

RESTRICTIONS, COVENANTS
AND CONDITIONS

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

WHEREAS, MITCHELL/SOUTHWEST ("Developer"), a Delaware Corporation, is the owner of the following described property situated in Galveston County, Texas, to-wit:

All numbered lots in Pirates Beach, Section Ten Amendment, save and except Reserves A through F, which reserves shall not be a part of the properties nor subject to the provisions hereof, a subdivision in Galveston County, Texas, according to the Plat thereof recorded in Plat Book 18, Page 257, of the Plat Records, Clerk's File No. 9034972, in the Office of the County Clerk of Galveston County, Texas;

all of the hereinabove described property, being hereinafter sometimes referred to as "Said Lots", "the Property", or "the Subdivision"; and,

WHEREAS, it is the desire of the Developer to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of Developer as well as future owners of the Property:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT Mitchell/Southwest, a Delaware corporation, with offices and principle place of business in The Woodlands, Montgomery County, Texas, acting herein by and through its duly authorized officers, does hereby adopt, establish and impose the following reservations, restrictions, covenants and conditions upon the Property, which shall constitute covenants running with the title to the land and shall inure to the benefit of Developer, its successors and assigns, to the City of Galveston and to each and every purchaser of one or more lots in the Subdivision, their successors and assigns, and any one of said beneficiaries shall have the right to enforce these restrictions by any available legal process.

RESTRICTIONS, COVENANTS AND CONDITIONS

1. Land Use and Building Type. The Property shall be used for residential purposes only, and only one (1) detached, single-family dwelling shall be erected on any one lot. No commercial activity shall be conducted on or from any of Said Lots, except that a lot owner may from time to time rent his or her home to another for residential purposes. Notwithstanding anything contained herein to the contrary, until Developer, its successors or assigns has sold all the Property, any unsold lots may be used by Developer for the location and operation of a sales office.

2. Resubdivision. No lot may be resubdivided except between or among the owners of abutting lots and thereafter each owner's resulting oversize tract shall be considered as one lot. Nothing herein contained shall prohibit the construction of a single residence on portions of two (2) lots, in which case both such lots shall be considered as one lot for building purposes. Irrespective of the foregoing provisions of this paragraph, the annual maintenance charge hereinafter set forth shall be and remain applicable to all lots as originally platted.

3. Architectural Control and Construction Time. No structure or improvement ("Improvement"), including but not limited to, buildings, fences, walls, piers, docks, trash enclosures, driveways, curb cuts, culverts, decks, porches, patios, swimming pools, playground equipment, and outdoor cooking or eating facility of a permanent nature, shall be commenced, erected, or maintained upon any lot in the Subdivision, nor shall any exterior addition or change or alteration of the exterior be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee ("the Committee") composed of three (3) or more representatives from time to time appointed by Developer. The persons serving from time to time on the Committee may be removed, with or without cause, by Developer at such times and for such reasons as Developer may determine in the exercise of its sole discretion. In the event of the removal or resignation of one or more members of the Committee, the Developer shall promptly designate other persons to replace those who are removed.

Approval by the Committee shall be granted or withheld based upon conformity of the Improvement to both the general and specific intent of this instrument, adequacy of site dimensions, structural design, quality of materials, conformity and harmony of external design and location with neighboring structures and sites and relation of finished grades and elevations to neighboring sites, and such other relevant considerations as the Committee may, in the exercise of its sole discretion, determine to be of significance in such determination ("Committee Considerations").

Each application made for architectural control approval shall be accompanied by the fee established by the Committee to defray expenses of the Committee and by complete plans and specifications of all proposed Improvements. The plans and specifications to be so submitted and approved shall include the following:

- a) A topographical plat showing existing contour grades and showing the location of all proposed Improvements. Existing and finished grades shall be shown at lot corners. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the lot contours is contemplated.
- b) Exterior elevations.
- c) Exterior materials and colors.
- d) Structural design.
- e) Landscaping plan, including walkways, fences and walls (if permitted), elevation changes, watering systems, lighting, vegetation and ground cover.
- f) Parking area and driveway plan.
- g) Screening, including size, location and method.
- h) Utility connections and septic system location.
- i) Exterior illumination, if any, including location and method.
- j) Design and materials for construction of interconnect (including any culvert (size and type) or related facility) between driveways and any walkway, and the street or roadway.

