

**DECLARATION OF CREATING
DUNE CONSERVATION AREA
AND
IMPOSING COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION is made on the date and year below written by FACEY ENTERPRISES, N.V., LTD., a Delaware Corporation (the "Declarant").

RECITALS:

A. The Declarant is the owner of certain real property located on the Gulf of Mexico coast line of Mustang Island, Nueces County, Texas, and being more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Property").

B. A portion of the Property is located seaward of the "Dune Protection Line" as defined and established pursuant to the Dune Protection Act, Chapter 63, Texas Natural Resources Code. The dunes constitute a natural barrier against the encroachment of the sea and are fragile and susceptible of erosion. The natural vegetation within this area is vital to erosion prevention, and also constitutes the habitat of unique flora and fauna.

C. Declarant has created a Master Plan for development of a portion of the Property as a private residential community. The development is to be accomplished pursuant to a comprehensive scheme of covenants, conditions and restrictions for purposes which include protecting the environmentally sensitive ecosystem and preserving the natural beauty of the Property so far as is practical.

D. To the extent that the execution of such Master Plan may involve damage to or destruction or removal of a sand dune or a portion of a sand dune seaward of the Dune Protection Line, or the destruction or removal of any vegetation growing on a sand dune seaward of the Dune Protection Line, it is subject to the approval of the Nueces County Commissioners' Court, and such other authorities having jurisdiction thereof.

E. As part of the Master Plan of development, Declarant desires to designate a portion of the Property, herein referred to as the "Dune Conservation Area," wherein the landscape is to be left substantially in its natural state, and to impose thereon certain covenants, conditions and restrictions to ensure the achievement of such objective. The Dune Conservation Area is more particularly described on Exhibit B attached hereto and made a part hereof, and consists generally of that portion of the Property landward of the natural vegetation line and seaward of the area in which the residential community will be constructed. The specific conservation values of the Dune Conservation Area are documented in materials filed in connection with Declarant's application to the Nueces County Commissioners' Court for approval of the Master Plan, and include reports, maps, photographs, and other documentation.

F. The general purpose of this Declaration is to guard against the erosion of the dunes and to preserve the natural beauty of the Dune Conservation Area.

NOW, THEREFORE, Declarant hereby declares that the Dune Conservation Area shall be held, sold, used, developed, occupied, leased and conveyed subject to the following reservations,

easements, restrictions, covenants and conditions, which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Dune Conservation Area or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner of any part of the Property.

ARTICLE I.

Prohibited Uses

1. Prohibited Uses. Any activity on or use of the Dune Conservation Area inconsistent with the purpose of this Declaration is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited within the Dune Conservation Area, except as provided in Article II.

1.1 No Pollution. There shall be no pollution or, except as permitted under Article II, any alteration, depletion, or extraction of surface water, natural water courses, ponds, marshes, subsurface water, or any other bodies.

1.2 No Vehicles. There shall be no horseback riding and no operation of mountain or other bicycles, dune buggies, motorcycles, all-terrain or off-road vehicles, hang gliders, or any other types of mechanized vehicles, other than required for fire protection, maintenance, or emergency purposes.

1.3 No Subdivision. The Dune Conservation Area may not be divided, partitioned, or subdivided, nor conveyed except in its current configuration as an entity.

1.4 No Dumping. There shall be no storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, solid waste, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Dune Conservation Area. Except as provided in Article II, there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils.

1.5 No Development. There shall be no agricultural, commercial, or industrial activity undertaken on or through the Dune Conservation Area, including oil and gas development or placement of pipelines. Farming, tilling, and grazing of domestic livestock are prohibited. There shall be no construction or placement of advertising signs, billboards, or any advertising materials in the Dune Conservation Area. There shall be no removal of topsoil, sand, gravel, or other materials.

1.6 No Exotic Plants and Animals. There shall be no introduction of exotic plant or animal species.

1.7 Recreation. There shall be no recreation, including, without limitation, camping, hunting or fishing. To the extent practical, pedestrian traffic shall be limited to the dune walkovers described in Article II.

ARTICLE II.

Permitted Uses

2. Permitted Uses. The following specific activities on or uses of the Dune Conservation Area consistent with the purpose of this Declaration are permitted:

2.1 Construction, Upkeep, and Repair of Dune Walkovers. Dune walkovers and appurtenances, including gazebos, may be constructed of the size, with the materials and at the locations set forth in the Master Plan approved by the Nueces County Commissioners' Court and such improvements shall be kept and maintained in accordance with such Master Plan and the standards set forth in the Nueces County Beach Management Plan, as it may be amended from time to time, and other applicable regulations.

2.2 Dune Restoration and Planting of Native Dune Grasses. Improving, rebuilding or repairing dunes shall be allowed subject to permitting and in accordance with the guidelines described in the Nueces County Beach Management Plan, as it may be amended from time to time, and other applicable regulations.

2.3 Posting of Protected Area. Small inconspicuous signs identifying the Dune Conservation Area as a protected dune area shall be permitted.

ARTICLE III.

Miscellaneous

3.1 Term. This Declaration shall remain in force in perpetuity.

3.2 Breach not Ground for Rescission. No breach or continuing breach of the restrictions, covenants, conditions, duties, or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision hereof.

3.3 Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

3.4 Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

3.5 Enforcement. The failure of any owner to comply with the provisions of this Declaration shall entitle any owner or any association of such owners to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, and equitable servitudes imposed by or pursuant to the provisions of this Declaration. In any such proceeding, the prevailing parties shall be entitled to recover their costs and expenses, including reasonable attorneys' fees. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be

cumulative and in addition to any other remedies available under law.

3.6. Rights of Governmental Authority. Any governmental authority or agency, including, but not limited to Nueces County, their agents, and employees, shall have the right of immediate access to the Dune Conservation Area at all times if necessary for the preservation of public health, safety and welfare, and shall have the same right to enforce this Declaration as any Owner or association of owners.

3.7. Governing Law. This Declaration shall be governed and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this 26th day of April, 2002.

DECLARANT:

FACEY ENTERPRISES, N.V., LTD., a
Delaware Corporation


By: 
Wellington Chan, Vice President

Exhibit A

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

Exhibit B

That area of land west of the vegetation line within Lot Forty (40), Block One (1), LA CONCHA ESTATES, an addition to the City of Corpus Christi, Nueces County, Texas according to the plat thereof recorded in Volume 61, Pages 197 & 198, Map Records of Nueces County, Texas.

Doc# 2002019772
Pages 10
04/29/2002 03:18:14 PM
Filed & Recorded in
Official Records of
NUECES COUNTY
ERNEST M. BRIONES
COUNTY CLERK
Fees \$27.00

STATE OF TEXAS
COUNTY OF NUECES
I hereby certify that this instrument was FILED in File Number
Sequence on the date and at the time stamped herein by me, and
was duly RECORDED, in the Official Public Records of
Nueces County, Texas



Ernest M. Briones
COUNTY CLERK
NUECES COUNTY, TEXAS

Return: Michael J. Shelly P.C.
5102 Holly Rd
Corpus Christi, TX 78411

Any provision herein which restricts the Sale, Rental or use
of the described REAL PROPERTY because of Race, Color,
Religion, Sex, Handicap, Familial Status or National Origin, is
Invalid and unenforceable under FEDERAL LAW, 3/12/89