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Original

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
PIRATES LANDING, SECTION 1

DEED OF TRUST

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THE STATE OF TEXAS §

COUNTY OF GALVESTON §

THIS DECLARATION, made and executed on this the 25th

day of April, 1974, by MITCHELL DEVELOPMENT CORPORA-
TION OF THE SOUTHWEST (hereinafter referred to as "the Devel-
oper"), a Texas corporation domiciled in Houston, Harris County,
Texas;

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain portions
of the property known as Pirates Landing, Section 1, according
to the map or plat thereof recorded in Volume 15, Page 9 of the
Map Records of Galveston County, Texas, to which reference
is here made for complete description of the land comprising
Pirates Landing, Section 1 and each of the lots into which
such land is thereby subdivided (the land covered by and
included within each map or plat being hereinafter sometimes
referred to as "Pirates Landing - 1"); and,

WHEREAS, Developer desires to create and carry out a
uniform plan for the improvement, development and sale of the
hereinafter specified Townhouse Lots in Pirates Landing - 1 for
the benefit of the present and future owners of such specified
lots, and for the protection of property values throughout all
of the Pirates Landing Subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, Developer, upon the recording hereof, does hereby adopt,
establish, and impose the following declarations, reservations,
protective covenants, limitations, conditions and easements to

apply uniformly to the use, improvement, occupancy and conveyance of those Townhouse Lots in Pirates Landing - 1 which are listed and designated on Exhibit "A" attached hereto and made a part hereof for all purposes; and each contract or deed which may be hereafter executed with regard to any of those Townhouse Lots in Pirates Landing - 1 which are listed on said Exhibit "A" shall conclusively be held to have been executed, delivered and accepted subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration (regardless of whether or not the same are set out in full or by reference in said contract or deed). Unless and until the terms and provisions of this Declaration are expressly made applicable thereto in the manner provided in Section 9.01 hereof, this Declaration and none of the covenants or restrictions set forth herein shall be applicable to any of the Townhouse Lots in Pirates Landing - 1 which are not listed on said Exhibit "A" hereto:

ARTICLE I

Definitions

Section 1.01 - The terms defined in this Article shall have the respective meanings stated in this Article for all purposes of this Declaration (except as otherwise expressly provided or unless the context otherwise requires):

"Corporation" shall mean the non-profit corporation organized pursuant to Article II hereof.

"Common Area" shall mean those lands which are shown on the recorded plat of Pirates Landing, Section 1, or on any amendment thereto or replatting thereof and on the recorded plats of other sections of the Pirate Landing Subdivision included within the Property, to be the "Common Open Area",

as well as any and all other lands, properties or facilities which may be hereafter from time to time owned by the Corporation for the common use and enjoyment of the Members of the Corporation and shall include, but is not limited to, all recreational facilities, community facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, driveways and walkways, but shall not include (i) any portion of the building locations shown on such recorded plats of the Sections of Pirates Landing, or (ii) any portion of such locations hereinafter described as a "Townhouse Lot".

"Covenants and Restrictions" shall mean all of the covenants, conditions, restrictions, uses, limitations, affirmative obligations, easements, liens and charges imposed by the provisions of this Declaration, as the same may be amended from time to time.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and any amendments thereto.

"Architectural Control Committee" shall mean the Architectural Control Committee created and established pursuant to Article V hereof.

"Developer" shall mean and refer to Mitchell Development Corporation of the Southwest, its successors, or a person or entity who acquires the Property or portions thereof for purposes of development and to whom the rights and obligations of Developer hereunder as to the all or part of the Property so acquired are specifically assigned by Mitchell Development Corporation of the Southwest.

"Member" shall mean and refer to every person or entity who holds membership in the Corporation.

"Party Wall" shall mean each wall or other structure which is built as a part of the construction of a Townhouse and placed on the dividing line between two Townhouse Lots.

"Patio Area" shall mean the open space or yard area within the boundaries of each Townhouse Lot.

"Plat" shall mean and refer to the recorded Plat of Pirates Landing, Section 1, hereinabove referenced, and any amendment or replat which is filed for record in the Office of the County Clerk of Galveston County, Texas.

"Property" shall mean and refer to those Townhouse Lots in Pirates Landing, Section 1, which are listed and designated in Exhibit "A" hereto and such other Townhouse Lots in Pirates Landing, Section 1, and in other sections of the Pirates Landing Subdivision as Developer may from time to time elect to make subject to this Declaration of Covenants, Conditions and Restrictions in accordance with Section 9.01 hereof.

"Townhouse" shall mean a single family residence unit constructed on a Townhouse Lot as part of a group of two or more single family residences, and shall include garages and carports.

"Townhouse Lot" shall mean and refer to each of the building locations shown on the plat of Pirates Landing, Section 1, which are listed and designated in Exhibit "A" hereto, and each of the other building locations in any other portion of the Property, on which there is or will be constructed a single family Townhouse, including the garage, carport and patio area located within the boundaries thereof.

"Townhouse Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Townhouse Lot, including contract purchasers, but excluding (i) those having such interests merely as security for performance of any obligation, and (ii) "Pirates Landing Development Corporation", with respect to Townhouses held by it for the purpose of resale to the first owner thereof, provided however, that the Pirates Landing Development Corporation shall not be excluded with respect to any Townhouse from and after the date any such Townhouse shall have been rented or leased (or sublet) to others.

ARTICLE II

The Townhouse Corporation

Developer shall cause to be created a non-profit corporation under the Texas Non-Profit Corporation Act for the purpose of administering the operation and maintenance of the Common Area and providing the other functions herein delegated to the Corporation.

Section 2.01 - Membership. Every person or entity who is a record owner of a Townhouse Lot, including contract purchasers, shall be a Member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separate from ownership of a Townhouse Lot. Ownership of such Townhouse Lot shall be the sole qualification for membership.

Section 2.02 - Voting Rights. The Corporation shall have two classes of voting membership:

Class "A". Class "A" members shall be all Owners with the exception of the Developer, each of which Owners shall be entitled to one (1) vote for each Townhouse Lot owned by him. When more than one person owns a fee interest in any Townhouse Lot, all such interested persons shall be members; however, the vote for such Townhouse Lot in which more than one person has a fee interest

shall be cast by the person or persons having a majority interest; and in the event the persons having a majority interest are not able to agree in respect to a vote upon any matter, then such Owners shall not have a right to vote on such matter as there shall be no fractional votes.

Class "B". Class "B" member shall be the Developer, who shall be entitled to three (3) votes for each Townhouse Lot owned by it, whether improved or unimproved. In determining the number of Townhouse Lots owned by Developer for voting purposes, there shall also be counted the number of Townhouse Lots it owns in the entire Property then made subject to the terms and provisions of this Declaration, including specifically any added or annexed property. The Class "B" membership shall cease and be converted into Class "A" membership at such time as the total votes outstanding in the Class "A" members equals for a period of at least twenty-four (24) consecutive months the total votes outstanding in the Class "B" membership.

The Board of Directors may make such regulations consistent with the Articles of Incorporation of the Corporation and with this Declaration as it deems advisable for any meetings of Members in regard to proof of membership in the Corporation, evidence of right vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes and such other matters concerning the conduct of meetings and voting as it shall deem proper.

Section 2.03 - Board of Directors. All of the affairs, policies and regulations of the Corporation shall be administered by the Board of Directors of the Corporation consisting of not less than three (3) directors.

