegraph, telephone, cable, fiber optic or other communications line or lines and water, gas, sanitary sewers, storm sewer line or lines.

ARTICLE II. RESERVATIONS, EASEMENTS, AND DEDICATIONS

2.1 Dedications in the Subdivision. The plat of the Subdivision dedicates for use the easements shown thereon, subject to the limitations set forth therein, and the plat of the Subdivision further establishes certain restrictions applicable to the Lots, including, without limitation, certain

minimum setback lines. All easements, dedications, limitations, restrictions and reservations shown on the Subdivision plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed and other instrument conveying or affecting all or part of the Subdivision, including a leasehold or other possessory interest, whether or not specifically referred to therein. To the extent of any inconsistency between the terms and provisions of the Subdivision and the terms and provisions of this Declaration, the terms and provisions of the Subdivision shall prevail. To the extent of any inconsistency between: (i) the provisions of this Declaration or the matters reflected on the Subdivision plat; and (ii) the Codes, the Codes shall prevail.

2.2 Reservation of Utility Easements in the Subdivision. Declarant further reserves the public utility easements shown on the Subdivision plat for the purpose of constructing, maintaining and repairing a system or systems of Utilities and any other Utility which may be installed in, across, or under said easements; provided all such Utilities shall be located underground (except that electrical transformer boxes, water meters and similarly required utility structures which connect other than cables and conduit may be set above ground).

2.3 Fence Easement. Declarant further hereby dedicates for the benefit of all Owners of Lots in the Subdivision the Fence Easement shown on the plat of the Subdivision for purposes of constructing, maintaining, repairing and replacing the Association Fence. Lot owners shall be permitted to install not more than one (1) gate per Lot within the Association Fence for vehicular and pedestrian ingress and egress to their Lot. A Lot Owner's gate in the Association Fence shall be closed and locked when not passing through same.

ARTICLE III. RESTRICTED USE AND BUILDING RESTRICTIONS

3.1 Land Uses and Building Type on Lots. All Lots within the Subdivision shall be used for Single Family Residential Uses only and, except as otherwise provided in this Declaration, no building or improvement shall be erected, placed or permitted to remain on any Lot other than one (1) Single Family Residence, together with no more than one (1) associated Outbuilding and Fences.

3.2 Setbacks – Matagorda Bayview Section 1. The following specific restrictions and requirements shall apply only to Lots within Matagorda Bayview Section 1:

(a) Bayside Building Set Back Line Lots 7-11, Block 1, Section 1. No Single Family Residence, or other structure other than a Fence, Dock, Swimming Pool, Spa, landscaping or trees, shall be erected, placed or permitted to remain on Lots 7 through 11 in Block 1, Section 1 of the Subdivision located east (Bay side) of the Bayside Building Line shown on the plat of the Subdivision.

(b) Front Setback All Lots – Section 1. No Single Family Residence, Swimming Pool, Spa or other structure other than a Fence, landscaping or trees shall be erected, placed or permitted to remain on any Lot within the Subdivision closer than twenty-five feet (25')

from the boundary of the 70' Private Road and Utility Easement shown on the plat of the Subdivision.

(c) Side Setbacks Lots 2-11, Block 1, Section 1. No Single Family Residence, Swimming Pool, Spa or other structure (excluding, however, a Fence, landscaping or equipment associated with the operation of a Swimming Pool or Spa provided such equipment does not encroach into any utility easement) shall be erected, placed or permitted to remain on Lots 2 through 11 in Block 1, Section 1 situated closer than ten feet (10') from the boundary line of such Lot.

(d) Side Setbacks Lot 1, Block 1, Section 1. No Single Family Residence, Swimming Pool or other structure (excluding, however, a Fence, landscaping or equipment related to the operation of a Swimming Pool or Spa provided such equipment does not encroach into any utility easement) shall be erected, placed or permitted to remain closer than ten feet (10') from the southern boundary line on Lot 1, Block 1, Section 1, or ten feet (10') from the northern boundary line of Lot 1, Block 1, Section 1.

(e) Rear Setback Lots 1-6, Block 1, Section 1. No Single Family Residence or other structure (excluding, however, a Fence, Swimming Pool, Spa, landscaping or equipment related to the operation of a Swimming Pool or Spa provided such equipment does not encroach into any utility easement) shall be erected, placed or permitted to remain closer than fifteen feet (15') to the western boundary lines of Lots 1 through 6 in Block 1, Section 1.

(f) Access and Driveways. All Lots within Matagorda Bayview Section 1 which have a completed and habitable Single Family Residence constructed thereon shall have driveway entrance onto the Private Roadway.

(g) Driveway Location on Private Roadway, Lot 1, Block 1, Section 1. The southernmost point of driveway access to the Private Roadway may not be located nearer than fifty-five feet (55') of the southern boundary line of Matagorda Bayview Section 1.

(g) Secondary Driveways, Lots 1 through 6, Block 1, Section 1. Subject to any permits required by Calhoun County or other applicable entity having jurisdiction, Lots 1 through 6 in Block 1, Section 1 may have a secondary driveway access to Third Street, provided such Lots have a constructed primary driveway access to the Private Roadway.

3.3 Building Heights. The following further specific restrictions and requirements regarding the elevations of Single Family Residences, Outbuildings and Fences upon any Lot shall apply:

(a) Minimum Elevation of Living Area/Single Family Residence. The minimum height of the livable space of a Single Family Residence within a Lot shall be constructed at an elevation above ground level not less than the minimum elevation required for residential uses under the Codes applicable at the time that any Single Family Residence is initially constructed, added onto, altered or reconstructed after casualty.

(b) Maximum Building Height/Single Family Residence. No Single Family Residence on a Lot may be constructed, reconstructed or remodeled to a height of more than two (2) stories of living space. A widow's walk or cupola structure on the roof of a Single Family Residence shall not be deemed a story.

(c) Maximum Building Height of Outbuildings. No Outbuilding may be constructed, reconstructed or remodeled to a height of more than twenty-two feet (22') above ground level.

(d) Height of Fences. No Fence may exceed a height of four and one-half feet (4.5') from the grade of the land upon which it is installed or maintained.

3.4 Docks and Boat Houses. Subject to all applicable Codes and necessary permits issued by the State of Texas or any subdivision thereof and/or the U.S. Army Corps of Engineers (or other applicable State or Federal agencies) and the ARC approval of the Plans therefore, each Lot Owner owning a Lot or property which abuts the Bay may build one Dock from the bank of that Owner's Lot into the Bay. Docks are specifically exempt from the Bayside Building Setback set forth in Section 3.2 hereof. Each Owner is responsible for complying with all applicable Codes with respect to the construction, repair and reconstruction of a Dock. All Docks must be maintained in a safe and tidy condition at all times save and except during construction or repair thereof. No sheds or covered, walled or roofed structures for the storage of boats, or other equipment, may be constructed or maintained along the shoreline of the Bay, either on or connected to a Dock.