When approval is sought for Improvements within the "Sand Dune Easement" as described in paragraph 7. below, the submittal shall indicate the location of such Easement within the lot, the median

height of the dunes under the proposed structure, and the plan for site drainage after installation of all improvements.

If the plans and specifications are approved by the Committee, an approved application shall be issued authorizing construction of the proposed Improvements in accordance with the plans and specifications so approved. In the event the Committee fails to approve or disapprove the plans within forty-five (45) days after same have been submitted to it, approval will be presumed and this paragraph will be deemed to have been fully complied with.

Following approval of the plans and specifications and prior to commencement of construction, owner shall obtain a licensed land surveyor or professional engineer to survey the lot and mark the lot corners and the location of the proposed structure on the ground to insure it conforms to the site plan as approved and lies within the building envelope as shown on the recorded plat of the Subdivision recorded in the Office of the County Clerk of Galveston County, Texas ("Plat"). The Committee must approve the survey in writing prior to commencement of construction.

After the commencement of construction, the lot owner shall have a maximum of six (6) months to complete or cause to be completed the exterior construction unless the Committee approves a written request from the owner for an extension of such time limit. Exterior construction shall be deemed complete when the structure or structures have been completed in accordance with the approved plans, and when all construction materials and debris have been cleaned up and removed from the site.

Approval by the Committee shall not relieve the owner from the responsibility of complying with applicable public ordinances or regulations, and the approval is not, nor is it intended to be, an indication of compliance with any such ordinances or regulations.

Neither the Developer, the Committee nor any of the members of such Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by these restrictions, covenants and conditions, by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

The Committee shall have the right to promulgate and adopt rules and regulations necessary to implement these restrictions, covenants, and conditions, including but not limited to, an outline of minimum, acceptable construction standards and specifications. These rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications and the like which need to be submitted with any application, payment of reasonable fees for processing or reviewing the application, and it may also include guidelines governing the development of each lot.

A member or agent of the Committee may enter on and inspect any lot and any Improvement thereon during regular business hours and following reasonable notice for the purpose of ascertaining whether such lot and the Improvements thereon are in compliance with these restrictions, covenants, and conditions. Neither the Developer, the Committee, nor the agent of any of them shall be deemed to have committed a trespass by reason of such entry for inspection, provided such inspection is carried out in accordance with the terms of this paragraph.

It shall be the responsibility of the lot owner during construction to remove in a timely manner all trash, lumber, and debris of any other description associated with such construction so as to preserve a neat and orderly appearance to his or her lot, and, upon completion of construction, to completely remove all remaining construction debris from his or her lot. If, in the

opinion of the Committee, a lot owner fails to remove such construction debris in a timely manner, the Committee shall have the option to cause such debris to be removed from the lot, and the cost of such work shall be charged to the lot owner and shall be payable to the Committee upon demand. Any amounts owing to the Committee hereunder shall be secured by the vendor's lien hereinafter mentioned in paragraph 21.

No exterior aerial antenna, satellite dish, flag pole, or other structure of any kind (except a chimney) shall project above the uppermost roof line of any structure on any lot in the Property.

The Committee shall have the power and the authority, to be exercised in its sole discretion, to authorize variances and exemptions from the terms and provisions of any of the restrictions, covenants, and requirements set forth in this paragraph as to any one or more lots, except for those covenants, conditions, and restrictions contained in paragraph 7. below. The rights, powers and duties reserved to Developer by this instrument and by this paragraph 3, shall remain in force and effect so long as the restrictions, covenants, and conditions, set forth herein shall be and remain in force and effect. The terms and provisions of this paragraph 3. may be enforced in the same manner as the other terms and provisions hereof are enforced pursuant to paragraph 24. hereof.

