

Stewart Title
GF# 602388 NT

BEACH ACCESS EASEMENT

DATE: November 14, 2006

GRANTOR: **FACEY ENTERPRISES, N.V., LTD.**

GRANTOR'S ADDRESS: 1770 Homet
San Marino, Ca. 91108

GRANTEE: **THE VILLAS ~~OF~~ MUSTANG ISLAND, LLP**

GRANTEE'S ADDRESS: 10370 Richmond
Suite 150
Houston, Texas 77042

CONSIDERATION: TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration (cash).

EASEMENT PROPERTY:

Lots Thirty-seven (37) and Thirty-eight (38), Block One (1), LA CONCHA ESTATES, a subdivision of the City of Corpus Christi, Nueces County, Texas, according to the map or plat recorded in Volume 61, Page 197, Map Records of Nueces County, Texas; and

That portion of Lot Forty (40), Block One (1) LA CONCHA ESTATES which is shown on the plat recorded in Volume 61, Page 197, Map Records of Nueces County, Texas, as the "50' Beach Private Access Easement" extending from Lot Thirty-seven (37) Block One (1), LA CONCHA ESTATES, to the Eastern border of the said Lot Forty (40), Block One (1), LA CONCHA ESTATES, all according to the plat recorded in Volume 61, Page 197, Map Records of Nueces County, Texas.

DOMINANT ESTATE PROPERTY:

Lot Eleven (11), Block Four (4), LA CONCHA ESTATES UNIT 3, a subdivision in the City of Corpus Christi, Nueces County, Texas according to the plat recorded in Volume 65, Page 125 of the Map Records of Nueces County, Texas; SAVE AND EXCEPT that portion of the said Lot Eleven (11), Block Four (4), LA CONCHA ESTATES UNIT 3 which is west of the eastern edge of the United Gas Pipe Line Company easement described in document recorded in Volume 5, Page 303, Lis Pendens Records, Nueces County, Texas; and Award of Commissioners

dated April 4, 1968, in Cause No. 557, County Court, Nueces County Texas in that certain Condemnation Proceedings styled: "United Gas Pipe Line Company vs. Adam Rogers Wilson, et al". The portion of said lot Eleven (11), Block Four (4), LA CONCHA ESTATES UNIT 3 comprising the Dominant Estate Property is a replat of the former Lot One (1), Block Three (3), of LA CONCHA ESTATES, an addition to the City of Corpus Christi, Nueces County, Texas, as shown by the map or plat recorded in Volume 61, page 197 of the Map Records, Nueces County, Texas.

EXCEPTIONS TO WARRANTY:

Easements, rights-of-way, whether of record or not; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the Easement Property; rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; and encroachments or overlapping of improvements; zoning laws, regulations and ordinances of municipal and other governmental authority, if any, affecting the Easement Property.

Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities:

- a. To tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, or
- b. To the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.

GRANT OF EASEMENT:

Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Exceptions to Warranty.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this document:

1. *Easement Purpose.* To allow the construction, maintenance and use of a six foot (6') wide concrete pathway and/or wooden boardwalk for pedestrian, bicycle, and light weight motorized vehicular ingress and egress to and from the Dominant Estate Property and the Gulf of Mexico and its beach.

2. *Character of Easement.* The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of any party who owns any interest in the Dominant Estate Property (as applicable, the "Holder"), including, without limitation, unit owners of condominiums and the applicable condominium association (and any such Holder's tenants, licensees and invitees), provided such Holder is not in default with the terms and conditions of any dedicatory instrument establishing a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development affecting the Dominant Estate Property. The governing body of any such residential subdivision, planned unit development, condominium or townhouse regime may restrict or prohibit the use of the Easement by any Holder determined to be in default according to the terms and conditions of their dedicatory instrument(s) and/or bylaws.

3. *Blanket Easement, Grantor's Right to Further Define Location of Primary Easement.* The six foot (6') wide concrete pathway and wooden boardwalk (the "Primary Easement") has not been constructed as of the date of the execution of this document, and its precise location within the Easement Property is not known as the date hereof. Grantor reserves the right to have the six foot (6') wide Primary Easement surveyed upon its completion, and have that portion of the Easement Property not within the Primary Easement and Secondary Easement (defined below) released back to Grantor free of this Easement. Grantee agrees that the Primary Easement granted herein may be limited upon its construction to its actual area within the Easement Property, and Grantee shall execute in favor of Grantor, at Grantor's expense, a written release of that portion of the Easement Property not within the Primary Easement or the Secondary Easement.