3.5 Barndominiums. A single Barndominium is permitted on a Lot and is considered a Single Family Residence. Barndominiums must comply with the exterior and roof material requirements of Section 3.6 below.

3.6 Exterior and Roof Materials. All exterior walls of a Single Family Residence shall be constructed of or clad in wood, HardiePlank (or similar type siding), masonry, brick, stucco, stone or any combination thereof. Outbuildings may be constructed of or clad in metal siding or may be clad in masonry, brick, stucco, stone or any combination of those materials (including metal). Roof materials of a Single Family Residence shall be composite, or standing seam metal roofing. Tile, slate and wood shingled roofs are not permitted.

3.7 Subdivision of Lots. No Lot may be further subdivided into a smaller tract of land.

3.8 Single Owner of Contiguous Lots. If two or more contiguous Lots within the Subdivision are owned by the same Owner, then to the extent permitted by applicable Codes, such Owner shall be permitted to construct a Single Family Residence and its associated Outbuilding over the side Lot line which divide such contiguous Lots without replatting the contiguous Lots as a single Lot. Additionally, if two or more contiguous Lots within the Subdivision are owned by the same Owner, such Owner shall be permitted to construct a Single Family Residence on one Lot and its associated Outbuilding on the other contiguous Lot.

3.9 Fill and Drainage. No Lot may be built up with dirt or fill materials which raise the elevation thereof more than two feet (2') from the natural grade thereof. Each Lot Owner shall be

responsible for ensuring that all state and federal rules and regulations regarding fill, drainage and runoff are met with respect to his / her / its Lot.

3.10 Culverts. Driveway crossings over the drainage culverts shall be constructed in a manner that permits easy clean-out of the drainage culvert, such as a metal grate or metal plate that may be lifted or removed. Lot owners shall regularly maintain the culverts at their respective driveway crossings in order to maintain positive drainage flow. The driveway culverts shall be properly sized to match the depth of the drainage ditch situated in the Private Roadway, as set forth in **Schedule 3.10**, attached hereto.

3.11 Septic. No septic tank, structure, or cesspool shall be permitted on any Lot.

3.12 Use of Temporary Structures. No structure of a temporary character, including but not limited to a trailer, tent, shack, sales and construction offices and storage area, model unit, sign, portable toilet facility, or other outbuilding or improvement shall be erected, placed or permitted to remain on any Lot, except for a limited amount of time in connection with the construction of a Single Family Residence on that Lot, and excepting Outbuildings erected or placed thereon in accordance with **Section 3.1** above.

3.13 Construction Period. Once construction of a Single Family Residence on a Lot has commenced, the Owner shall diligently prosecute its construction to completion within a period of twenty-four (24) months after the commencement of construction.

3.14 Storage of Automobiles, Boats, Trailers and Other Vehicles. No automobile or other motorized vehicle (such as a motorcycle, scooter, golf cart, all-terrain vehicle (ATV) or similar motorized vehicle), camper or recreational vehicle, whether with or without a motor, may be parked or stored outside of any building (as opposed to being fully enclosed within a garage, other permitted Outbuilding or Barndominium) unless such vehicle is in operating condition, is in regular use as passenger motor vehicle on the streets and highways of the State of Texas, does not exceed seven feet (7.0') in height, seven feet six inches (7'6") in width, and twenty-one feet (21') in length, and is parked in the driveway on such Lot. No trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any Lot unless such object is either: a) concealed from public view behind a permitted Fence or concealed within a fully enclosed Outbuilding, attached garage of a Single Family Residence on which the doors may be closed and secured; or b) parked or stored under an elevated Single Family Residence (although such area may not and need not be concealed from view); or c) parked within a Barndominium. Notwithstanding the foregoing, a camper or recreational vehicle, including a fifth-wheel camper, motor home, or camper van, may not be permanently stored on any Lot unless such camper or recreational vehicle is concealed from public view within a fully enclosed Outbuilding, garage associated with a Single Family Residence or Barndominium constructed upon said Lot. None of the foregoing restrictions of this **Section 3.14** shall apply to any vehicle, trailer, machinery, equipment, boat, trailer, camper or recreational vehicle which is temporarily parked on a Lot for a period of less fourteen (14) consecutive days within any eighteen (18) consecutive date period) or any longer period during which such vehicle, trailer, machinery, equipment, boat, trailer, camper or recreational vehicle is in temporary use for the erection, repair or maintenance of structures on a Lot, however, no one shall be permitted to dwell or reside in such vehicle, boat, trailer,

machinery, camper or recreational vehicle during the erection, repair or maintenance of structures on a Lot.

3.15 Animal Husbandry. No animals of any kind shall be raised, bred or kept on any Lot excepting common household pets, such as dogs, cats and other common household pets that are not raised, bred or kept for commercial purposes. Notwithstanding the foregoing, a Lot Owner may raise and keep no more than five (5) adult laying hens on its Lot, provided such laying hens are kept in a pen or enclosure. No roosters or swine shall be permitted upon a Lot. Household pets must be confined inside a Fenced area. All animals owned by an Owner of a Lot shall be kept on the Owner's Lot except when leashed or otherwise under the control of its Owner.

3.16 Vegetation. All trees, shrubs and other vegetation, including grass and weeds, on a Lot (excluding Lots owned by Declarant) shall at all times be cut, pruned and otherwise maintained in a neat, sanitary, healthful and attractive condition, and no Lot shall ever be used for storage of materials and equipment except for normal residential requirements or incident to construction of Improvements thereon as permitted in this Declaration.

3.17 Erosion. The Owners of Lots abutting the Bay shall be solely responsible for maintenance of rip rap or other defenses against erosion with respect to each such Owner's lands. The installation, maintenance, construction or repair of rip rap, bulkheads, granite blocks, concrete walls, or such other erosion defenses must be performed in accordance with all applicable Codes. All rip rap shall be free of iron reinforcing bar.

3.18 Trash. No Lot shall be used or maintained as a dumping ground for garbage, trash, rubbish, or other waste, nor shall the accumulation of garbage, trash, rubbish or other waste be permitted thereon. Equipment for the storage or disposal of garbage, trash, rubbish and other waste generated in the construction or alteration of Improvements on a Lot may be placed thereon (in appropriate containers) at the time construction is commenced and may be maintained thereon until the completion of the work, so long as the construction progresses without undue delay, at which time the garbage, trash, rubbish and other waste shall be removed from the Lot.