4. ~~Dwelling Size~~ Only one (1) detached single-family dwelling may be erected on any lot in the Property and each such dwelling shall contain ~~not less than 1200 square feet of livable area; not less than 300 square feet of covered deck area; and not less than 100 square feet of garage or enclosed storage area.~~

5. Type of Construction, Materials and Landscape.

(a) Every structure, building or addition thereto shall be affixed to the ground in a permanent manner.

(b) All elevated structures shall be built on pilings or other type of elevated foundation designed so that the foundation will aesthetically conform to standards set by the Committee.

(c) No round pilings shall be permitted, unless the pilings are concrete.

(d) No angle bracing from pilings to floor stringers will be permitted. Elevated structures may be cross braced against the floor joists to prevent racking of structures, and floor joist stringers must be of adequate size to carry floor joists without angle bracing from the pilings to the stringers.

(e) All houses and other structures must be kept in good repair, and painted or stained when necessary to preserve the attractiveness thereof.

(f) No house, building or structure shall be more than two (2) stories of living area in height. Open decking will be permitted above the second level provided it is no more than forty (40) feet above mean sea level and accessed by less than one hundred fifty (150) square feet of enclosed space. The open decking should also be less than forty percent (40%) of the square feet of the floor below. Notwithstanding anything contained herein, to the contrary, a house, building, or structure may be disapproved by the Committee because of excessive height, due to Committee Considerations described in paragraph 2. above.

(g) The minimum first floor elevation of a house must be at least in accordance with the requirements for insurance

against storms and as required by the City of Galveston and County of Galveston, and any other governmental entity having jurisdiction.

(h) Toilet facilities of all houses shall be installed inside each house, and shall be connected before use with a sewage disposal system approved by the City of Galveston and the Galveston County Health Department. No other sewage disposal system will be permitted in the Subdivision other than a central sewage system serving the Subdivision. No septic tank or privy shall be installed, erected or maintained on the premises. Nothing herein contained to the contrary or seemingly to the contrary shall prevent the installation and use of sanitary sewer facilities by a water district or other governmental authority in the Subdivision. Each lot owner will, at his or her expense, extend his residence connection line to an outside perimeter of the lot as designated by Developer or a utility district, as the case may be.

(i) All pilings must be sunk to a depth of a least ten (10') feet.

(j) Walls attached to structural or vertical pilings below the living area of the house must be of a break away nature and may not be permanently or structurally affixed to the pilings.

(k) Upon completion of a house each lot owner shall plant, and continually maintain on his or her lot at least four (4) healthy palm trees, of a minimum height of ten (10') feet at the time of planting, and shall install a concrete driveway extending to the street pavement. Any palm tree which is damaged or dies must be replaced in a timely manner with a new palm tree meeting the requirements of this paragraph 5.(k).

(l) All construction must be in compliance with all laws, ordinances, rules and regulations of all government and municipal agencies having jurisdiction over construction of improvements on lots.

6. Location of Improvements. No portion of a building, (except dune walkovers), including porch or roof overhang, stairs, and air conditioning units, shall be located closer to the front, side and rear lot lines than the building lines as shown on the Plat and if no rear or side building lines are indicated on the Plat, then no closer than ten (10) feet to the rear lot line and five (5) feet to any side lot line. Above ground propane tanks, air conditioning units, and all other unsightly structures, facilities, or equipment must be screened from public view by planting or decorative fencing. Corner lots shall be deemed to front on the street along which such lot has the least amount of frontage, except houses on the gulf or those houses which have been excepted by the Committee by reason of outstanding or unusual design. No fence shall be erected in the front building setback line and no rear yard fencing shall be higher than four (4) feet. No building or structure of any type, except for dune walkovers as specified in paragraph 7., shall be built, placed or permitted to remain on any portion of a lot designated as "Sand Dune Easement" as described in paragraph 7. below. Driveway access shall be prohibited where access limits are designated on the Plat.

