

852065.1

AMENDMENT OF DECLARATION
OF COVENANTS AND CONDITIONS

003-85-1940

THE STATE OF TEXAS §

COUNTY OF GALVESTON §

WHEREAS, by instrument entitled Declaration of Covenants, Conditions and Restrictions ("Declaration") dated February 2, 1985, filed for record under County Clerk's File No. 8406238 of the Real Property Records of Galveston County, Texas, Mitchell Development Corporation of the Southwest, a Delaware corporation, did impose upon all the property shown on the plat entitled Lake Como Townhouses at Pirates' Beach, recorded in Volume 17, Page 111 of the Map Records of Galveston County, Texas, certain covenants and conditions; and

WHEREAS, the Declaration was amended once before by instrument dated October 4, 1984 filed for record under County Clerk's File No. 8448675 of the Real Property Records of Galveston County, Texas; and

WHEREAS, Section 9.08 of the Declaration, as amended, provides that the covenants, restrictions or other terms and provisions of the Declaration, may be repealed, amended or modified by an instrument in writing executed by the persons or entities who own 75% of the Townhouse Lots, then subject to and covered by the Declaration and filed for record in the Real Property Records of Galveston County, Texas; and

WHEREAS, Mitchell Development Corporation of the Southwest, the owner of seventy-five per cent (75%) of the Townhouse Lots subject to the Declaration desires to amend and modify the Declaration and to execute and record in Galveston County, Texas, this instrument embodying such amendments in order that all parties shall be charged with the same.

NOW THEREFORE, for and in consideration of the premises, the

WHEREAS, BY INSTRUMENT ENTITLED DECLARATION OF COVENANTS, Conditions and Restrictions ("Declaration") dated February 2, 1985, filed for record under County Clerk's File No. 8406238 of the Real Property Records of Galveston County, Texas, Mitchell Development Corporation of the Southwest, a Delaware corporation, did impose upon all the property shown on the plat entitled Lake Como Townhouses at Pirates' Beach, recorded in Volume 17, Page 111 of the Map Records of Galveston County, Texas, certain covenants and conditions; and

WHEREAS, the Declaration was amended once before by instrument dated October 4, 1984 filed for record under County Clerk's File No. 8448675 of the Real Property Records of Galveston County, Texas; and

WHEREAS, Section 9.08 of the Declaration, as amended, provides that the covenants, restrictions or other terms and provisions of the Declaration, may be repealed, amended or modified by an instrument in writing executed by the persons or entities who own 75% of the Townhouse Lots, then subject to and covered by the Declaration and filed for record in the Real Property Records of Galveston County, Texas; and

WHEREAS, Mitchell Development Corporation of the Southwest, the owner of seventy-five per cent (75%) of the Townhouse Lots subject to the Declaration desires to amend and modify the Declaration and to execute and record in Galveston County, Texas, this instrument embodying such amendments in order that all parties shall be charged with the same.

NOW THEREFORE, for and in consideration of the premises, the undersigned do hereby make, execute and adopt the following:

1. The three paragraphs on page 1. of the Declaration, immediately under the word "WITNESSETH", are hereby amended to read as follows:

003-85-1341

"WHEREAS, Developer is the owner of the following described property situated in the County of Galveston, State of Texas, and being commonly known as Pirates' Cove Townhomes, according to the map or plat thereof entitled Lake Com Townhouses at Pirates Beach, recorded in Plat Record 17, Map Number 111, of the Plat Records of Galveston County, Texas (such property being hereinafter referred to as Property); and,

WHEREAS, Developer desires to create and carry out a uniform plan for the improvement, development and sale of the Townhouse Lots comprising the Property for the benefit of the present and future owners of such specified lots.

NOW, THEREFORE, KNOW ALL PERSONS 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 all Townhouse Lots comprising the Property and each contract or deed which may be hereafter executed with regard to any of the Townhouse Lots 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 forth in full or by reference in said contract or deed)."