ARTICLE III

Property RightsSection 3.01 - Members' Easement of Enjoyment.

Every Member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Townhouse Lot, subject to the following provisions:

(a) The right of the Corporation to limit the number of guests of Members;

(b) The right of the Corporation, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgagee in said property shall be subordinate to the rights of the Members hereunder;

(c) The right of the Corporation to suspend the voting rights and right to use the recreational facilities of any Member for any period during which such Member is in default of any provision of this Declaration and, for a period not to exceed thirty (30) days, for any infraction of its published rules and regulations;

(d) The right of the Corporation to dedicate or transfer, with the written consent of all first lienholders, if any, all or any part of the Common Area to

any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by the Members entitled to cast seventy-five percent (75%) of the votes has been recorded, agreeing to such dedication or transfer.

Section 3.02 - Delegation of Use. Any Member may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside in the Property, subject to such rules and regulations as may from time to time be promulgated by the Corporation.

Section 3.03 - Title to the Common Area. Developer hereby covenants for itself, its successors and assigns, that it will convey, or cause to be conveyed, title to the Common Area to the Corporation. The Common Area shall remain undivided, and shall at all times be controlled by the Corporation or its successors, it being agreed that this restriction is necessary in order to preserve the right of each Townhouse Owner with respect to the operation and management of the Common Area.

Section 3.04 - Easement for Encroachment. Each Townhouse Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two

or more Townhouses is partially and totally destroyed, and then rebuilt, the Owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouse units or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3.05 - Easement for Utilities. There is hereby created permanent easements upon, across, over and under those portions of the Property as may be reasonably necessary for the installation, maintenance and repair of all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system, which easements shall run to and be administered by the Corporation. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Corporation, its officers, agents, employees, and to any management company selected by the Corporation to enter in or to cross over the Common Area and any Townhouse Lot to perform the duties of maintenance and repair of the Townhouses or Common Area provided for herein. No utility company, water district or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their agents or employees to the shrubbery, trees, flowers or other property of any Townhouse Owner situated within or on the land covered by such easements. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities

may be installed or relocated on the Property except as provided in Section 8.10 hereof. Developer reserves the right to grant (without necessity for consent from any Townhouse Owner) such additional utility easements as may, in its judgment, be necessary to properly serve the Subdivision's utility requirements.

ARTICLE IV

Covenants for Maintenance Assessments

Section 4.01 - Creation of the Lien and Personal

Obligation. The Developer, for each Townhouse Lot within the Property, hereby covenants, and each Townhouse Owner, by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree, to pay to the Corporation annual assessments or charges, and special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided in Sections 4.03, 4.04, 4.05 and 4.06. The annual and special assessments, together with such interest thereon and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Townhouse Lot against which each such assessment is made. Each such assessment, together with such interests, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Townhouse Lot at the time when the assessment fell due. The personal obligation shall not pass to his successor in title unless expressly assumed by them.

Section 4.02 - Purpose of Assessments. The assessments levied by the Corporation shall be used exclusively for

the purpose of promoting the health, safety, and welfare of the residents of the Property and, in particular, for the improvement and maintenance of the Property, the Townhouses situated therein, the Common Area and all related facilities and for providing services to enhance the use and enjoyment of said Common Area and of the Townhouses situated in the Property. The purpose of the assessments shall include, but are not limited to, providing payment of the actual cost to the Corporation of the insurance, repair, replacement and maintenance of the Common Area and of such maintenance of the exteriors of the Townhouses as may from time to time be authorized by the Board of Directors, providing payment for such other facilities and activities as mowing grass, caring for the grounds, sprinkler system, landscaping, fences, masonry walls, lighting, roofs and exterior walls of the Townhouses, sidewalks, streets, and drives within the Property, providing for collecting and disposing of garbage, trash or rubbish and performing such other functions as the Board of Directors of the Corporation shall determine to be necessary to meet the primary purposes of the Corporation.

The foregoing enumeration of purposes of the assessments shall not be deemed to require the Corporation to use the funds derived from such assessment for any one or more of such purposes or to require that any particular amount of funds be expended for any particular purpose. The Corporation shall be entitled to expend such amounts as and for such of the foregoing enumerated purposes as it shall determine, in the exercise of its reasonable and prudent judgment, to be necessary and proper. However, the Corporation shall remit to Developer or to the entity controlling the "Maintenance Funds" as described in restrictions of record in Galveston County, \$84.00 yearly or the amount assessed to lot owners in Pirates Beach and Pirates Cove Subdivision for each Townhouse Lot now or hereafter subject to the assessment provided in Section 4.03.

Section 4.03 - Basis and Maximum of Annual Assess-

ments. The annual assessment during the calendar year 1974 shall be \$540.00 per Townhouse Lot. The maximum annual assessment for each calendar year after 1974 may be increased or decreased over the amount of annual assessment imposed for the immediately preceding year by action of the Board of Directors of the Corporation, without approval of the Membership, by such amount as the Board of Directors, in its sole discretion, shall deem to be required in order to carry out the purposes of the Corporation and the assessments herein provided for.

Section 4.04 - Special Assessments for Capital Im-

provements. In addition to the annual assessment authorized above, the Corporation may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Any such special assessment shall require the assent of seventy-five percent (75%) of the votes of the Corporation Members, at a meeting duly called for such purpose, written notice of which shall be sent to all Corporation Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purposes of the meetings.

Section 4.05 - Uniform Rate of Assessment. Both

annual and special assessments must be fixed at a uniform rate for all Townhouse Lots and may be collected on a quarterly basis with each Townhouse Owner paying an amount equal to that paid by each of the other Townhouse Owners.

Section 4.06 - Date of Commencement of Annual Assessments. The annual assessments provided for herein shall relate to a fiscal year commencing on July 1st and ending on June 30th of the next year and shall commence as to each Townhouse Lot on the first day of the month following the date on which the Developer shall have sold and conveyed title to such Townhouse Lot. In no event shall any assessment be levied against any Townhouse Lot either owned by Developer or specifically excepted from assessment by Developer. The first annual assessment shall be adjusted according to the number of months remaining in the then current fiscal year. The Board of Directors shall fix the amount of the annual assessment against the Townhouse Lots at least thirty (30) days in advance of each such annual assessment period. Written notice of the annual assessment shall be sent to every Member. The annual assessment shall be payable in twelve equal installments of \$45.00 each and the due date of the first such installment shall be July 1st of each year with similar monthly installments of \$45.00 being due and payable on the first day of each succeeding calendar month. The Corporation shall upon demand at any time furnish a certificate in writing, signed by an officer of the Corporation, setting forth whether the assessments on a specified Townhouse Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 4.07 - Effect of Nonpayment of Assessments; Remedies of the Corporation. Any installments of such assess-

ments which are not paid when due shall be delinquent. If any monthly installment of the assessment is not paid within thirty (30) days after the due date, such installment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Corporation may bring an action at law against the Owner personally obligated to pay the same to recover the amount of the delinquent account and all accrued interest thereon, costs, and reasonable attorney's fees for such action, and to foreclose the lien securing such assessment against the subject Townhouse Lot. Each such Townhouse Owner, by his acceptance of a deed to a Townhouse Lot, hereby expressly vests in the Corporation, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Corporation in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Corporation a power of sale in connection with said lien, same to be exercised in compliance with the terms of Article 3810 of the Texas Civil Statutes. The lien provided for in this Section shall be in favor of the Corporation and shall be for the benefit of all other Townhouse Owners. The Corporation, acting on behalf of the Townhouse Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease and mortgage the same. No Townhouse Owner may waive or otherwise escape liability for any and all assessments provided for herein by non-use

of the Common Area or abandonment, sale or other disposition of his Townhouse Lot.