3.19 Rental. No Lot, nor portion thereof, may be leased, subleased or rented for any use other than Single Family Residential Use, and shall not be leased, subleased, or rented to persons who are not the Lot Owner, or principals of the Lot Owner (to the extent Owner is a Trust or legal entity) for periods of less than thirty (30) consecutive days. No lot may be used for transient housing. Rental of a Single Family Residence on a Lot shall be limited to no more than eight (8) adults.

3.20 Signs. No signs are permitted on a Lot other than Permitted Signs.

3.21 Private Utility Lines. All electrical, telephone and other utility lines and facilities which are located on a Lot and are not owned by a governmental entity or public utility company shall be installed underground unless otherwise approved in writing by the ARC.

3.22 Noxious Uses / Nuisances. No substance, thing, or material may be kept on a Lot which emits foul or obnoxious odors, or that will cause noise or other condition that materially disturbs the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No

Lot or any portion thereof may be used for any illegal purpose. Burning of brush, trash or garbage on a Lot is prohibited.

3.23 Mineral Development. No Lot may be used for the drilling or mining of oil, gas or other minerals.

**ARTICLE IV.
MATAGORDA BAYVIEW HOMEOWNER'S ASSOCIATION, INC.**

4.1 Organization. The Association has been organized and formed as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein and in any Supplemental Declaration(s) (if applicable), providing for the maintenance and preservation of the Area of Common Responsibility and the facilities of the Association, and architectural control of the Lots. The Association shall be governed by the Nonprofit Corporations provisions of the Texas Business Organizations Code, its Articles of Incorporation and By-laws, and shall have such powers, rights and privileges allowed it under the law, its Articles of Incorporation and By-Laws, and that it may otherwise have under applicable law, including the power to:

- (1) adopt and amend by-laws;
- (2) adopt and amend budgets for revenues, expenditures and reserves, and assess and collect Assessments from the Owners;
- (3) hire and terminate managing agents and other employees, agents and independent contractors;
- (4) institute, defend, intervene in, settle or compromise litigation or administrative proceedings on matters affecting the Property;
- (5) make contracts and incur liabilities relating to the operation of the Association;
- (6) regulate the use, maintenance, repair, replacement, modification and appearance of the Common Areas of the Property;
- (7) establish the number of members of the ARC from time to time, provided no more than three (3) persons shall make up the membership of the ARC at any one time;
- (8) appoint the members of the ARC, who shall serve as the pleasure of the Association, and to fill vacancies in the membership of the ARC;
- (9) make additional Improvements to be included as a part of the Common Area;
- (10) grant easements, leases, licenses and concessions through or over the Common Area;

- (11) impose interest, late charges and, if applicable, returned check charges for non-payment of regular assessments, special assessments and any other charges;
- (12) establish fines and penalties for violations of these Declarations or the Association's Articles of Incorporation, By-Laws, Building Guidelines or other rules and regulations promulgated by the Association in accordance with this Declaration or under applicable law;
- (13) collect attorney's fees and costs incurred by the Association relating to violations of this Declaration or the Association's Articles of Incorporation, By-Laws, Building Guidelines or other rules and regulations promulgated by the Association in accordance with this Declaration or under applicable law;
- (14) charge costs to an Owners' assessment account and collect the costs in any manner provided in this Declaration or under law for the collection of Assessments;
- (15) adopt and amend rules regulating the collection of delinquent Assessments and the application of payments;
- (16) impose reasonable charges for preparing, recording, copying or delivering copies of this Declaration, any Supplemental Declaration, any amendment to this Declaration, any Dedicatory Instrument as defined in Section 209.002 of the Texas Property Code and any successor statute thereto;
- (17) impose reasonable charges for preparing and delivering resale certificates or statements of unpaid assessments;
- (18) create and maintain an electronic database and/or website associated with the Subdivision;
- (19) purchase insurance and fidelity bonds, including any increases therein, consistent with this Declaration and the Articles of Incorporation and By-Laws of the Association;
- (20) assess any regular and special Assessments, including any increases therein, consistent with this Declaration and the Articles of Incorporation and By-Laws of the Association;
- (21) subject to the requirements of the Texas Business Organizations Code, indemnify a director or officer of the Association or member of the Architectural Review Committee who was, is or may be made a named defendant or respondent in a proceeding because the person is or was a director;
- (22) exercise other powers conferred by this Declaration or the Articles of Incorporation and By-laws of the Association;

- (23) exercise other powers that may be exercised in this state by a corporation of the same type as the Association; and
- (24) exercise other powers necessary and proper for its governance and operation.

4.2 **Membership.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as hereinafter provided. The membership rights of a Lot owned by a corporation, partnership or other entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Board, subject to the provisions of this Declaration and the By-Laws.

4.3 **Voting.** The Association shall have two (2) classes of membership, Class A and Class B, as follows:

(a) **Class A.** Class A Members shall be all Owners with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot of which they are the Owner. If more than one Person holds the interest in a Lot required for membership in the Association, any such Persons may exercise the vote for such Lot; provided, however, the vote for such Lot shall be suspended in the event more than one Person seeks to exercise it.

(b) **Class B.** The Class B Member shall be the Declarant which shall have five (5) votes for each Lot it owns in the Subdivision. The Class B Membership shall cease and be converted to Class A Membership upon the earlier of (i) the date on which Declarant has sold and conveyed all of the Lots it owns in the Subdivision; or (ii) on such earlier date that the Declarant, in its sole and absolute discretion, so determines and records an instrument to such effect in the real property records of Calhoun County, Texas. The Class B Member shall have the exclusive right to appoint and remove the members of the Board of Directors during the Class B Control Period. In the event the Class B Membership ceases pursuant to clause (ii), thereafter, the Declarant shall be a Class A Member with respect to the Lots it owns and shall have one (1) vote per Lot it owns as a Class A Member.

4.4 **Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including legal fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein

shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled.