2. The definitions of "Common Area", "Plat", "Property", "Townhouse Lot" and "Townhouse Owner" in Section 1.01 of the Declaration are hereby amended to read as follows:

"'Common Area' shall mean that portion of the Property which is shown on the recorded plat of the Property to be the 'Common Area', as well as any and all other lands, properties or facilities which may be hereafter from time to time owned by the

Beach, recorded in Plat Record 17, Map Number 111, of the Plat Records of Galveston County, Texas (such property being hereinafter referred to as Property); and,

WHEREAS, Developer desires to create and carry out a uniform plan for the improvement, development and sale of the Townhouse Lots comprising the Property for the benefit of the present and future owners of such specified lots.

NOW, THEREFORE, KNOW ALL PERSONS 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 all Townhouse Lots comprising the Property and each contract or deed which may be hereafter executed with regard to any of the Townhouse Lots 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 forth in full or by reference in said contract or deed)."

2. The definitions of "Common Area", "Plat", "Property", "Townhouse Lot" and "Townhouse Owner" in Section 1.01 of the Declaration are hereby amended to read as follows:

"'Common Area' shall mean that portion of the Property which is shown on the recorded plat of the Property to be the 'Common 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 any portion of such locations

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hereinafter described as a 'Townhouse Lot'."

"'Plat' shall mean and refer to the recorded plat of the Property entitled Lake Como Townhouses at Pirates Beach, 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 the above described Plat, containing 4.1700 acres of land and such other lands, if any, as Developer may from time to time make subject to this Declaration of Covenants, Conditions and Restrictions."

"'Townhouse Lot' shall mean and refer to each part or parcel of land out of the Property shown on the Plat or any replat thereof intended as and constituting a building location, on which there is or will be constructed a single family Townhouse, including the garage, carport and patio area located within the boundaries thereof. There is excepted herefrom the above described Common Area.

'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, excluding those having such interests merely as security for performance of any obligation."

3. The first paragraph in Section 4.02 - Purpose of Assessments of the Declaration is hereby amended to read as follows:

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 Townhouse Owners and, in particular, for the improvement and maintenance of the property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of the Townhouses. The purposes of the assessments shall include, but are not limited to, providing payment of the actual cost to the Corporation of all

'Property' shall mean and refer to the above described Plat, containing 4.1700 acres of land and such other lands, if any, as Developer may from time to time make subject to this Declaration of Covenants, Conditions and Restrictions."

"'Townhouse Lot' shall mean and refer to each part or parcel of land out of the Property shown on the Plat or any replat thereof intended as and constituting a building location, on which there is or will be constructed a single family Townhouse, including the garage, carport and patio area located within the boundaries thereof. There is excepted herefrom the above described Common Area.

'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, excluding those having such interests merely as security for performance of any obligation."

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"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 Townhouse Owners and, in particular, for the improvement and maintenance of the property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of the Townhouses. The purposes 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, and any landscaping, fences, masonry walls, lighting, roofs and exterior walls of the Townhouses, taxes, streets, and drives within the Common Area, 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."

4. The first sentence in Section 4.09 - Insurance of the Declaration is hereby amended to read as follows:

"Section 4.09 - Insurance. The Corporation, as defined in Section 1.01 of the Declaration, or its duly authorized officers, shall have the authority to and shall obtain insurance for all the buildings located on the Property, including, but not limited to, any and all Townhouses unless the Townhouse Owners, or any one thereof, have supplied proof of adequate coverage to the Corporation's complete satisfaction, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost or any repair or reconstruction work in the event of damage or destruction from any hazard, and the Corporation shall also obtain a broad form public liability policy covering the Common Area, and all damage or injury caused by the negligence of the Corporation and its agents."

5. The first sentence in Section 9.01 - Annexation of Additional Lands of the Declaration is hereby amended to read as follows:

"Section 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 lands, as such other lands are platted and filed for record in the Office of the County Clerk of ...