Section 4.08 - Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages imposed on the Townhouse Lots to secure debt incurred for the purchase price thereof or for improvements thereto. Sale, transfer or other disposition of any Townhouse Lot shall not affect the assessment lien. However, the sale or transfer of any Townhouse Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer of any kind, including foreclosure, shall relieve such Townhouse Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

Architectural Control

Section 5.01. 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 Townhouse Lot after the purchase of any Townhouse Lot from Developer, its successors or assigns, nor shall any exterior addition to or change or alteration of the exterior thereof 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 (herein sometimes called the "Committee") composed of three (3) or more representatives from time to time appointed by the Developer. The persons serving from time to time on the Committee may be removed, with or without cause, by the 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 of one or more members of such Committee, the Developer shall promptly designate other persons to replace those so removed. Approval by such Committee shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, harmony of external design with existing and proposed structures and location with respect to topographical and finished grade elevation and such other relevant considerations as the Architectural Control 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 \$100.00 to defray expenses of the Committee and by a set of plans and specifications of all proposed construction and other work to be done, including a plat plan showing the location on the Townhouse Lot and dimensions of all proposed walls, drives, curb cuts and other matters relevant to architectural approval. As to each set of plans and specifications which 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 said Committee, fails to approve or disapprove

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such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will be presumed and this Article will be deemed to have been fully complied with.

Section 5.02. No exterior aerial antenna, flag pole of any kind or other structure (except chimney) shall project above the uppermost roof line of the Townhouse on any Townhouse Lot.

Section 5.03. The Architectural Control Committee shall have the power and authority, to be exercised in its sole discretion, to authorize variances and exemptions from the terms and provisions of any of the restrictive covenants and requirements set forth in this Article V or in Article VIII hereof, as to any one or more of the Townhouse Lots.

Section 5.04. The rights, powers and duties reserved unto Developer in this Article V shall remain in force and effect so long as the Covenants and Restrictions set forth herein shall be and remain in force and effect.

Section 5.05. The terms and provisions of this Article V may be enforced in the same manner as the other terms and provisions hereof are enforced pursuant to Section 9.11 hereof.

ARTICLE VI

Maintenance

Section 6.01 - Owner's Maintenance Responsibilities.

The responsibility of the Townhouse Owner shall be to maintain, repair and replace at his expense all portions of his Townhouse, except the portions to be maintained, repaired and replaced by the Corporation as hereinafter stated; and to

promptly report to the Corporation any defect or need for repairs, the responsibility for the remedying of which is that of the Corporation.

Section 6.02 - Common Area. The maintenance and operation of the Common Area shall be the responsibility of the Corporation.

Section 6.03 - Exterior Maintenance and Repair of Buildings. The exterior of all Townhouses shall be maintained and repaired on a periodic basis by the Corporation, which maintenance and repair shall include, but shall not be limited to, repainting and repair of exterior walls, shutters, trim, eaves, fences, gutters, downspouts, roofs or any portion of the foregoing. Such exterior maintenance shall not include glass surfaces. The times and extent of such maintenance and repair shall be determined by the Corporation in its sole discretion. The exterior maintenance to be performed by the Corporation shall extend only to maintenance and repair of normal wear and tear, and not to exterior damage caused by casualty ("casualty damage"). Each Townhouse Owner shall be responsible for and shall promptly cause to be made the repair of any such casualty damage to his respective Townhouse in a good and workmanlike manner and in accordance with the original plans and specifications for such Townhouse. In the event any such Owner shall fail or refuse to repair such casualty damage within thirty (30) days, the Corporation is hereby irrevocably authorized by such Owner to repair such casualty damage. The Owner shall promptly repay the Corporation for all amounts expended in making such repairs of casualty damage, and the Corporation shall have a lien to

secure payment thereof in like manner as the lien to secure payment of the assessments provided for in Article IV above, with the right of foreclosure.

There is hereby reserved in favor of the Corporation the right to enter upon all of the Townhouse Lots and buildings located thereon for the purpose of conducting a periodic program of exterior maintenance and repair.

The Corporation shall not be responsible for repairs beyond the exterior surfaces of the Townhouses, all such repairs being the responsibility of the Townhouse Owner.

Section 6.04 - Management Agreements. Each Owner of a Townhouse Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Corporation. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Corporation shall provide that said management agreement may be cancelled by an affirmative vote of seventy-five percent (75%) of the votes of the Members of the Corporation. In no event shall such management agreement be cancelled prior to the effecting by the Corporation or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Corporation or its Board of Directors to effect a new management agreement prior to the expiration of the term of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

Section 7.01 - General Rules of Law to Apply.

Each wall which is built as a part of the construction of a Townhouse and placed on the dividing line between the Townhouse Lots shall constitute a Party Wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Townhouse Owner sharing a Party Wall shall have a perpetual easement in that part of the premises of the other on which that Party Wall is located, for Party Wall purposes.

Section 7.02 - Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Townhouse Owners who make use of the wall in equal proportions.

Section 7.03 - Destruction by Fire or Other Casualty.

The destruction in whole or in part of a Party Wall shall not affect the rights and obligations inherent therein and the Townhouse Owners sharing such Party Wall shall continue to have the right of obtaining lateral support from the adjoining Townhouse. If a Party Wall is destroyed or damaged by fire or other casualty, any Townhouse Owner who has used the wall may restore it, and if the other Townhouse Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Townhouse Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 7.04 - Weatherproofing. Notwithstanding any other provision of this Article, a Townhouse Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 7.05 - Right to Contribution Runs With Land. The right of any Townhouse Owner to contribution from any other Townhouse Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VIII

Use Restrictions

Section 8.01 - Single-Family Residences. None of the Townhouse Lots or the Townhouse units thereon shall be used for anything other than single-family, private residential purposes, and all Townhouse Lots shall be exclusively townhouse residential lots. No Townhouse shall exceed three (3) stories in height consisting of two floors of living areas over a private garage (or other covered car parking facility) for no more than four (4) automobiles. The living area of the main structure (exclusive of porches, patios, deck, car parking facilities, terraces or driveways) shall contain at least 1000 square feet on one or both stories thereof. Also each Townhouse unit must contain an open deck area of at least 235 square feet. No commercial activity shall be permitted on any Townhouse Lot, nor shall any commercial activity be engaged in from any such Townhouse Lot. All buildings or structures erected on any Townhouse Lot shall be of new construction and no buildings or other structures shall be moved from other locations onto any such Townhouse Lot. No buildings or struc-

tures other than single family Townhouses joined together by a common exterior roof and foundation shall be constructed on any Townhouse Lot. No structures of a temporary character, mobile home, boat, camper, trailer, tent, shack, garage, barn or other outbuildings shall ever be used on any portion of a Townhouse Lot at any time as a residence, either temporarily or permanently.

Section 8.02 - Resubdivision. Except as provided in Section 9.02 hereof, no Townhouse Lot may be resubdivided or in any way divided or converted into more than one single dwelling unit.

