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RESTRICTIONS, COVENANTS
AND CONDITIONS

PIRATES BEACH, SECTION NINE
GALVESTON, TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

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

All lots in Pirates Beach, Section Nine, a subdivision in Galveston County, Texas, according to the Plat thereof recorded in Plat Book 18, Page 106, of the Plat Records, Clerk's File No. 8631274, 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 Development Corporation of the 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 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 home to another for residential purposes.

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 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 maintenance assessment hereinafter set forth shall be and remain applicable to all lots as originally platted.

3. Architectural Control and Construction Time. No building, fence, wall, pier, dock, swimming pool, playground equipment, outdoor cooking or eating facility of permanent nature or other structure of any kind 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 compliance with the provisions of this instrument, quality of materials, harmony of external design with the existing and proposed structures, location with respect to topographical and finished grade elevation, and such other relevant considerations as the Committee may, in the exercise of its sole discretion, determine to be of significance in such determination. Each application made for architectural control approval shall be accompanied by a fee of \$150.00 to defray expenses of the Committee and by complete plans and specifications of all proposed structures or improvements, including but not limited to, walls, drives, curb cuts, structures, and other matters relevant to architectural approval. When approval is sought for improvements within the "Dune Protection Zone" as described in paragraph 7 below, the submittal shall indicate the location of such Zone 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, a Certificate of Compliance 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. After the plans for construction have been approved pursuant hereto, and the pilings have been set, the lot owner or builder 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 painted or stained, 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 is not nor intended to be an indication of compliance with any such ordinances or regulations.

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 lot, and, upon completion of construction, to completely remove all remaining construction debris from his 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 removed from the lot, and the cost of such work shall be charged to the lot owner and shall be payable upon demand to the Committee. 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 authorized variances and exemptions from the terms and provisions of any of the restric-

tive 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 covenants and restrictions 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 25 hereof.

4. Dwelling Size. Only one detached single-family type dwelling may be erected on any lot in the Property and each such dwelling shall contain not less than 1200 square feet of living 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 concrete.

(d) No angle bracing from pilings to floor stringers will be permitted. Elevated structures may be crossbraced 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 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.

(g) The minimum first floor elevation of a house must be at least fourteen (14) feet above mean sea level.

(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 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 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 on his lot at least four (4) 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. Notwithstanding the foregoing, however, the Committee shall have the right to consider and approve or disapprove, in its sole discretion, other types of driveway pavement upon written request of the lot owner.

(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 side front and/or rear lot lines than the building setback lines as shown on the recorded plat and no closer than 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 bay 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 walk-overs as specified in paragraph 7, shall be built, placed or permitted to remain on any portion of a lot designated as "Dune Improvement Zone" as described in paragraph 7 below. Driveway access shall be prohibited where access limits are designated on the recorded plat of the subdivision.

7. Dune Improvement Zone. 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 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 order to ensure the continuance, protection and maintenance of the dunes, a Dune Improvement Zone ("Dune Improvement Zone") has been designated on the recorded plat of the Subdivision as recorded in the Office of the County Clerk of Galveston County, and the following additional restrictions, covenants, and conditions shall be and are hereby imposed against those portions of said lots located within said Dune Improvement Zone, as covenants running with the land. These additional covenants, conditions, and restrictions shall affect only those portions of the lots within the Dune Improvement Zone, 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 Dune Improvement Zone.

(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 Dune Improvement Zone 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 Dune Improvement Zone facing the beach is permitted. After construction of the walkover, the surrounding site must be restored and re-vegetated.

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 Dune Improvement Zone 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 Dune Improvement Zone 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 Dune Improvement Zone. 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 *Spartina patens* and *Panicum amarum* in the Dune Improvement Zone, and 100% of *Panicum amarum* between the Dune Improvement Zone 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 its 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 of the Subdivision 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 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 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 Nine 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 nonresidential development in such Reserve(s).

9. Easements. The Dune Protection Zone 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 recorded 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 Dune Improvement Zone affecting beachfront 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 lot in a sanitary, healthful and attractive manner. No owner or occupant of any lot shall in any event use his 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 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 Dune Improvement Zone. 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, other than one sign, a maximum 18 x 24 inches in size, advertising the property for sale or rent. 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.

17. Hunting. No hunting nor the discharge of firearms shall be permitted within 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 \$180.00 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 the 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. All sums accruing to such Maintenance Fund shall be applied, so far as sufficient, towards the payment of maintenance expenses, 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 and Bay 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 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. 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. The above described maintenance charge will remain in effect for the full term (and extended term or terms, if applicable) of the within covenants.

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

24. Each owner of one or more lots in the Subdivision shall, simultaneously upon the closing of the purchase of such lot or lots, make application for a Social Membership in the Galveston Country Club ("Club") on a form to be provided by the Club. If accepted for membership, the lot owner shall maintain such membership in an active status and shall timely pay all dues, charges and fees as may be established by the Club for Social Membership from time to time, during the period of ownership of a lot in the Subdivision, and shall comply with (and such membership shall be subject to) all rules, regulations and By-Laws promulgated by the Club as they may be amended from time to time. The obligation herein contained shall be a covenant running with the land and shall be binding upon the heirs, successors and assigns of the owner. Payment of such dues and fees shall be secured by a lien as provided in paragraph 21.

25. Terms and Enforcement. The covenants, restrictions and conditions set forth in this declaration 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, 2006, 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 covenants, conditions and restrictions, 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 Dune Improvement Zone 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 covenant, restriction, 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.

26. 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 non-profit 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 the responsibility for collection and disbursement of the maintenance fund to the property owners' association, together with the responsibility for enforcing the maintenance charge lien.

27. 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.

28. 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.

29. Amendments of These Restrictions. Any part or all of these covenants, conditions, and restrictions (with the exception of covenants, conditions and restrictions 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 it shall be entitled to one vote for each lot owned.

30. 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.

004-75-2187

WITNESS the execution hereof this the 23rd day
of August, 1986.

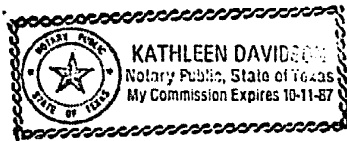
MITCHELL DEVELOPMENT CORPORATION
OF THE SOUTHWEST

By: [Signature]
Name: J. L. Rogers (1986)
Title: Senior Vice President

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on August 23, 1986
J. L. ROGERS, Senior Vice President of MITCHELL DEVELOPMENT
CORPORATION OF THE SOUTHWEST, a Delaware corporation on behalf of
said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 23rd day
of August, 1986.



[Signature]
Printed Name: KATHLEEN DAVIDSON
Notary Public
State of Texas
My Commission Expires: 10-11-87

FILED FOR RECORD
AUG 26 11 36 AM '86

[Signature]
COUNTY CLERK, MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS COUNTY OF GALVESTON
I hereby certify that this instrument was filed on the
date and time stamped hereon by me and was duly recorded
in the Official Public Records of Real Property of Galveston
County, Texas, on

AUG 26 1986



[Signature]
COUNTY CLERK, Galveston County, Texas