7. Sand Dune Easement. Developer and each lot owner understand and agree that the protection and maintenance of sand dunes which front on the beach facing the Gulf of Mexico is an important means of retarding beach erosion and of reducing the destructive energy of storm surges. Lot owners will be responsible for compliance with any and all City of Galveston ordinances governing the location and design of improvements and/or the alteration or improvement of lots which contain dunes, beach swales or other environmentally significant features. In addition to any

other permits that may be required, Lots 6, 7, 15, 16, 21, 25, 32 and 33, Block 1, may require a Specific Use Permit, to be issued by the City of Galveston before a building can be constructed.

In order to ensure the continuance, protection and maintenance of the dunes, a Sand Dune Easement ("Sand Dune Easement") has been designated on the Plat, and the following additional restrictions, covenants, and conditions shall be and are hereby imposed against those portions of said lots located within said Sand Dune Easement, as covenants running with the land. These additional covenants, conditions, and restrictions shall affect only those portions of the lots within the Sand Dune Easement, and shall be in addition to, and not in substitution for, the remainder of the restrictions, covenants and conditions herein contained. Said additional restrictions, covenants and conditions are as follows:

a. Prohibition Against Construction.

(i) Building or Structures. No building or structure of any type, except for dune walkovers, may be built, placed, or permitted to remain within any portion of the Sand Dune Easement.

(ii) Dune Walkovers. One elevated walkway, set on piers at a minimum spacing of not less than three (3) feet and with open decking not more than four (4) feet in width and at a height above dunes equal to its deck width is permitted for each lot. Such a "walkover" of approved design must extend from any portion of the lot outside the Sand Dune Easement over the dunes to beyond the toe of the dune facing the beach and shall be aligned perpendicular to the rear or the beach front lot line. Placement of such a walkover within the Sand Dune Easement facing the beach is permitted. After construction of the walkover, the surrounding site must be restored and revegetated.

b. Prohibited Activities.

Any activity or construction which will result in the loss or disruption of sand, silt, shell, sediment, vegetation or any other geologic or biological component of the natural terrain within the Sand Dune Easement is prohibited, including, but not limited to the following:

(i) Parking or operation of automobiles, trailers or other vehicles.

(ii) Storage of any kind or walled enclosure of any building substructure.

(iii) Grading, paving of any kind, or construction of any auxiliary structures.

(iv) Grazing of any animal or the erection of any pen, enclosure, or attachment for keeping of any animals.

(v) Mowing of vegetation.

(vi) Horseback riding.

(vii) Pedestrian activities that will alter the terrain and/or damage vegetation, including, but not limited to, the creation of foot paths.

(viii) Use or placement of playground equipment, showers, barbecue pits or apparatus.

c. Site Improvements and Maintenance.

(i) Landscaping

No landscaping within the Sand Dune Easement is permitted which involves alteration of the existing terrain or removal of any native vegetation.

(ii) Drainage and Maintenance

The general maintenance and repair of dunes within each owner's lot shall be the responsibility of the lot owner, except that the City of Galveston shall have right, but not the obligation, to maintain and repair those portions of the dune area located within the Sand Dune Easement. Each lot owner shall restore and revegetate any breaches or alterations in the dunes within his lot which occur either as a result of building construction, site improvements, the owner's activities, or of natural drainage and erosion. Restoration of the terrain should be effected as soon as practical after an alteration or breach occurs. Revegetation, using a 50/50 mix of Spartinae patens and Panicum amarum in the Sand Dune Easement, and 100% of Panicum amarum between the Sand Dune Easement and the beach front lot line shall be accomplished as soon as possible during the period between March 1st and September 30th of any calendar year. In dry seasons, after sprigging, restored areas should be thoroughly soaked with water at least twice at two week intervals.