Section 8.03 - Improper Activity. No immoral, improper, unlawful, noxious or offensive activity shall be carried on or maintained on any Townhouse Lot or upon the Common Area, nor shall anything be done or permitted to be done thereon which may be or become an annoyance or a nuisance to the residents of the Property.

Section 8.04 - Use of Common Area. The Common Area (other than the utility areas which will be regulated as to use by the Corporation) shall not be used for storage of supplies, personal property or trash or refuse of any kind, except common trash receptacles placed at the discretion of the Corporation. Regulations concerning the use of the Common Area shall be promulgated by the Board of Directors of the Corporation and such regulations shall be binding on all Members of the Corporation unless duly amended by the Board of Directors or by a majority of the Members after they have acquired voting rights in accordance with Section 2.02 hereof.

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Section 8.05 - Screening. All clothes lines, equipment, garbage cans, service yards, wood piles or storage piles shall be confined to the Patio Areas, and shall be kept screened by adequate planting so as to conceal them from view of neighboring Townhouses and streets. All rubbish, trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

Section 8.06 - Parking. Driveways and parking spaces in the Common Area shall be used solely for the parking of passenger cars only by residents of the Property and their guests or invitees, and any such passenger car must be in operating condition. The parking or standing of any type of motor vehicle or trailer in any part of the Property, other than in a garage, carport, driveway, or the designated parking spaces, is expressly prohibited. This provision shall not be construed to prohibit the temporary parking of motor vehicles necessary to the servicing or repair of the Townhouse units in the Property.

Section 8.07 - Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Townhouse Lots, except that dogs, cats or other domestic household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No pets may run at large in the Property and any pets that, in the opinion of Developer, constitute a nuisance or health hazard to the residents shall be promptly removed.

Section 8.08 - Signs and Other Advertising. No sign, advertisement, billboard or advertising structures of any kind shall be erected, placed or permitted to remain on any Town-

house Lot, without written consent of Architectural Control Committee. Agents of the Architectural Control Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Townhouse Lot without such consent, and, in so doing, shall not be liable and is expressly relieved from any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 8.09 - Additional Restrictions. No structure shall be used or occupied until the exterior thereof, as approved pursuant to Article V above, is finished and water and sanitary sewerage disposal facilities are completely installed and operable. No outside toilets or septic tanks will be permitted on any Townhouse Lot. The use or discharge of firearms is expressly prohibited within the Property. No Townhouse Lot shall be used as a dumping ground for garbage, trash, or rubbish. Any and all trash, garbage, and other waste shall be kept in sanitary containers. Any incinerator or other equipment for the storage or disposal of such waste material must be kept in a clean, sanitary and sightly condition at all times. No building material of any kind shall be placed or stored upon any Townhouse Lot except during construction; and then such material shall be placed within the property lines of the Townhouse Lot on which the improvements are to be erected. If open carports are used, no storage shall be permitted therein that is visible from the street or from any other Townhouse Lot. No boats, campers, mobile homes, trailers, trucks or other vehicles of any kind shall be stored (or kept for the purpose of repair)

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NO. 2564 PAGE 614

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VOL. 2112 PAGE 227

on any Townhouse Lot. No Townhouse Lot or any part of the Common Area shall ever be used for drilling, mining, producing or otherwise developing the oil, gas or other minerals in and under any portion of such lands.

Section 8.10 - Underground Utilities. No pipe, conduit, cable, line or the like for water, gas, sewage, drainage, steam, electricity or any other energy or service shall be installed and maintained in the Property (outside of any building) above the surface of the ground except for hoses and movable pipes used for irrigation or other purposes as specifically approved in writing by the Architectural Control Committee. All auxiliary machines or equipment or facilities used in the Property in connection with any such energies or services shall be located only in such manner and upon such conditions as may be specifically approved by said Architectural Control Committee.

Section 8.11 - Limitation During Construction and Sales. Notwithstanding anything contained herein to the contrary, the foregoing Covenants and Restrictions concerning commercial activities, construction and maintenance of buildings, if any, shall not apply to such activities by the Developer, its agents or assigns, or other designated entities, during the construction and sales period; nor shall such Covenants and Restrictions apply to the Corporation, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 8.12 - Location of Improvements. No building or other improvements shall be erected on any Townhouse Lot in violation of any front, rear or side set-back lines shown on the Plat.

ARTICLE IX

DEED OF TRUST

General ProvisionsBOOK 2564 PAGE 615Section 9.01 - Annexation of Additional Lands. At

any time prior to the termination of the Covenants and Restrictions set forth herein, Developer, in its sole discretion, may annex and add to the land covered by this Declaration additional Townhouse Lots in Pirates Landing -1 and lands in other sections of Pirates Landing Subdivision, as such sections are platted and filed for record in the Office of the County Clerk of Galveston County, Texas. Such action shall not require the consent or joinder of the existing Members of the Townhouse Corporation or of the Townhouse Owners and shall be effected by Developer executing and filing for record in Galveston County, Texas, a written declaration that such additional Townhouse Lots in Pirates Landing - 1 or the lands included within the sections shown on any such recorded plat, so identified therein, are thereby covered by and made subject to all of the terms and provisions of this instrument. Upon the execution and filing of such declaration the additional Townhouse Lots or the land covered by such recorded plat shall comprise a part of the Property covered hereby to the full extent as if such land had been listed, described and designated in Exhibit "A" hereto (except that its liability for assessment shall not accrue until the date such declaration is filed for record, as aforesaid) and the subsequent owners of the Townhouse Lots included in such additional land shall thereafter be bound by the terms and provisions hereof and entitled to all of the rights, privileges and benefits of the Townhouse Owners.

Section 9.02 - Replatting of Unsold Building Locations. Provided no Lot in a specific building location as shown on the Plat has been sold by Developer, there is hereby reserved to Developer the right, in its sole discretion, to replat such building location to change the size, location or dimensions of the Townhouse Lots therein. Any such change may alter the Common Area adjoining the building location being changed, provided that such replatting shall not affect or alter the land upon which any building constituting a part of the Common Area is located, and provided that the total acreage contained in the Common Area may not be reduced by more than ten percent (10%). Any such replat provided for in this Section shall not require the consent or joinder of the existing Members of the Corporation.

Section 9.03 - Water Service. Water meters will be installed on each Lot following the approval of plans and specifications for such Lot by the Architectural Control Committee and all water charges thereafter accruing will be metered and billed to the Townhouse Owner.

Section 9.04 - Electrical Utility Service. A semi-underground electric distribution system will be installed in that part of Pirates Landing - 1, designated Semi-Underground Residential Subdivision, which semi-underground service area shall embrace all lots in Pirates Landing - 1. The owner of each Townhouse Lot in the Semi-Underground Residential Subdivision shall, at his 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 the electric company's metering on the customer's structure to

the point of attachment at such company's 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. In addition, the owner of each Townhouse Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such owner's lot. For so long as semi-underground service is maintained, the electric service to each lot in the Semi-Underground Residential Subdivision shall be uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

Section 9.05 - Right to Use Other Facilities. The Townhouse Owners and their respective families and guests shall have the right to use the combined recreational facilities of the Pirates Beach and Pirates Cove subdivisions situated in Galveston County, Texas.