4. *Secondary Easement.* Upon the location of the Primary Easement and the release of that portion of the Easement Property not within the Primary Easement to Grantor, Grantee shall have the right (the "Secondary Easement") to use ten feet (10') of the surface of the Easement Property on either side of the Primary Easement (the "Adjacent Property") to repair and maintain the facilities within the Primary Easement that are reasonably suited for the Easement Purpose. Grantee agrees to promptly restore the Adjacent Property to its previous physical condition, to the extent practical, if changed by use of the rights granted by this Secondary Easement.

5. *Duration of Easement.* The easements granted in this document are perpetual.

6. *Reservation of Rights.* The easements granted in this document are nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to convey the non-exclusive use of the Primary Easement and the Secondary Easement to others ("Other Grantee"), including, but not limited to, the owners of lots within the following tract of land:

Lot One (1), Block Two (2), of LA CONCHA ESTATES, an addition to the City of Corpus Christi, Nueces County, Texas, as shown by the map or plat recorded in Volume 61. page 197 of the Map Records, Nueces County, Texas.

As a condition to the Other Grantee's utilization of the Easement Property, however, Grantor, Grantee and any Other Grantee shall have first entered into a written, recordable agreement for the sharing of all costs associated with the Easement Property, all parties acting reasonably in their negotiations for the sharing of such costs.

7. *Maintenance of Primary Easement and grant of lien in favor of the La Concha Estates Owners' Association, Inc.* Maintenance and liability insurance costs of the Primary Easement will be at the expense of Grantee and any Other Grantee. Notwithstanding anything to the contrary, where reference is made in this document to maintenance and insurance obligations, it shall apply only to the six foot (6') wide portion of the Primary Easement on which the pathway or boardwalk is actually located and not on any other portion of the Easement Property. Should Grantor exercise its right to convey the non-exclusive use of the Primary Easement and the Secondary Easement to an Other Grantee, it shall be in consideration of the Other Grantee's covenant to share and pay Grantee, its successors or assigns, the Other Grantee's pro-rata share of the cost of maintenance and insurance costs of the Primary Easement.

Should Grantee or Other Grantee fail to maintain or insure the Primary Easement, the La Concha Estates Owners' Association, Inc. (the "Association") may, after first giving Grantee and Other Grantee fifteen (15) days notice and opportunity to cure, perform those obligations and be reimbursed by Grantee and any Other Grantees within fifteen (15) days of demand for any reasonable sums so paid, including reasonable attorney's fees. The sum to be reimbursed to the Association is hereby secured by a lien in favor of the Association which lien shall be enforced in the same manner and shall have the same priority as the lien granted to the Association as said lien is described within the current Declaration of the Covenants and Restrictions of La Concha Estates and the Bylaws of said Association, dated April 26, 2002, recorded under Clerk's File Number 2002019773 of the Official Real Property Records of Nueces County, Texas. The Association may enforce its remedy of foreclosure only if the Association first serves written notice to Grantee and any Other Grantee by certified mail, return receipt requested, of its intention to enforce its lien; provides Grantee and Other Grantee thirty (30) days from the date of such notice to cure the default (and the default is not cured prior to enforcement), and otherwise complies with the terms and conditions of assessment enforcement as set forth in the current Declaration and Bylaws of the Association.

The lien in favor of the Association shall have priority over any other lien except:

- a. a lien for real property taxes and other governmental assessments or charges against the Dominant Estate Property or any portion thereof or interest therein; and

- b. vendor's liens and/or deeds of trust securing loans that encumber any interest in the Dominant Estate Property that are recorded before the date on which both (i) the assessments sought to be enforced becomes delinquent, and (ii) an affidavit claiming a lien is filed in the Real Property Records of Nueces County, Texas; provided, however, the beneficiary of any such vendor's or deed of trust liens must at the time of their creation be unrelated to the owner of the Dominant Estate Property.

The lien of the Association shall be expressly subordinate and inferior to the liens and deeds of trust described above; however, promptly upon a request, the Association shall execute and deliver an appropriate subordination agreement.