8. Electrical Distribution System. An underground electric distribution system will be installed in that part of the Subdivision, designated herein as Semi-Underground Residential Subdivision, which semi-underground service area embraces all of the lots which are platted in the Subdivision. In the event that there are constructed within the Semi-Underground Residential Subdivision structures containing multiple dwelling units such as townhouses, duplexes or apartments, then the underground service area embraces all of the dwelling units involved. The owner of each lot containing a single dwelling unit or, in the case of a multiple dwelling unit structure, the owner/developer, shall, at his or her own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Developer has either by designation on the Plat or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned, and installed service wires. In addition, the owner of each lot containing a single dwelling unit, or in the case of a multiple dwelling unit structure the owner/developer, shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Semi-Underground Residential Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as

single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the semi-underground electric distribution system in the Semi-Underground Residential Subdivision at no cost to Developer (except for certain conduits, where applicable, and except as hereinafter provided) upon Developer's representation that the Semi-Underground Residential Subdivision is being developed for residential dwelling units, including homes, and if permitted by the restrictions applicable to such subdivision, townhouses, duplexes and apartment structures, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent and all of which multiple dwelling unit structures are wired so as to provide for separate metering to each dwelling unit. Should the plans of the Developer or the lot owners in the Semi-Underground Residential Subdivision be changed so as to permit the erection therein of one or more mobile homes, the electric company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company an amount representing the excess in cost, for the entire Semi-Underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the semi-underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by the electric company to be necessary.

The provisions of the two preceding paragraphs also apply to any future residential development in Reserve(s) shown on the plat of Pirates Beach Section Ten as such plat exists at the execution of the agreement for underground electric service between the electric company and Developer or thereafter. Specifically, but not by way of limitation, if a lot owner in a former Reserve undertakes some action which would have invoked the above per front lot foot payment if such action had been undertaken in the Semi-Underground Residential Subdivision, such owner or applicant for service shall pay the electric company \$1.75 per front lot foot, unless Developer has paid the electric company as above described. The provisions of the two preceding paragraphs do not apply to any future non-residential development in such Reserve(s).

9. Easements. The Sand Dune Easement and easements for the installation and maintenance of utilities, drainage facilities, roads, streets and pedestrian access to the beach are granted and reserved as shown on the Plat. No utility company, water district or other authorized entity or political subdivision using the easements herein referred to shall be liable for any damage done by themselves, their successors, assigns, agents, employees, or servants, to shrubbery, trees or flowers or other property of the owner situated on the land covered by said easements. Developer reserves the right to grant (without the consent of any lot owner) such additional easements as may, in the opinion of Developer, be necessary to properly serve the Subdivision's requirements.

10. Annoyances or Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood or to a person of reasonable sensibilities. ←

11. Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be kept, raised or bred on any lot in the Subdivision. Not more than two (2) dogs and/or cats may be kept on a lot, provided they are kept only for the use and

pleasure of the owner and are not kept, bred or maintained for commercial purposes.

12. Drainage Structures. Drainage structures under private driveways shall be either of two types: (1) where the drainage ditch is of sufficient size to accommodate the culvert as described herein without causing the driveway to be elevated above the street level, drainage structures shall be buried underneath the private driveway, and shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater, and shall be a minimum of 1 3/4 square feet (18-inch diameter pipe culvert); (2) where the drainage ditch is of insufficient size to accommodate the culvert above described, the drainage structure may be a dip in the private driveway that will allow the free flow of water over the driveway.

13. Condition of the Lot Surface. The cutting of grass and weeds, except in the Sand Dune Easement affecting beach front lots, and the collection of garbage, trash and rubbish shall be the responsibility of each lot owner, and may be handled by a third party or parties on an individual contract basis. The owner or occupant of each lot shall at all times maintain his or her lot in a sanitary, healthful and attractive manner. No owner or occupant of any lot shall in any event use his or her lot or any part thereof for the storage of materials or equipment except such materials and equipment as may be needed for normal, immediate residential building requirements, nor shall they permit the accumulation of garbage, trash, rubbish, or refuse of any kind thereon. In the event of default on the part of the owner or occupant of any lot in observing any of the above requirements, or in the event any garbage, trash, rubbish or refuse is allowed to remain on the individual owner's premises for a longer period of time than one (1) week, with the exception that a maximum of thirty (30) days is granted to clear debris and repair damage due to hurricanes or other acts of God, Developer, (and the successors and assigns of Developer in a like capacity), without liability to such owner or occupant in trespass or otherwise, may enter upon such lot and cut or cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash, rubbish or debris so as to place such lot in a neat, attractive, healthful and sanitary condition, in which case Developer shall bill the owner or occupant for such work. The owner or occupant, as the case may be, agrees by purchase or occupancy of any lot in the Subdivision, to pay such statement within fifteen (15) days of receipt thereof.