Section 9.06 - Rules and Regulations. Developer retains the right and power to promulgate and impose rules and regulations, and to vary and amend same from time to time as may be necessary, relating to the use and occupancy of the Townhouse Lots, the Townhouses constructed thereon, the Common Area and all related facilities now or hereafter constructed thereon, so as to provide for the safe and orderly use of such properties and facilities.

Section 9.07 - Disclaimer of Developer's Responsibilities. It is expressly agreed and understood that Developer shall assume no obligation, responsibility or liability for the enforcement of any of the restrictions or other terms of this instrument or for the collection of the annual assessments provided for herein.

Section 9.08 - Duration. The Covenants and Restrictions set forth in this Declaration shall be deemed to run with all or any portion of the Property, and shall be a burden and a benefit to Developer, its successors and assigns, and any persons acquiring or owning any interest in the Property, their grantees, successors, heirs, executors, administrators and assigns; and shall run with the land and shall be binding on all parties and persons claiming under them until December 31, 2000, after which time these Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years each unless, prior to the expiration of any such ten-year period, an instrument signed by the then Owners of seventy-five percent (75%) of the Townhouse Lots, agreeing to change these restrictions in whole or in part, has been filed for record in Galveston County, Texas.

Section 9.09 - Amendments. Any or all of the Covenants, Restrictions or other terms and provisions set forth in this Declaration may be repealed, amended or modified either as to all or any part of the Property at any time and from time to time by the action and approval of the Townhouse Owners who at such time own 75% of the Townhouse Lots then subject to and covered by this Declaration. The owner of each Townhouse Lot, including Developer, shall be entitled to one vote for each Townhouse Lot owned by it. Such repeal, amendment or modifi-

cation shall be effected by an instrument in writing executed by the persons or entities, including Developer, who own seventy-five percent of the Townhouse Lots then subject to and covered by this Declaration, and filed for record in the Office of the County Clerk of Galveston County, Texas. Provided, however, that no amendment shall be made which shall in any manner impair the security of any institutional lender having a mortgage or other lien against any Townhouse Lot or the Common Area, or any other record owners of liens thereon; nor shall any amendment in any manner impair the management agreement, if any, then in effect.

Section 9.10 - Waiver of Liability. Neither the Developer nor the Corporation shall be held liable for any personal injury or damage to property resulting from acts or omissions by the Developer or the Corporation or their respective agents or employees in connection with the carrying out of any of their rights, duties or obligations under the terms of this instrument or in otherwise developing the Property.

Section 9.11 - Enforcement. The Corporation, and any Townhouse Owner, shall have the right to enforce all of the Covenants and Restrictions imposed by the provisions of this Declaration, as the same may be amended from time to time, including specifically but not limited to the terms and provisions of Article V hereof, 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 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 terms and provisions hereof. The Corporation is hereby expressly authorized to use its funds for the purpose of assisting in the enforcement of the terms and provisions hereof. Failure by the Corporation or by any Townhouse Owner to enforce any Covenant or Restriction herein contained, or acquiescence in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions. In addition, the Corporation shall have the right to enter the Property of the violator and correct the violation, or to require the same be corrected.

Section 9.12 - Severability. Invalidation of any of these Covenants or Restrictions by judgment, court order or otherwise, shall in nowise affect the validity of any other provisions, which shall remain in full force and effect.

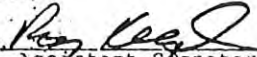
Section 9.13 - Headings. All section and paragraph headings used herein are for convenience only and shall have no efficacy in construing any of the provisions hereof.

Section 9.14. Pirates Landing, Inc., the owner of a portion of the Townhouse Lots described and designated on Exhibit "A" hereto, joins in the execution hereof for the purpose of adopting, ratifying and confirming all of the terms and provisions of this Declaration and to impose all of such terms and provisions on each and all of the Townhouse Lots in Pirates Landing, Inc., owned by it to the full extent and in the same manner as if all of the Townhouse Lots described

and designated in Exhibit "A" hereto were owned by Developer on the date of execution and recording of this Declaration.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers on the day and year first hereinabove written.

ATTEST:

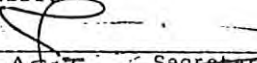

Assistant Secretary

MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST


By: 
Vice President *LC*

"DEVELOPER"


ATTEST:


ASST. Secretary

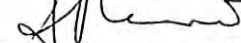
PIRATES LANDING ~~INC.~~ Development Corporation

By: 
Vice - President

ATTEST:


ASSISTANT SECRETARY

PRINGLE ASSOCIATED MORTGAGE CO.

By: 
SR. VICE PRESIDENT



DEED OF TRUST

BOOK 2564 PAGE 622

CONDOMINIUM RECORD

VOL. 2117 PAGE 235

THE STATE OF TEXAS)
COUNTY OF ~~HARRIS~~ Montgomery

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Lawrence S. Kash, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18th day of April, 1975.

Kaye Pittman
Notary Public in and for
~~Harris County, Texas.~~
Montgomery

THE STATE OF TEXAS)
COUNTY OF ~~HARRIS~~ Montgomery

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared JOHN L. FORT, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said PIRATES LANDING ~~DEVELOPMENT CORPORATION~~ a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 19th day of APRIL, 1975.

Eugene L. Guy
Notary Public in and for
~~Harris County, Texas.~~
Harris County, Texas.
EUGENE L. GUY, Notary Public in
Dallas County, Texas
My Commission Expires June 1, 1976

Comm. of PENNA
~~THE STATE OF TEXAS~~)
COUNTY OF ~~HARRIS~~ Montgomery

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared STANTON W. FELT II, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said PRINGLE ASSOCIATED MORTGAGE CO., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 24th day of April, 1975.

Cynthia Weinstein
Notary Public in and for
~~Harris County, Texas.~~

CYNTHIA WEINSTEIN
Notary Public, State of Texas, Montgomery County
My Commission Expires July 3, 1978

CONDOMINIUM RECORD

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Exhibit A

Pirates Landing Townhomes

Lots 1,2,3,4,5,6,7,8,9,10, 11, 12,13,14,15,16,17,18,19,20,21,22,
23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,
43,44,45,46,47,48

Pirates Landing, Section 1 recorded in Volume 15, page 9, of the
map records of Galveston County, Texas.

DEED OF TRUST
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7 MAY 20 1975
10:15

CONDOMINIUM RECORD
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DEED OF TRUST
BOOK 2564 PAGE 624

Stewart Ave
* 5-1

STATE OF TEXAS
I hereby certify that this instrument was filed on the
date and time stamped hereon by me and was duly recorded
in the volume and page of the named records of Galveston
County, Texas as stamped hereon by me.



MAY 21 1975

John Humphrey Jr.
COUNTY CLERK, Galveston County, Texas

STATE OF TEXAS
I hereby certify that this instrument was filed on the
date and time stamped hereon by me and was duly recorded
in the volume and page of the named records of Galveston
County, Texas as stamped hereon by me.