**ARTICLE V
COVENANT FOR ASSESSMENTS**

5.1 Purpose of Assessments. The Assessments provided for in this Declaration shall be used by the Association to maintain and keep, in good repair, the Areas of Common Responsibility and for the common benefit of the Owners and Occupants of the Lots. The judgment of the Board of Directors as to the activities undertaken by the Association and the expenditure of Assessments shall be final and conclusive. Such purposes may include, but are not limited to:

(a) Maintenance, repair and replacement of the Private Road, drainage areas and structures, landscaping, mowing, and Improvements, street lights, entry features, landscaping and Irrigation within the Private Roadway, the Entry Gate, Subdivision Identification Sign, the Association Fence, mosquito control, and other services, facilities and activities specified in this Declaration or in the Articles of Incorporation;

(b) Payment of taxes and premiums for insurance coverage in connection with the Areas of Common Responsibility, liability insurance, and director and officer insurance for the benefit of the Association;

(c) Payment of labor, equipment, material and associated supervisory services and fees related to the maintenance, keeping and repair of the Areas of Common Responsibility;

(d) Paying the cost and fees of a manager or firm retained to carry out the duties or the Association or to manage the affairs and property of the Association for bookkeeping, accounting and tax preparation services and preparation of resale certificates;

(e) Debris removal from the Areas of Common Responsibility;

(f) Payment of legal fees and expenses incurred in the collection of Assessments and the enforcement of the terms of this Declaration;

(g) Payment of legal fees, expert fees, court costs, damages and/or judgments assessed against the Association in any lawsuit or administrative proceeding, or the payment of legal fees, expert fees, court costs and damages resulting from any agreed judgment or voluntary settlement of claims made against the Association;

(h) Creation and funding of reserve funds deemed necessary by the Board of Directors;

(i) Carrying out the duties and responsibilities of the Board of Directors of the Association; and

(j) Payment of water and electricity associated with the irrigation within the Private Roadway and the Entry Gate.

5.2 Types of Assessments. By acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, each Owner hereby covenants and agrees to pay to the Association the following General Assessments, Special Assessments, and Specific Assessments, to be established and collected as hereinafter provided:

(a) General Assessments. General Assessments shall be levied annually against the Lots to enable the Association to pay the Association Expenses which are determined by the Board of Directors to benefit all Members excepting expenses for which the Board of Directors makes a Specific Assessment. General Assessments shall be fixed at uniform rates, provided however, that Lots owned by Declarant shall not be subject to assessment.

(b) Special Assessments. In addition to other authorized Assessments, the Board may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment shall be levied against all Tracts in accordance with the formula for determining the General Assessments against the Tracts pursuant to paragraph (a) above. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

(c) Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot to cover costs incurred by the Association in bringing the Lot into compliance with this Declaration or the Building Guidelines or costs incurred as a consequence of the conduct of an Owner or Occupant of a Lot, their agents, contractors, employees, licensees, invitees or guests.

At least sixty (60) days before the beginning of each calendar year, the Board shall prepare a budget of the estimated Association Expenses for the coming year, including contributions to be made to any reserve fund created by the Board. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments levied against the Lots, and the amount to be generated through the levy of General Assessments, Special Assessments and Specific Assessments against the Lots, as authorized by this Section 5.2. In the event that the Board fails to determine a budget for the succeeding year, then and until such time as a budget shall have been adopted, the budget in effect for the then current year shall continue for the succeeding year.

The Board may establish a reserve fund in such amount as it determines to be necessary and prepare, from time to time, a reserve budget for the Areas of Common Responsibility, which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may include in the budget for Association Expenses a capital contribution to fund such reserves, in an amount sufficient to meet the projected need with respect both to amount and timing, by annual contributions over the budget period.

The Association is hereby authorized to levy annual General Assessments against all Lots in the Subdivision starting at an initial rate of Eight Hundred and No/100 Dollars \$800.00 per Lot per annum. Thereafter, in determining the General Assessment rate, the Board may consider any assessment income expected to be generated from any additional tracts of land reasonably anticipated to be annexed into these Declarations and become subject to assessment during the year. The Board shall use reasonable efforts to send notice of the amount of the General Assessments to be levied to each Member at least thirty (30) days prior to the due date.

5.3 Authority to Assess, Time of Payment. The Association is hereby authorized to levy Assessments as provided for in this **Article V**. The obligation to pay Assessments shall commence as to each Lot in the Subdivision on the first day of the month following the month in which the Board first determines a budget and levies Assessments pursuant to this **Article V**. The first annual General Assessments levied shall be adjusted according to the number of months remaining in the calendar or fiscal year at the time the General Assessments commence.

Assessments shall be paid in such manner and on such date or dates as the Board may establish. The Board may require advance payment of Assessments at closing of the transfer to title to a Tract, and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two (2) or more installments. Unless the Board otherwise determines, General Assessments shall be due and payable in advance on the first day of each calendar year. If any Owner is delinquent in paying any Assessments or other charges levied on its Lot, the Board, after a minimum of thirty (30) days written notice to the Owner and an opportunity for the Owner to cure the delinquency, may require the outstanding balance on all Assessments to be paid in full immediately.

5.4 Creation of Lien and Personal Obligation for Assessments. All Assessments, together with interest at the rate of eighteen percent (18%) per annum or such other rate of interest as may be set from time to time by the Board of Directors, not in excess of the maximum lawful rate, commencing on the date which is thirty (30) days after the due date, costs (specifically including, but not limited to, any flat charges or percentage fees charged by any collection agencies used by the Association in collecting delinquent Assessments), and reasonable attorney's fees and court costs actually incurred, shall be a charge on each Lot and shall be secured by a continuing lien in favor of the Association upon the Lot against which each Assessment is made

Each such Assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment fell due. Each such Owner shall be personally liable for his or her portion of each Assessment coming due while he or she is the Owner of the Lot and each Assessment thereafter coming due unless and until such Owner notifies the Association of the sale or conveyance of the Lot against which the Assessment is made as hereinafter provided in this **Section 5.4**.

In order to extinguish any Person's personal liability with regard to Assessments coming due following the sale or conveyance of the Lot owned by such Person, such Person shall be obligated to notify the Association of such Person's sale or conveyance of the Lot against which Assessments may be levied. In that regard, each Person who at any time owned any Lot in the Subdivision against which Assessments may be levied shall no longer be liable or responsible for

payment of Assessments coming due after the date upon which such Person furnishes to the Association a copy of the executed instrument of conveyance by which fee simple title to the Lot previously owned by such Person was conveyed or transferred to another Person, and the mailing address of the Person to whom such Lot was conveyed or transferred. Upon receipt of such information, the Association shall cause the name and address of the new Owner to be substituted for that of the prior Owner on the records of the Association, and the prior Owner shall no longer be liable or responsible for Assessments subsequently coming due. Each Person owning a Lot against which Assessments may be made shall have the obligation to notify the Association of any change in its address, and notice of any such change shall become effective five (5) days after written notice thereof has been provided to the Association. With regard to mailing notices of Assessments payable by any Person to the Association, the Association shall be deemed to have satisfied any obligation that it might have to provide written notices or bills if the same are marked or delivered to the Owner at the address of such Owner as reflected on the records of the Association. No such Owner or other Person liable for the payment of any Assessment shall escape such liability or be entitled to any deferral or abatement of interest or any late charges or collection costs with regard to delinquent Assessments on the basis of such Person's failure to receive notice thereof if the Association did mark or deliver such notice to the most recent address of the Person according to the records of the Association