Should an undivided interest in the legal title to the Easement Property, or any portion thereof, be conveyed to the Association as common area for the benefit of some or all of the members of the Association, then, in that event, Grantee hereby agrees and covenants to share with and pay to the Association Grantee's pro-rata share of the Association's reasonable cost of the insurance and maintenance of the Primary Easement, if any, attributable to Grantee's rights to the Easement Property. As a condition to the conveyance to the Association of any interest in the Primary Easement, Grantor, Grantee and the Association shall have first entered into a written agreement in recordable form for the sharing of all real estate taxes, insurance, and maintenance costs associated with the Primary Easement, all parties acting reasonably in their negotiations for the sharing of such costs, and in recognition that Grantee's share should be based on the relative anticipated use of the Primary Easement by the Association, its members and others, along with Grantee. The parties agreement for cost sharing shall be recorded in the Real Property Records of Nueces County Texas, and upon the filing of the agreement, the pro-rata cost, if any, to be paid to the Association shall be secured by a lien in favor of the Association as described within the current Declaration of the Covenants and Restrictions of La Concha Estates and the Bylaws of said Association, dated April 26, 2002, recorded under Clerk's File Number 2002019773 of the Real Property Records of Nueces County, Texas. Such lien shall have the same priority and will be inferior to the those liens listed in the preceding paragraphs above (and otherwise subject to the protective provisions for notice and opportunity to cure set forth above); however, upon such conveyance to the Association, the primary responsibility for maintaining and insuring the Primary Easement shall be with the Association.

8. *Legal Construction.* If any provision in this document is for any reason unenforceable, to the extent the un-enforceability does not destroy the basis of the document, the unenforceability will not affect any other provision, and this document will be construed as if the unenforceable provision had never been a part of it. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender. Article and section headings in this document are for reference only and are not intended to restrict or define the text of any section. This terms of this document will not be construed more or less favorably between the parties by reason of authorship or origin of language.

9. *Attorney's Fees.* If any party retains an attorney to enforce this document, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

10. *Binding Effect.* This document binds and inures to the benefit of the parties and their respective heirs, successors, and assigns. Upon a transfer by Grantor or Grantee or their heirs, successors and assigns, of all of their interest in the property subject to this document, the transferring property shall be relieved of any personal liability for any obligation that arises thereafter under this document. This document may only be amended by the written agreement of the owners of a majority of the land area of the Dominant Estate Property (or an association having jurisdiction over same) and the Primary Easement, and their respective mortgagees.

11. *Choice of Law.* This document will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county in which the Easement Property is located.

12. *Counterparts.* This document may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

13. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

14. *Further Assurances.* Grantor and Grantee each agree to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this document and all transaction contemplated by this document; including, without limitation, estoppel letters regarding compliance with the terms and conditions hereof. All estoppel letters shall be executed and returned to the requesting party within ten (10) business days of receipt of a written request therefor.

15. *Indemnity.* Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this document by the indemnifying party.

16. *Integration.* This document contains the complete agreement of the parties concerning the subject matter hereof and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this document concerning the subject matter hereof.

17. *Notices.* Any notice required or permitted under this document must be in writing. Any notice required by this document will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this document. Notice may also be given by personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. In addition, up to two (2) additional addresses for notice may be requested by notice given as provided herein. Any change of address or notice of additional addresses shall be deemed effective ten (10) days after being given.

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

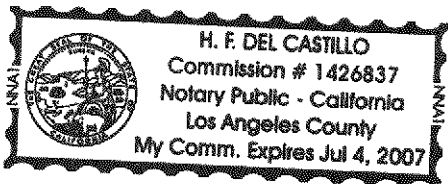
By: *Wellington Chan*
Wellington Chan, Vice President

STATE OF CALIFORNIA §
 §
COUNTY OF LOS ANGELES §

BEFORE ME, *H.F. DEL CASTILLO*, on this day personally appeared Wellington Chan, Vice President of FACEY ENTERPRISES, N.V., LTD, a Delaware corporation, on behalf of said corporation, known to be [or proved to me on the oath of _____, or through *DRIVER'S LICENSE* _____ (description of identity card or other documentation)] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this *14th* day of *NOV.*, 2006.

H. F. Del Castillo
Notary Public



Stewart Title
GF# *602388 NT*

PREPARED IN THE LAW OFFICE OF:
Michael J. Shelly, P.C.
Attorney at Law
5102 Holly Rd., Suite A
Corpus Christi, Texas 78411

Doc# 2006060768
Pages 8
11/28/2006 16:48:32 PM
e-Filed & e-Recorded in the
Official Public Records of
NUECES COUNTY
DIANA T. BARRERA
COUNTY CLERK
Fees 39.00

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

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 HEREON BY ME AND WAS DULY
RECORDED IN THE OFFICIAL PUBLIC
RECORDS OF NUECES COUNTY TEXAS



Diana T. Barrera
COUNTY CLERK
NUECES COUNTY TEXAS