It is the responsibility of each owner to maintain the dunes located within his or her lot, to the extent possible to prevent any damage thereto, and to repair and restore any damage to or breaches of such dunes, all in accordance with applicable City and County of Galveston Laws.

14. Temporary Structures. No structure of a temporary character, including, but not limited to, trailers, tents, shacks, mobile homes, boats or motor vehicles of any type, shall ever be maintained or used on any lot at any time as a residence, either temporarily or permanently. No vehicles, boat trailers, boats, or boat riggings may be parked on those portions of lots within the Sand Dune Easement. Parking of automotive vehicles on road shoulders is prohibited.

15. Excavation or Filling. The excavation or the removal of any soil from any lot is prohibited except where necessary in conjunction with landscaping or construction being done on such lot. No filling material which will have the effect of changing the grade level of any lot shall be placed on such lot without the prior approval in writing of the Committee, the City of Galveston, and any other governmental agencies having jurisdiction thereof, if any.

16. Signs and Billboards. No signs, advertisements, billboards or advertising structures of any kind may be erected or maintained on any lot without the prior consent in writing of the Committee. Developer or the Committee shall have the right to remove any such signs, advertisements, billboards or structures placed on any lot within the Subdivision without such consent, and in so doing shall not be liable for trespass or any damages in connection therewith or arising from such removal. Notwithstanding anything contained herein to the contrary, Developer reserves the right to construct and maintain such signs and advertising devices on the Property as is customary in connection with the general sale of property in the Subdivision.

17. Hunting. No hunting nor the discharge of firearms shall be permitted in, on, or from, any part of the Subdivision.

18. Treasures or Artifacts. Developer reserves a one-half (1/2) interest in all treasures and artifacts found on any lot within the Subdivision.

19. Maintenance Charge. Each lot within the Property, except as hereinafter provided, is hereby subject to a minimum annual maintenance charge of \$198.50 per year for the purpose of creating a fund to be known as a "Maintenance Fund". Said maintenance charge may be increased from time to time by the Committee in an annual amount not to exceed 10% of the maintenance charge for the previous year, up to a maximum charge of \$300.00 a lot per year, if in the sole discretion of the Committee, such action is required to satisfy funding requirements for those expenses enumerated in paragraph 20 below. After said maximum charge of \$300.00 per lot has been reached, thereafter the Committee shall have the right, in its sole discretion, to increase the annual maintenance charge by a percentage increase equal to the percentage increase in the Consumer Price Index - All Items, 1967 equals 100 (as defined by the U.S. Department of Labor, Bureau of Labor Statistics) for the year preceding the year for which the assessment is being made. Should the U.S. Department of Labor, Bureau of Statistics cease to publish the Consumer Price Index - All Items, 1967 equals 100, the Committee shall select such other indices which in its judgment reflect the then broad range of economic factors represented in the said Consumer Price Index - All Items, 1967 equals 100. Said maintenance charge shall be due and payable annually in advance on or before the first day of July of each year to the Committee at its offices in The Woodlands, Texas. The maintenance charge on any lot purchased after July 1st of any year (covering the period of time from the purchase thereof to June 30 of the ensuing year) shall be prorated in the proportion that the number of months remaining prior to July 1st of said ensuing year bears to a whole year. All maintenance charges referred to herein, together with any and all liens securing payment of the same, are hereby transferred, assigned and conveyed to the Committee. It is expressly agreed that all unsold lots owned by Developer and its successors and assigns, shall be excluded from such maintenance charge. The sole and only obligation of Developer in connection with the purposes for which said Maintenance Fund has been created is to keep the grass and weeds mowed on all unsold lots. Notwithstanding the foregoing, Developer may, at its sole option, assume and agree to pay other expenditures for the benefit of owners or occupants of lots in the Subdivision.