5.5 Subordination of the Lien to Mortgages. The lien securing the Assessments provided for herein shall be subordinate to (i) liens of *ad valorem* taxes, and (ii) the lien of any Mortgage encumbering the applicable Tract which has been recorded in the real property records of Calhoun County, Texas. Sale or transfer of any property subject to this Declaration shall not affect the lien hereby created; however, the sale or transfer of any property pursuant to foreclosure of a Mortgage or any conveyance in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such property from liability for any Assessments thereafter becoming due or from the lien thereof. All Persons acquiring liens or encumbrances on any property subject to this Declaration, after this Declaration shall have been recorded in the real property records of Calhoun County, Texas, shall be deemed to consent that such liens or encumbrances shall be inferior to the lien securing Assessments becoming due after foreclosure or conveyance in lieu thereof as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

5.6 Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessments which are not paid in full by the date specified by the Board shall be delinquent. Any delinquent Assessment shall commence to bear interest on the date which is thirty (30) days after the due date at the rate specified hereinabove. If the Assessment is not paid when due, the lien herein retained and created against the affected property shall secure the Assessment due, interest thereon from the date which is thirty (30) days after the due date, all costs of collection, court costs, reasonable attorney's fees actually incurred, and any other amount provided or permitted by law. In the event that the Assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit for collection against the Owner personally obligated to pay the Assessment, or foreclose the lien created and reserved hereby against the Lot of such Owner.

The Association's lien is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien shall be or is required. By acquiring a Lot an Owner grants to the Association a power of sale in connection with the Association's lien. By written resolution, the Board of Directors of the Association may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. The Association shall exercise its power of sale pursuant to the Texas Property Code, and any applicable revision(s), amendment(s), or modifications thereof in effect at the time of the exercise of such power of sale. The Association has the right to foreclose its lien judicially, or by nonjudicial foreclosure, pursuant to the power of sale created hereby. Costs of foreclosure may be added to the amount owed by the Owner to the Association. An Owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the Owner's debt. The Association may bid for and purchase the Lot at the foreclosure sale utilizing funds of the Association. The Association may own, lease, encumber, exchange, sell, or convey a Lot. The purchaser at any such foreclosure sale shall be entitled to sue for possession of the Lot by an action of forcible detainer without the necessity of giving any notice to the former Owner or Owners of the Lot sold at foreclosure. The Owner shall have no right of redemption after or resulting from a foreclosure of the Association's lien unless otherwise provided by law. Nothing herein shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien. At any time before a nonjudicial foreclosure sale, an Owner of a Lot may avoid foreclosure by paying all amounts due the Association. Foreclosure of a tax lien attaching against a Tract shall not discharge the Association's lien for amounts becoming due to the Association after the date of foreclosure of the tax lien.

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein by non-use of Common Area or abandonment of the Lot owned by such Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Lot Owner.

All payments shall be applied first to costs and attorney's fees, then to interest, and then to delinquent Assessments.

5.7. Assessment Obligation of Declarant. Subject to the further provisions hereof, Declarant, on behalf of itself and its successors and assigns to whom its rights as Declarant are expressly assigned, shall have no obligation to pay Assessments on any of the Lots it owns for so long as Class B membership exists in the Association.

5.8. Exempt Property. The following property shall be exempt from payment of Assessments:

- (a) all property owned by any governmental authority or public utility;

(b) the seventy foot (70') wide Private Road and Utility Easement shown on the plat of the Subdivision; and

(c) property which is not a Lot, and is either owned by or designated on the Declarant's land plan for conveyance to the Association, to another property owners Association, or to a governmental authority, including a utility district, the County, or a municipality.

The Person owning Exempt Property, as defined herein, shall have no right to be a Member of the Association with regard to its ownership of the Exempt Property, nor shall such Person be entitled to any votes attributable to its ownership of the Exempt Property.

ARTICLE VI ASSOCIATION INSURANCE

6.1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority, but not the obligation, to obtain blanket, all-risk casualty insurance for all insurable improvements on the Common Area, or if blanket all-risk coverage is not reasonably available, an insurance policy providing fire and extended coverage. Such insurance policies shall be in such amount or amounts as the Board of Directors deems appropriate.

The Board may also obtain general liability insurance in such amount as it deems appropriate, from time to time, covering the Common Area, insuring the Association, the Board and the Association's Members for all damages or injury caused by the negligence of the Association, its agents, the Board, the Members or Occupants, in such amount as the Board deems appropriate. In addition to the other insurance discussed in this Section 6.1, the Board may also obtain, as an Association Expense payable from General Assessments, (i) Workers' Compensation insurance (ii) directors' and officers' liability coverage, and (iii) a fidelity bond or fidelity insurance on directors, officers, employees, agents and other Persons handling or responsible for the Association's funds.

6.2. Damage and Destruction. Immediately after damage or destruction by fire or other casualty of all or any part of the property covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and the repair or reconstruction of the damaged or destroyed property, to the extent insurance proceeds are available for such purpose. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition which existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. In the event that insurance proceeds are unavailable to repair or reconstruct the Common Area, the damaged or destroyed property shall be restored to its natural state and maintained by the Association in a neat and attractive condition. If insurance proceeds are insufficient to cover a repair or reconstruction, the Board may levy a Special Assessment to cover the shortfall.

ARTICLE VII ARCHITECTURAL STANDARDS AND RESTRICTIONS

7.1. Purpose. In order to establish and preserve a harmonious and aesthetically pleasing design for and promote and sustain the value of the Subdivision, each Lot shall be subject to the restrictions set forth in this **Article VII**. Every grantee of any interest in a Lot, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this **Article VII**.

7.2. Architectural Review Committee. There is hereby established the Matagorda Bayview Architectural Review Committee (hereinafter called the "ARC"), which shall have exclusive jurisdiction over all original construction on the Lots and over modifications, additions, or alterations made on or to the Improvements on the Lots. The ARC shall from time to time (i) adopt and/or modify such standards or guidelines as it determines for the construction or alteration of Improvements on the Lots (the "Design Guidelines"), and (ii) establish and/or modify application and review procedures for the Plans for proposed Improvements or alterations to Improvements. The ARC shall make the Design Guidelines available to Owners who seek to engage in the development of a Lot or construction upon a Lot, and who shall conduct their operations strictly in accordance therewith. The ARC may establish and charge reasonable fees for its review of Plans hereunder. The ARC shall consist of up to three (3) members. Until the date on which it has sold all of its Lots within the Properties, the Declarant shall have the right to appoint all members of the ARC, as well as the right to remove any member at any time. There shall be no surrender of this right prior to that time, except by a written instrument executed by Declarant and recorded in the real property records of Calhoun County, Texas. Following the expiration of such right, the Board of Directors shall have the right to appoint and remove the members of the ARC. The ARC is authorized, but not obligated, to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. The costs of the services of such consultants shall be an Association Expense, except to the extent such costs are covered by a Plan review fee established by the ARC, if it elects to establish such fee.