MAY 27 1975

John Humphrey Jr.
COUNTY CLERK, Galveston County, Texas

~~43290~~

~~FILED FOR RECORD
MAY 21 1 02 PM 1975~~

~~COUNTY CLERK, GALVESTON COUNTY, TEXAS~~

43690

FILED FOR RECORD
MAY 27 9 25 AM 1975

COUNTY CLERK, GALVESTON COUNTY, TEXAS

PT
PBC

43691

~~43292~~

Original

SUPPLEMENTAL AGREEMENT

THE STATE OF TEXAS
COUNTY OF GALVESTON

, DEED OF TRUST
BOOK: 2564 PAGE 625

~~CONDOMINIUM RECORD
VOL. 2112 PAGE 246~~

THIS AGREEMENT made and entered into on this the
20 day of MAY, 1975, by and
between MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST,
a Texas corporation (herein called "Seller") and PIRATES
Development Corporation
LANDING/ ~~XX~~, a Texas corporation (herein called "Purchaser");

W I T N E S S E T H:

WHEREAS, Seller and Purchaser entered into that
certain Land Agreement dated November 5, 1973, relating to
certain properties situated in Galveston County, Texas,
described in Exhibit "A" thereto, and pursuant to such Land
Agreement Seller has sold and conveyed to Purchaser 48 Lots
out of Pirates Landing, Section 1, a subdivision in Galves-
ton County, Texas;

WHEREAS, Seller has caused a Declaration of Cove-
nants, Conditions and Restrictions (herein called the
"Declaration") relating to certain lots in such Pirates
Landing, Section 1, to be prepared for filing in accord-
ance of the terms of such Land Agreement; and

WHEREAS, Seller and Purchaser desire to herein
evidence certain supplemental agreements between such par-
ties relating to the subject matter of such Land Agree-
ment;

NOW, THEREFORE, for and in consideration of
premises and the mutual covenants herein set forth, Mitchell
Development Corporation of the Southwest and Pirates Landing,
Inc. do hereby covenant and agree as follows:

1. Seller and Purchaser do hereby approve the Declaration, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes and hereby authorize same to be filed for record with the County Clerk of Galveston County, Texas;

DEED OF TRUST

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2. Purchaser has heretofore submitted to Seller the plans and specifications for certain townhouse improvements to be constructed on certain of the Lots sold by Seller to Purchaser in Pirates Landing, Section 1. Developer hereby covenants that the improvements constructed by Purchaser pursuant to such previously approved plans and specifications shall be approved by the Architectural Control Committee provided for in such Declaration and that such Committee shall likewise approve the plans and specifications submitted by Purchaser for the construction of additional townhouses on Lots in Section 1 of Pirates Landing, if such plans and specifications are substantially identical to those which have heretofore been approved by Developer;

3. Section 9.05 of the Declaration authorizes the Owners of Townhouse Lots covered by such Declaration to use and enjoy the combined recreational facilities of the Pirates Beach and Pirates Cove Subdivisions situated in Galveston County, Texas. The real property upon which said facilities are located is described in Exhibit "B" attached hereto and made a part hereof for all purposes. Seller, hereby expressly confirms that the Owners of the Townhouse Lots now or hereafter made subject to the Declaration shall be permitted to use and enjoy any and all such recreational facilities and amenities heretofore and hereafter constructed or caused to be constructed or caused to be constructed by Seller for the Pirates Beach and Pirates Cove Subdivisions on the same basis and subject to the same regulations as the residents of the Pirates Beach and Pirates Cove Subdivisions are authorized and permitted to use such recreational facilities and amenities. If the facilities are abandoned or applied by Seller to an alternate use, or if the facilities are dedicated to public use, this covenant shall be of no further effect. However, it is expressly acknowledged and agreed that the foregoing terms of this agreement shall not be deemed to in any way require Seller to construct, develop or operate any particular recreational facilities or amenities for either of such Pirates Beach or Pirates Cove Subdivisions, and that the rights herein granted to Owners of Townhouse Lots in Pirates Landing, Section 1, shall apply only to such recreational facilities and amenities as Seller may in its sole judgment and discretion elect to construct, develop and operate with respect to such Pirates Beach and Pirates Cove Subdivisions;

4. In consideration for the agreements set forth in the foregoing paragraph 3, Purchaser agrees that it shall consent to, authorize and cause the nonprofit corporation to be established pursuant to such Declaration. Said Corporation shall remit to Seller or to the entity controlling the maintenance fund for Pirates Beach and Pirates Cove the sum of \$84.00 per year for each Townhouse Lot now or hereafter subject to annual assessment in accordance with the terms and provisions of Sections 4.03 of said Declaration;

DEED OF TRUST

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5. Seller agrees that at such time and from time to time as Purchaser shall purchase additional Lots in Pirates Landing, Section 1, from Seller pursuant to such Land Agreement, as hereby supplemented, Seller shall undertake the necessary action pursuant to Section 9.01 of the Declaration to cause such Declaration and all of its terms and provisions to be made applicable to all such additional Lots in Pirates Landing, Section 1, hereafter purchased from Seller by Purchaser;

6. In all other respects the terms and provisions of such Land Agreement shall be and remain in full force and effect in accordance with its terms.

The terms hereof extend to and shall be binding upon the parties hereto and their respective successors and assigns.

EXECUTED the day and year first above written.

MITCHELL DEVELOPMENT CORPORATION
OF THE SOUTHWEST

[Signature]
Attest, Amintah Sauton

By: [Signature]
Vice-President AK

PIRATES LANDING, ~~XXX~~ Development Corporation

[Signature]
Attest, Paul Sec

By: [Signature]
Vice-President

DEED OF TRUST

BOOK: 2561 PAGE 628

THE STATE OF TEXAS)
COUNTY OF Montgomery)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Lawrence S. Kash, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.



GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18th day of April, 1975.

Kaye Pittman
Notary Public in and for
Montgomery County, Texas

LOUISIANA)
THE STATE OF ~~TEXAS~~)
~~XXXXXXXXXX~~)
PARISH OF EAST BATON ROUGE)

BEFORE ME, the undersigned, a Notary Public in and for said ~~PARISH~~ and State, on this day personally appeared JOHN L. FORT, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said PIRATES LANDING, ~~XXXXX~~ ^{Development Corporation} that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

22 GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the day of MAY, 1975.

John L. Fort
Notary Public in and for
EAST BATON ROUGE County, ~~Texas~~
PARISH, LOUISIANA



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1.

Sections 1, 2 and 3 of maps recorded on pages 66, 67 and 174 respectively in Volume 1666 of Galveston County Map Records, County of Galveston, Texas.

2.

Section 4 of map recorded on page 77 in Volume 10 of Galveston County Map Records, County of Galveston, Texas.

3.

Sections 1, 2 and 3 of maps recorded on pages 128, 126 and 158 respectively in Volume 1616 of Galveston County Map Records, County of Galveston, Texas.

4.

Section 4 of map recorded on page 003 of Volume 15 of Galveston County Map Records, County of Galveston, Texas.