Notwithstanding anything contained herein to the contrary, in the event either the public and/or private roads and/or streets in sections of Pirates Beach and Pirates Cove Subdivision (including, but not limited to, access roads) are damaged by hurricane, flood, storm or other act of nature, and the City or County of Galveston does not satisfactorily repair such roads, the annual maintenance charge may be increased annually during the next ensuing collection period or periods by an amount not to exceed one-half (1/2) of the then current annual maintenance charge in order to raise sufficient funds to pay the cost of restoring such roads or streets to their

former condition and the funds collected by reason of such increase may be used to repair such damage and/or to reimburse Developer, its successors or assigns, for any expense, including interest, if any, which it may have incurred in connection with the repair of such damage. After the total cost of such repairs, including interest, if any, has been paid, the annual maintenance charge shall revert to such amount as may have been collected annually prior to such increase, subject to the right of the Committee, its successors or assigns, to increase the maintenance charge as herein provided.

20. Purpose of Maintenance Fund. All sums accruing to such Maintenance Fund shall be applied, so far as sufficient, towards the payment of maintenance expenses, of all sections of Pirates Beach and Pirates Cove Subdivision, including, but not limited to, the following: lighting, sidewalks and dunes and dune crossover walkways, if any, paths, public and/or private roads and/or streets (including, but not limited to, access roads), public canals, parks, playgrounds, Gulf lot owner facilities, esplanades, collecting and disposing of garbage, trash, and rubbish from common areas, and doing other things necessary or desirable in the opinion of the Committee to keep the Property neat and in good order, or which the Committee considers of a general benefit to the owners or occupants of lots in the section of Pirates Beach and Pirates Cove Subdivision. In this connection, it is understood that the judgment of the Committee in the expenditures of the Maintenance Fund shall be final so long as such judgment is exercised in good faith.

21. Maintenance Fund Lien. To secure the payment of the aforesaid maintenance charge, there is reserved in the deed or contract by which each lot is conveyed a vendor's lien for the benefit of the Committee, such reservation to be effective by a reference to this instrument contained in each such deed or contract, such lien to be enforceable by such beneficiary through the appropriate means at law, provided, however, that any lien securing the maintenance charge as to each lot is hereby specifically made secondary, subordinate and inferior to all liens, presently or in the future, given, granted and created at the instance or request of the owner of any such lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such lot, and it is hereby further provided that as a condition precedent to any proceeding to enforce such lien upon any lot against which there is an outstanding valid and subsisting first mortgage lien, such beneficiary shall give the holder of such first mortgage lien sixty (60) days' written notice of such proposed action, such notice to be sent to the nearest office of such mortgage holder by prepaid United States registered or certified mail, such notice to contain a statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of the owner of any such mortgage, said beneficiary shall acknowledge in writing to such owner its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien. The purchaser of any lot in the Subdivision shall, at the request of Developer, its successors or assigns, execute and deliver (at the time the lot is conveyed to such purchaser) such instruments as Developer, its successors or assigns may require as additional security for payment of the maintenance charge.

22. Term of Maintenance Fund. The above described maintenance charge will remain in effect for the full term (and extended term or terms, if applicable) of the within restrictions, covenants, and conditions.

23. Use of Recreational Facilities. Lot owners in all sections of Pirates Beach and Pirates Cove Subdivision shall have the use of the combined recreational facilities within said subdivisions.