7.3. Approval of Plans. No construction of a building or other Improvements, modifications, additions, or alterations to existing Improvements, shall be commenced or maintained by or on behalf of any Owner with respect to a Lot, nor shall any exterior addition to, or change or alteration therein, be made (including, without limitation, painting or staining of any exterior surface a different color than the one previously approved), unless and until the Plans therefor and related data have been submitted to and approved in writing by the ARC. The ARC may establish a reasonable fee sufficient to cover the expense of reviewing Plans and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his / her / its Improvements, to paint the interior of the Improvements on his Lot any color desired, or to repaint or restain the exterior of the Improvements on his / her / its Lot with the same color which has been previously approved for such Improvements. The ARC shall have the sole discretion to determine whether Plans submitted for approval are acceptable to the Association.

Upon approval of Plans, no further approval under this **Article VI** shall be required with respect thereto, unless construction has not substantially commenced within one (1) year of the written approval of such Plans (e.g. clearing and grading, pouring of footings, etc.), or unless such Plans are materially altered or changed. The ARC may disapprove Plans for any reason which is consistent with the objectives and purposes of this Declaration, as determined by the ARC from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

7.4 Approval Not a Variance. The review and approval of Plans pursuant to this Article is made on the basis of aesthetic considerations only, and no approval of plans and specifications, and no publication of the Building Guidelines, shall be construed as representing or implying that the Building Guidelines will, if followed, result in properly designed Improvements. Such approvals and design guidelines shall in no event be construed as representing or guaranteeing that any Improvements built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, the ARC, nor any of their respective officers, partners, directors, agents, employees, or members, shall be responsible or liable in damages or otherwise to any Person by reason of mistake of judgment, negligence or nonfeasance arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications. The purpose of such review primarily is to conform the aesthetic appearances of development within the Subdivision. In addition, the approval of Plans pursuant to this **Article VII** shall not be deemed to be a variance from the specific restrictions of this Declaration, the Building Guidelines. All variances must be issued in accordance with the provisions of **Section 7.7** hereof.

7.5. Right to Inspect. Any member of the Board of Directors, or the ARC and their representatives, shall have the right, but not the obligation, during reasonable hours to enter upon and inspect any Lot with respect to which construction of an improvement (as defined in **Section 7.2** hereof) is underway or has been completed to determine whether or not the plans and specifications therefor have been approved and are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In the event the ARC shall determine that such plans and specifications have not been approved, or are not being complied with, the ARC shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In addition to any other remedies available to the Association, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

7.6. No Waiver of Future Approvals. The approval by the ARC of any plans and specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

7.7. Variances. The ARC may grant variances from compliance with the restrictions of this Declaration, and from any of the Building Guidelines, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require,

but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) estop the ARC from denying a variance in other circumstances. For purposes of this Section 7.7, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance.

7.8. Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder and may, from time to time, by resolution unanimously adopted in writing, designate a representative to take an action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 7.7 of this Article VI. In the absence of such designation, the vote of the majority of the members of the ARC, or the written consent of the majority of the members of the ARC, taken without a meeting, shall constitute an act of such committee.

ARTICLE VIII ADDITION TO AND ANNEXATION OF PROPERTY

8.1 Unilateral Annexation by Declarant. The Declarant, as the Owner thereof or, if not the Owner, with the consent of the Owner thereof, shall have the unilateral right, privilege, and option, but not the obligation, at any time and from time to time, to annex additional real property to the jurisdiction of the Association by filing for record either (i) a Supplemental Declaration in respect to the property being annexed which subjects the lands within the annexed property to assessment by the Association on a uniform basis with all other Lots within the Association's jurisdiction, or (ii) a declaration of annexation instrument which describes the annexed property and subjects the lands described therein to all of the provisions of this Declaration. Any such annexation shall be effective as to the lands described therein upon the filing for record of such Supplemental Declaration or declaration of annexation instrument unless otherwise provided therein. The right reserved by the Declarant to annex additional land shall not be implied or construed so as to impose any obligation upon Declarant to subject any of the property it owns other than the property described in the first paragraph of the preamble to this Declaration to the jurisdiction of the Association. If such additional land is not annexed, Declarant has no obligation to impose any covenants and restrictions similar to those contained herein upon such land, nor shall anything contained herein be construed to limit or restrict the use to which such land may be put by Declarant or by any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not. Declarant shall no longer have the right to make unilateral annexation of lands into the jurisdiction of the Association when there are no longer any Class B membership interests in the Association.

8.2 Other Annexations. With the consent of the Owner thereof, the Association may annex other real property to the jurisdiction of the Association. Such annexation shall require the approval by a majority of the votes of the Class A Members present, in person or by proxy, at a meeting called for such purpose, and of the Declarant, so long as there is a Class B membership in the Association. Annexation pursuant to this Section 8.2 shall be accomplished by filing of record, in the real property records of Calhoun County, Texas, an annexation agreement describing the lands being annexed. Such annexation agreement shall be signed by the President and the

Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein.

8.3 Rights of Owners of Annexed Area. The Owners of lands in annexed property shall be entitled to use the Common Area in the same manner and to the same extent of the Owners of all other property subject to the jurisdiction of the Association; provided, however, that such lands are subject to Assessments by the Association on a uniform basis, consistent with the provisions of this Declaration.

8.4 Deannexation. Without the approval of any other Owners or Members, the Declarant shall have the right to deannex and remove any portion of the lands owned by it which is not yet developed with building Improvements at the time of deannexation from the provisions of this Declaration and the jurisdiction of the Association. Such deannexation shall be accomplished by the execution and filing for record of an instrument setting forth the land being deannexed.

ARTICLE IX. GENERAL PROVISIONS

9.1 Term. Subject to amendment in accordance with the further provisions hereof, the provisions of this Declaration shall run with and bind all of the Lots in the Subdivision and shall be and remain in effect for a period of forty (40) years after the date that this Declaration is recorded (the "Initial Term"), after which time they shall be automatically extended for successive periods of ten (10) years (each an "Extension Term"), unless an instrument in writing, signed by Owners representing more than fifty percent (50%) of the total votes in the Association agreeing to terminate this Declaration, has been recorded within the year immediately preceding the beginning of a ten (10) year Extension Term, in which case this Declaration shall terminate at the end of its original term or the applicable extension period. The Initial Term, together with any extension term, are herein collectively referred to as the "Term." Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration may be extended and renewed as provided in this **Section 9.1**.