EXHIBIT B

FINAL
APPROVED
4-21-75

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
PIRATES LANDING, SECTION 1

THE STATE OF TEXAS §
COUNTY OF GALVESTON §

DEED OF TRUST
BGC 2564 PAGE 630

THIS DECLARATION, made and executed on this the ____ day of _____, 1974, by MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST (hereinafter referred to as "the Developer"), a Texas corporation domiciled in Houston, Harris County, Texas;

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain portions of the property known as Pirates Landing, Section 1, according to the map or plat thereof recorded in Volume 15, Page 9 of the Map Records of Galveston County, Texas, to which reference is here made for complete description of the land comprising Pirates Landing, Section 1 and each of the lots into which such land is thereby subdivided (the land covered by and included within each map or plat being hereinafter sometimes referred to as "Pirates Landing - 1"); and,

WHEREAS, Developer desires to create and carry out a uniform plan for the improvement, development and sale of the hereinafter specified Townhouse Lots in Pirates Landing - 1 for the benefit of the present and future owners of such specified lots, and for the protection of property values throughout all of the Pirates Landing Subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, Developer, upon the recording hereof, does hereby adopt, establish, and impose the following declarations, reservations, protective covenants, limitations, conditions and easements to

EXHIBIT "A"

DEED OF TRUST

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apply uniformly to the use, improvement, occupancy and conveyance of those Townhouse Lots in Pirates Landing - 1 which are listed and designated on Exhibit "A" attached hereto and made a part hereof for all purposes; and each contract or deed which may be hereafter executed with regard to any of those Townhouse Lots in Pirates Landing - 1 which are listed on said Exhibit "A" shall conclusively be held to have been executed, delivered and accepted subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration (regardless of whether or not the same are set out in full or by reference in said contract or deed). Unless and until the terms and provisions of this Declaration are expressly made applicable thereto in the manner provided in Section 9.01 hereof, this Declaration and none of the covenants or restrictions set forth herein shall be applicable to any of the Townhouse Lots in Pirates Landing - 1 which are not listed on said Exhibit "A" hereto.

ARTICLE I

Definitions

Section 1.01 - The terms defined in this Article shall have the respective meanings stated in this Article for all purposes of this Declaration (except as otherwise expressly provided or unless the context otherwise requires):

"Corporation" shall mean the non-profit corporation organized pursuant to Article II hereof.

"Common Area" shall mean those lands which are shown on the recorded plat of Pirates Landing, Section 1, or on any amendment thereto or replatting thereof and on the recorded plats of other sections of the Pirate Landing Subdivision included within the Property, to be the "Common Open Area",

as well as any and all other lands, properties or facilities which may be hereafter from time to time owned by the Corporation for the common use and enjoyment of the Members of the Corporation and shall include, but is not limited to, all recreational facilities, community facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, driveways and walkways, but shall not include (i) any portion of the building locations shown on such recorded plats of the Sections of Pirates Landing, or (ii) any portion of such locations hereinafter described as a "Townhouse Lot".

"Covenants and Restrictions" shall mean all of the covenants, conditions, restrictions, uses, limitations, affirmative obligations, easements, liens and charges imposed by the provisions of this Declaration, as the same may be amended from time to time.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and any amendments thereto.

"Architectural Control Committee" shall mean the Architectural Control Committee created and established pursuant to Article V hereof.

"Developer" shall mean and refer to Mitchell Development Corporation of the Southwest, its successors, or a person or entity who acquires the Property or portions thereof for purposes of development and to whom the rights and obligations of Developer hereunder as to the all or part of the Property so acquired are specifically assigned by Mitchell Development Corporation of the Southwest.

"Member" shall mean and refer to every person or entity who holds membership in the Corporation.

"Party Wall" shall mean each wall or other structure which is built as a part of the construction of a Townhouse and placed on the dividing line between two Townhouse Lots.

"Patio Area" shall mean the open space or yard area within the boundaries of each Townhouse Lot.

"Plat" shall mean and refer to the recorded Plat of Pirates Landing, Section 1, hereinabove referenced, and any amendment or replat which is filed for record in the Office of the County Clerk of Galveston County, Texas.

"Property" shall mean and refer to those Townhouse Lots in Pirates Landing, Section 1, which are listed and designated in Exhibit "A" hereto and such other Townhouse Lots in Pirates Landing, Section 1, and in other sections of the Pirates Landing Subdivision as Developer may from time to time elect to make subject to this Declaration of Covenants, Conditions and Restrictions in accordance with Section 9.01 hereof.

"Townhouse" shall mean a single family residence unit constructed on a Townhouse Lot as part of a group of two or more single family residences, and shall include garages and carports.

"Townhouse Lot" shall mean and refer to each of the building locations shown on the plat of Pirates Landing, Section 1, which are listed and designated in Exhibit "A" hereto, and each of the other building locations in any other portion of the Property, on which there is or will be constructed a single family Townhouse, including the garage, carport and patio area located within the boundaries thereof.

"Townhouse Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Townhouse Lot, including contract purchasers, but excluding (i) those having such interests merely as security for performance of any obligation, and (ii) "Pirates Landing Development Corporation", with respect to Townhouses held by it for the purpose of resale to the first owner thereof, provided however, that the Pirates Landing Development Corporation shall not be excluded with respect to any Townhouse from and after the date any such Townhouse shall have been rented or leased (or sublet) to others.

ARTICLE II

The Townhouse Corporation

Developer shall cause to be created a non-profit corporation under the Texas Non-Profit Corporation Act for the purpose of administering the operation and maintenance of the Common Area and providing the other functions herein delegated to the Corporation.

Section 2.01 - Membership. Every person or entity who is a record owner of a Townhouse Lot, including contract purchasers, shall be a Member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separate from ownership of a Townhouse Lot. Ownership of such Townhouse Lot shall be the sole qualification for membership.

Section 2.02 - Voting Rights. The Corporation shall have two classes of voting membership:

Class "A". Class "A" members shall be all Owners with the exception of the Developer, each of which Owners shall be entitled to one (1) vote for each Townhouse Lot owned by him. When more than one person owns a fee interest in any Townhouse Lot, all such interested persons shall be members; however, the vote for such Townhouse Lot in which more than one person has a fee interest

DEED OF TRUST

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shall be cast by the person or persons having a majority interest; and in the event the persons having a majority interest are not able to agree in respect to a vote upon any matter, then such Owners shall not have a right to vote on such matter as there shall be no fractional votes.

Class "B". Class "B" member shall be the Developer, who shall be entitled to three (3) votes for each Townhouse Lot owned by it, whether improved or unimproved. In determining the number of Townhouse Lots owned by Developer for voting purposes, there shall also be counted the number of Townhouse Lots it owns in the entire Property then made subject to the terms and provisions of this Declaration, including specifically any added or annexed property. The Class "B" membership shall cease and be converted into Class "A" membership at such time as the total votes outstanding in the Class "A" members equals for a period of at least twenty-four (24) consecutive months the total votes outstanding in the Class "B" membership.

The Board of Directors may make such regulations consistent with the Articles of Incorporation of the Corporation and with this Declaration as it deems advisable for any meetings of Members in regard to proof of membership in the Corporation, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes and such other matters concerning the conduct of meetings and voting as it shall deem proper.

Section 2.03 - Board of Directors. All of the affairs, policies and regulations of the Corporation shall be administered by the Board of Directors of the Corporation consisting of not less than three (3) directors.

ARTICLE III

Property RightsSection 3.01 - Members' Easement of Enjoyment.

Every Member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Townhouse Lot, subject to the following provisions:

- (a) The right of the Corporation to limit the number of guests of Members;
- (b) The right of the Corporation, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgagee in said property shall be subordinate to the rights of the Members hereunder;
- (c) The right of the Corporation to suspend the voting rights and right to use the recreational facilities of any Member for any period during which such Member is in default of any provision of this Declaration and, for a period not to exceed thirty (30) days, for any infraction of its published rules and regulations;
- (d) The right of the Corporation to dedicate or transfer, with the written consent of all first lienholders, if any, all or any part of the Common Area to

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any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by the Members entitled to cast seventy-five percent (75%) of the votes has been recorded, agreeing to such dedication or transfer.