24. Terms and Enforcement. The restrictions, covenants, and conditions set forth in this instrument shall be deemed to run with all or any portion of the Property, and shall be a burden and benefit to Developer, its successors and assigns, and any grantees, successors, heirs, executors, administrators or assigns, and shall run with the land and shall be binding upon all parties and persons claiming under Developer until December 31, 2010, at which time these covenants shall be extended automatically for successive periods of ten (10) years each unless an instrument signed by the majority of the then owners of lots within the Property has been duly executed and acknowledged, changing said covenants, restrictions and conditions, in whole or in part, and filed for record in Galveston County, Texas. Enforcement of these restrictions, covenants, and conditions, including specifically but not limited to, the terms and provisions of paragraph 3. hereof, may be had by any proceedings at law or in equity against any person or persons so violating or attempting to violate any of the provisions hereof, including by means of actions to restrain or prevent such violation or attempted violation by injunction, prohibitive or mandatory. It shall not be a prerequisite to the granting of any such injunction that there be an inadequate remedy at law, or that there be any showing of irreparable harm or damage if such injunction is not granted. In addition, any person entitled to enforce the provisions hereof may recover such damages, either actual or punitive, as such person may show himself justly entitled by reason of such violation of the terms and provisions hereof. Such enforcement may be by the City of Galveston (by virtue of its ownership of the Sand Dune Easement within the Subdivision), by the owner of any lot within the Property, by Developer, or by any association of owners of lots in Pirates Beach and Pirates Cove Subdivisions, as provided by law. Failure by any person or persons to enforce any restriction, covenant or condition herein contained, or acquiescence in any violation hereof, shall not be deemed the waiver of the right to enforce against the violator or others the provisions so violated or any other provision.

25. Property Owner's Association. Developer shall have the right, but not the duty, to create or cause to be created at any time within the duration of these restrictions a property owners' association, to be incorporated as a Texas nonprofit corporation. In the event a property owners' association is created, every person or entity who is a record owner of a lot within the Subdivision shall be a member of said corporation. Lot ownership shall be the sole qualification for membership, and membership shall be appurtenant to and may not be separated from lot ownership. Members shall be entitled to one (1) vote for each lot owned. If such property owners' association is formed, Developer shall have the right, but not the duty, and at its sole discretion, to transfer or sell the recreational facilities it owns, if any, and any or all reserves within the Subdivision, and to transfer its responsibilities under these restrictions, covenants, and conditions, including, but not limited to, the responsibility for collection and disbursement of the maintenance fund to the property owners' association, responsibility for enforcing the maintenance fund lien and the responsibilities for architectural control set out in paragraph 3. hereof.

26. Responsibility of Developer. It is expressly understood and agreed that Developer assumes no obligation, responsibility or liability in the execution of these reservations, restrictions, covenants and conditions, and further that any or all duties, responsibilities, maintenance charges, and/or rights contained, established or reserved herein may be assigned, transferred and conveyed to a civic club or similar organization at any time Developer is reasonably assured that said civic club or similar organization is able to function for the benefit of all owners of lots in the Subdivision.

27. Severability. Invalidation of any one of these covenants by judgment or other court order shall in nowise affect any of the other provisions, such other provisions to remain in full force and effect.

28. Amendments of These Restrictions, Covenants, and Conditions. Any part or all of these restrictions, covenants, and conditions (with the exception of restrictions, covenants and conditions set out in paragraph 7. above) may be amended, from time to time by an instrument duly executed and acknowledged and recorded in the office of the County Clerk of Galveston County, Texas, signed by the owners of a majority of the lots in the Subdivision, provided that only one vote shall be allowed for each lot in the Subdivision, regardless of whether more than one person owns a lot, and provided, further, that when one person or Developer owns more than one lot, he or she shall be entitled to one vote for each lot owned.

29. Headings. All sections and paragraph headings used herein are for convenience only and shall have no efficacy in construing any of the restrictions, covenants and/or conditions herein contained.

WITNESS the execution hereof this the 16th day of November, 1990.

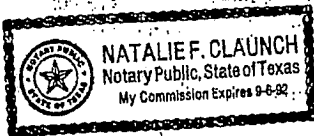
MITCHELL/SOUTHWEST

By: [Signature]
Name: J. L. Rogers
Title: Senior Vice President

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on November 16, 1990 by J. L. ROGERS, Senior Vice President of MITCHELL/SOUTHWEST, a Delaware corporation on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 16th day of November, 1990.



[Signature]
Printed Name: Natalie F. Claunch
Notary Public
State of Texas
My Commission Expires: 9-6-92

When Recorded Return To:
The Woodlands Corporation
Attn: Mary Rose [Signature]
P. O. Box 4000
The Woodlands, Texas 77380

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