9.2 Amendment by Declarant. During the Class B Control Period, this Declaration may be amended unilaterally at any time, and from time to time, by Declarant without approval by the Members or any Owners.

(a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith;

(b) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the property subject to this Declaration;

(c) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the property subject to this Declaration; or

(d) for any other purpose, provided that the amendment has no material adverse effect upon any right of any Owner or that the Owner or Owners so affected have consented thereto.

9.3 Amendment by Owners. In addition to the amendments described above, this Declaration may be amended at any time by an instrument executed and notarized in recordable form by Owners of Lots representing more than fifty percent (50%) of the total votes in the Association and, as long as the Class B Membership exists, the Declarant; provided, however, no amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant. Any amendment to this Declaration must be recorded in the real property records of Calhoun County, Texas.

9.4 Super-Majority Required Amendments. Notwithstanding anything to the contrary contained within Section 9.3 hereof, any termination, modification or amendment to any of Sections 3.1, 3.7, 3.18, 3.19, 3.22 and 3.23 hereof concerning Land Uses and Building Type on Lots, Subdivision of Lots, Trash, Rental, Noxious Uses / Nuisances and Mineral Development and definitions related thereto and this Section 9.4, may be amended, waived or terminated only by an instrument executed and notarized in recordable form by the Owners of Lots representing seventy-five percent (75%) of the total votes in the Association as such ownership of the affected lands are reflected in the real property records at the time such amendment, waiver or termination is undertaken.

9.5. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association's rules and regulations, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire, or other hazard, in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

9.6 Enforcement. Each Owner and Occupant shall comply strictly with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and with the rules and regulations adopted by the Board. The Board may impose fines, or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, or the rules and regulations, shall be grounds for an action to recover sums due for damages, injunctive relief, or any other remedy available at law or in equity, maintainable by the Board on behalf of the Association, or by any Lot Owner. Declarant, the Association and each Lot Owner of lands within the Subdivision shall have the right to enforce all reservations, easements, restrictions, covenants and conditions now or hereafter imposed by the provisions of this Declaration, and in connection therewith shall be entitled to recover all

reasonable costs and attorneys' fees. Failure to enforce any provision hereof shall in no event be deemed a waiver of the right to do so thereafter. It is hereby stipulated that any violation or threatened violation of this Declaration, or any failure or refusal, or threatened failure or refusal, to comply with the terms and provisions of this Declaration, will result in irreparable harm to Declarant and each Owner, and that injunctive relief is appropriate and should be granted to prevent further violations and threatened violations and further failure or refusal, and threatened failure and refusal, to comply with the terms and provisions hereof. Thus, the reservations, easements, restrictions, covenants and conditions of this Declaration may be enforced both by an action for damages and by injunctive and other equitable relief, including but not limited to restraining orders and mandatory and prohibitory injunctions, upon proof of the existence of any violation or threatened violation. In addition to the other remedies provided for herein, the Association, or its duly authorized agent, shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Board's rules and regulations, and/or the Design Guidelines. Except in the case of emergency and law enforcement situations, and as otherwise specified herein, the Association shall give the violating Owner fifteen (15) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a Specific Assessment and shall be collected as provided for herein for the collection of Assessments.

9.7 Merger and Consolidation. Upon any merger or consolidation of the Association with another non-profit corporation organized for the same or similar purposes, the Association's properties, rights, and obligations may be transferred to the surviving or consolidated Association, or alternatively, the properties, rights and obligations of another Association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving, or consolidated, Association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme.

9.8 Dissolution. The Association may be dissolved with the approval by a two-thirds (2/3rds) vote of the Class A Members present, in person or by proxy, at a meeting called for such purpose and, until the termination of the Class B Membership, the Declarant, upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, Association, trust or other organization to be devoted to such similar purposes.

9.9 Notice of Sale or Transfer of Title. In the event that an Owner sells or otherwise transfers title to his Lot, such Owner shall give the Association written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of Assessments, notwithstanding the transfer of title to the Lot.

9.10 Severability. Invalidation of any one provision of this Declaration shall in no way affect any other provision of this Declaration, all of which provisions shall remain in full force and effect.

9.11 Interpretation. If this Declaration, or any word, clause, sentence, paragraph or other part hereof, shall be susceptible of conflicting interpretations, then the interpretation which is most nearly in accord with the general purposes and objectives of this Declaration shall govern.

9.12 Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission as unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

EXECUTED this 6th day of February, 2020, effective as of the Effective Date.

DECLARANT:

Matagorda View, LLC

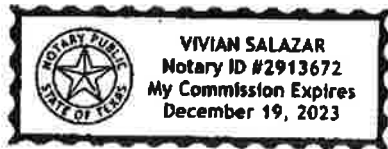
By: *Walter G. Mayfield*
Name: Walter G. Mayfield
Title: Manager

Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 6th day of February, 2020, by Walter G. Mayfield, Manager of Matagorda View, LLC, a Texas limited liability company.

Vivian Salazar
Notary Public, in and for the State of Texas



AFTER RECORDING, RETURN TO:
Leigh Rhodes-Zittrer
Cradly Jewett McCulley & Houren LLP
2727 Allen Parkway, Suite 1700
Houston, Texas 77019-2125

EXHIBIT 1.26
[Future Section 2 Lands]

**PROPERTY DESCRIPTION
8.86 ACRES**

**STATE OF TEXAS }
COUNTY OF CALHOUN }**

All of that certain tract or parcel containing 8.86 acres situated in the Santiago Gonzales Survey, Abstract No. 19 of Calhoun County, Texas and being a part of the same property described as Lot 1 in Block 1 of Mayfield Subdivision according to plat recorded in Volume Z, Page 654 of the Plat Records of Calhoun County, Texas. This 8.86 acres is more particularly described by metes and bounds as follows:

BEGINNING at an existing 5/8 inch iron rod located at the South corner of the above referenced Mayfield Subdivision and at the intersection of Northeast line of Third Street and the Northwest line of Taylor Avenue for the South corner of this 8.86 acres being described;

THENCE North 28° 12' 32" West, with the Southwest line of the said Mayfield Subdivision and the Northeast line of Third Street, a distance of 675.47 feet to a 5/8 inch iron rod with plastic cap set for the West corner of this 8.86 acres being described; from which an existing 5/8 inch iron rod located at the West corner of the said Mayfield Subdivision, bears North 28° 12' 32" West, a distance of 703.66 feet;