Section 3.02 - Delegation of Use. Any Member may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside in the Property, subject to such rules and regulations as may from time to time be promulgated by the Corporation.

Section 3.03 - Title to the Common Area. Developer hereby covenants for itself, its successors and assigns, that it will convey, or cause to be conveyed, title to the Common Area to the Corporation. The Common Area shall remain undivided, and shall at all times be controlled by the Corporation or its successors, it being agreed that this restriction is necessary in order to preserve the right of each Townhouse Owner with respect to the operation and management of the Common Area.

Section 3.04 - Easement for Encroachment. Each Townhouse Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two

or more Townhouses is partially and totally destroyed, and then rebuilt, the Owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouse units or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3.05 - Easement for Utilities. There is hereby created permanent easements upon, across, over and under those portions of the Property as may be reasonably necessary for the installation, maintenance and repair of all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system, which easements shall run to and be administered by the Corporation. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Corporation, its officers, agents, employees, and to any management company selected by the Corporation to enter in or to cross over the Common Area and any Townhouse Lot to perform the duties of maintenance and repair of the Townhouses or Common Area provided for herein. No utility company, water district or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their agents or employees to the shrubbery, trees, flowers or other property of any Townhouse Owner situated within or on the land covered by such easements. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities

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may be installed or relocated on the Property except as provided in Section 8.10 hereof. Developer reserves the right to grant (without necessity for consent from any Townhouse Owner) such additional utility easements as may, in its judgment, be necessary to properly serve the Subdivision's utility requirements.

ARTICLE IV

Covenants for Maintenance Assessments

Section 4.01 - Creation of the Lien and Personal Obligation. The Developer, for each Townhouse Lot within the Property, hereby covenants, and each Townhouse Owner, by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree, to pay to the Corporation annual assessments or charges, and special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided in Sections 4.03, 4.04, 4.05 and 4.06. The annual and special assessments, together with such interest thereon and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Townhouse Lot against which each such assessment is made. Each such assessment, together with such interests, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Townhouse Lot at the time when the assessment fell due. The personal obligation shall not pass to his successor in title unless expressly assumed by them.

Section 4.02 - Purpose of Assessments. The assessments levied by the Corporation shall be used exclusively for

the purpose of promoting the health, safety, and welfare of the residents of the Property and, in particular, for the improvement and maintenance of the Property, the Townhouses situated therein, the Common Area and all related facilities and for providing services to enhance the use and enjoyment of said Common Area and of the Townhouses situated in the Property. The purpose of the assessments shall include, but are not limited to, providing payment of the actual cost to the Corporation of the insurance, repair, replacement and maintenance of the Common Area and of such maintenance of the exteriors of the Townhouses as may from time to time be authorized by the Board of Directors, providing payment for such other facilities and activities as mowing grass, caring for the grounds, sprinkler system, landscaping, fences, masonry walls, lighting, roofs and exterior walls of the Townhouses, sidewalks, streets, and drives within the Property, providing for collecting and disposing of garbage, trash or rubbish and performing such other functions as the Board of Directors of the Corporation shall determine to be necessary to meet the primary purposes of the Corporation.

The foregoing enumeration of purposes of the assessments shall not be deemed to require the Corporation to use the funds derived from such assessment for any one or more of such purposes or to require that any particular amount of funds be expended for any particular purpose. The Corporation shall be entitled to expend such amounts as and for such of the foregoing enumerated purposes as it shall determine, in the exercise of its reasonable and prudent judgment, to be necessary and proper. However, the Corporation shall remit to Developer or to the entity controlling the "Maintenance Funds" as described in restrictions of record in Galveston County, \$84.00 yearly or the amount assessed to lot owners in Pirates Beach and Pirates Cove Subdivision for each Townhouse Lot now or hereafter subject to the assessment provided in Section 4.03.

Section 4.03 - Basis and Maximum of Annual Assessments. The annual assessment during the calendar year 1974 shall be \$540.00 per Townhouse Lot. The maximum annual assessment for each calendar year after 1974 may be increased or decreased over the amount of annual assessment imposed for the immediately preceding year by action of the Board of Directors of the Corporation, without approval of the Membership, by such amount as the Board of Directors, in its sole discretion, shall deem to be required in order to carry out the purposes of the Corporation and the assessments herein provided for.

Section 4.04 - Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Corporation may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Any such special assessment shall require the assent of seventy-five percent (75%) of the votes of the Corporation Members, at a meeting duly called for such purpose, written notice of which shall be sent to all Corporation Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purposes of the meetings.

Section 4.05 - Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Townhouse Lots and may be collected on a quarterly basis with each Townhouse Owner paying an amount equal to that paid by each of the other Townhouse Owners.

Section 4.06 - Date of Commencement of Annual Assessments. The annual assessments provided for herein shall relate to a fiscal year commencing on July 1st and ending on June 30th of the next year and shall commence as to each Townhouse Lot on the first day of the month following the date on which the Developer shall have sold and conveyed title to such Townhouse Lot. In no event shall any assessment be levied against any Townhouse Lot either owned by Developer or specifically excepted from assessment by Developer. The first annual assessment shall be adjusted according to the number of months remaining in the then current fiscal year. The Board of Directors shall fix the amount of the annual assessment against the Townhouse Lots at least thirty (30) days in advance of each such annual assessment period. Written notice of the annual assessment shall be sent to every Member. The annual assessment shall be payable in twelve equal instalments of \$45.00 each and the due date of the first such installment shall be July 1st of each year with similar monthly installments of \$45.00 being due and payable on the first day of each succeeding calendar month. The Corporation shall upon demand at any time furnish a certificate in writing, signed by an officer of the Corporation, setting forth whether the assessments on a specified Townhouse Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 4.07 - Effect of Nonpayment of Assessments; Remedies of the Corporation. Any installments of such assess-

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ments which are not paid when due shall be delinquent. If any monthly installment of the assessment is not paid within thirty (30) days after the due date, such installment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Corporation may bring an action at law against the Owner personally obligated to pay the same to recover the amount of the delinquent account and all accrued interest thereon, costs, and reasonable attorney's fees for such action, and to foreclose the lien securing such assessment against the subject Townhouse Lot. Each such Townhouse Owner, by his acceptance of a deed to a Townhouse Lot, hereby expressly vests in the Corporation, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Corporation in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Corporation a power of sale in connection with said lien, same to be exercised in compliance with the terms of Article 3810 of the Texas Civil Statutes. The lien provided for in this Section shall be in favor of the Corporation and shall be for the benefit of all other Townhouse Owners. The Corporation, acting on behalf of the Townhouse Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease and mortgage the same. No Townhouse Owner may waive or otherwise escape liability for any and all assessments provided for herein by non-use

of the Common Area or abandonment, sale or other disposition of his Townhouse Lot.

Section 4.08 - Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages imposed on the Townhouse Lots to secure debt incurred for the purchase price thereof or for improvements thereto. Sale, transfer or other disposition of any Townhouse Lot shall not affect the assessment lien. However, the sale or transfer of any Townhouse Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer of any kind, including foreclosure, shall relieve such Townhouse Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

Architectural Control

Section 5.01. 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 Townhouse Lot after the purchase of any Townhouse Lot from Developer, its successors or assigns, nor shall any exterior addition to or change or alteration of the exterior thereof 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