THENCE crossing the said Mayfield Subdivision with the following courses and distances;
North 61° 42' 57" East a distance of 237.19 feet to a 5/8 inch iron rod with plastic cap set for corner;
North 39° 31' 52" West a distance of 59.75 feet to a 5/8 inch iron rod with plastic cap set for corner;
North 50° 28' 08" East a distance of 356.40 feet to the existing edge of Matagorda Bay for the North corner of
this 8.86 acres being described;

THENCE with the following meanders of Matagorda Bay;
North 81° 55' 25" East a distance of 20.72 feet;
South 76° 14' 39" East a distance of 12.64 feet;
South 60° 21' 16" East a distance of 51.10 feet;
South 12° 24' 49" East a distance of 26.26 feet;
South 26° 04' 16" West a distance of 19.17 feet;
South 50° 28' 08" West a distance of 19.49 feet;
South 09° 58' 29" East a distance of 33.84 feet;
South 38° 39' 55" East a distance of 75.62 feet;
South 32° 53' 53" East a distance of 41.70 feet;
South 45° 04' 07" East a distance of 203.26 feet;
South 67° 33' 12" East a distance of 18.60 feet;
North 83° 54' 31" East a distance of 16.55 feet;
North 20° 32' 45" East a distance of 11.19 feet;
North 68° 32' 49" East a distance of 11.60 feet;
South 48° 02' 35" East a distance of 11.91 feet;

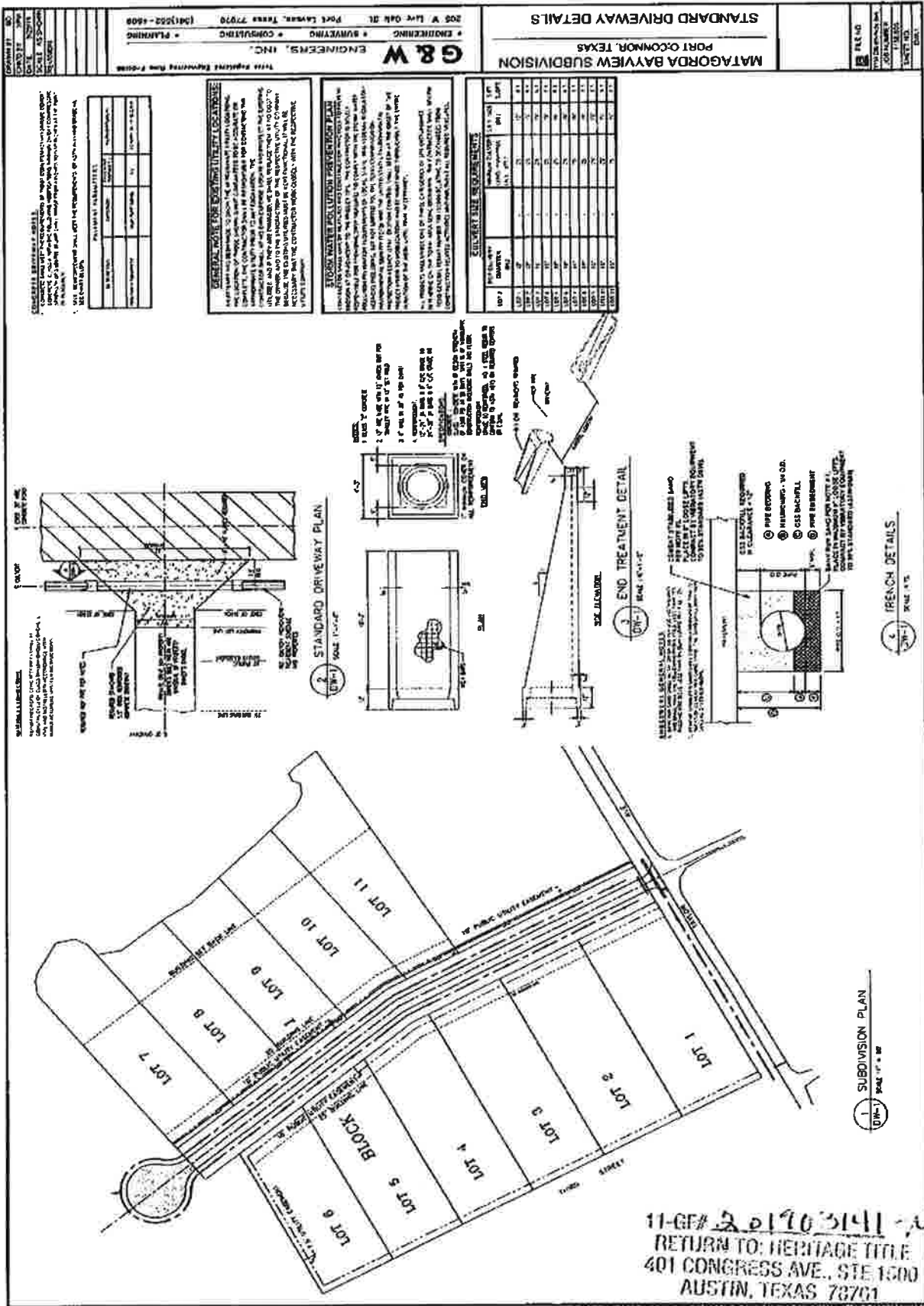
South 39° 48' 03" East a distance of 38.04 feet to the North corner of Two Palms Subdivision relative to plat recorded in Slide No. 562B of the Plat Records of Calhoun County, Texas for the East corner of this 8.86 acres being described;

THENCE South 57° 30' 18" West, with the Northwest line of the said Two Palms Subdivision and the Northwest line of the said Three Palms Subdivision relative to the plat recorded in Slide No. 568A of the Plat Records of Calhoun County, Texas, a distance of 347.44 feet to an existing 5/8 inch iron rod located at the West corner of the said Three Palms Subdivision for an interior corner of this 8.86 acres being described;

THENCE South 28° 17' 03" East, with the Southwest line of the said Three Palms Subdivision, a distance of 271.49 feet to an existing 5/8 inch iron rod located in the Northwest line of Taylor Avenue and at the South corner of the said Three Palms Subdivision for the Southeast corner of this 8.86 acres being described;

THENCE South 61° 27' 59" West, with the Northwest line of Taylor Avenue and the Southeast line of the said Mayfield Subdivision, a distance of 367.27 feet to the **PLACE OF BEGINNING**, containing within these metes and bounds 8.86 acres.

Schedule 3.10
[Culvert Requirements]



11-GF# 20190341-24 H
RETURN TO: HERITAGE TITLE
401 CONGRESS AVE., STE 1500
AUSTIN, TEXAS 78701

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS 2020-00446

DEC Fee: \$158.00

02/07/2020 03:27 PM cblevins



Anna M. Goodman

Anna Goodman, County Clerk
Calhoun County, Texas