003-85-1044

purchase of the Townhouse Lot or Townhouse Lots, make application for membership in the Galveston Country Club on a form to be provided by said Club. If accepted for membership, the Townhouse Owner shall maintain such membership in an active status and shall timely pay all dues, charges and fees as may be established by the Galveston Country Club for membership from time to time, during the period of ownership of a Townhouse Lot, and shall comply with (and such membership shall be subject to) all rules, regulations and Bylaws promulgated by the Galveston Country 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 Townhouse Owner. Payment of such dues and fees shall be secured by a lien as provided in Section 4.07 above."

7. The foregoing shall be covenants running with the land and shall be binding upon any purchaser, grantee, owner, or lessee of any land or building comprising the Property, and upon the respective heirs, executors, administrators, devisees, successors and assigns of such purchaser, grantee, owner or lessee.

8. Except only as the same may have heretofore been modified or amended by an instrument filed in the office of the County Clerk of Galveston County, Texas, and as modified and amended herein set forth, the Declaration shall be and remain in full force and effect in accordance with the instrument filed and recorded as aforesaid.

EXECUTED this 30th day of April, 1985.

MITCHELL DEVELOPMENT CORPORATION
OF THE SOUTHWEST

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by the Galveston Country Club for membership from time to time, during the period of ownership of a Townhouse Lot, and shall comply with (and such membership shall be subject to) all rules, regulations and Bylaws promulgated by the Galveston Country 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 Townhouse Owner. Payment of such dues and fees shall be secured by a lien as provided in Section 4.07 above."

7. The foregoing shall be covenants running with the land and shall be binding upon any purchaser, grantee, owner, or lessee of any land or building comprising the Property, and upon the respective heirs, executors, administrators, devisees, successors and assigns of such purchaser, grantee, owner or lessee.

8. Except only as the same may have heretofore been modified or amended by an instrument filed in the office of the County Clerk of Galveston County, Texas, and as modified and amended herein set forth, the Declaration shall be and remain in full force and effect in accordance with the instrument filed and recorded as aforesaid.

EXECUTED this 30th day of April, 1985.

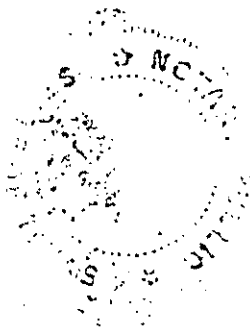
MITCHELL DEVELOPMENT CORPORATION
OF THE SOUTHWEST

By: [Signature]
Name: ALFRED LEHTONEN v.p.
Title: VICE PRESIDENT

STATE OF TEXAS §
COUNTY OF MONTGOMERY §

1102-05-1940
1102-05-1940

This instrument was acknowledged before me on April 30, 1985, by ALFRED LEHTONEN, VICE PRESIDENT of Mitchell Development Corporation of the Southwest, a Delaware corporation, on behalf of said corporation.



Kathleen Davidson
Printed Name: KATHLEEN DAVIDSON
Notary Public
State of Texas
My Commission Expires: 10-11-87

[Faint, illegible text]

FILED FOR RECORD
MAY 24 10 13 AM '85

Mary Jane Christensen
COUNTY CLERK, GALVESTON COUNTY, TEXAS

STATE OF TEXAS COUNTY OF GALVESTON

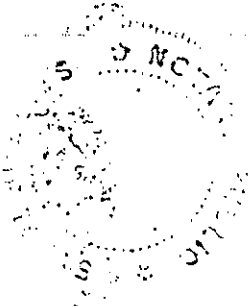
I hereby certify that this instrument was filed on the date and time stamped herein by me and was duly recorded in the Official Public Records of Real Property of Galveston County, Texas, on

MAY 24 1985



Mary Jane Christensen
COUNTY CLERK, Galveston County, Texas

STEWART-DUE



Kathleen Davidson
Printed Name: Kathleen Davidson
Notary Public
State of Texas
My Commission Expires: 10-11-87

FILED FOR RECORD
MAY 24 10 13 AM '85

Mary Jane Christensen
COUNTY CLERK, GALVESTON 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

MAY 24 1985



Mary Jane Christensen
COUNTY CLERK, Galveston County, Texas

STEWART-DUE

RETURN TO:
EILEEN STILSON
LEGAL DEPARTMENT
MITCHELL ENERGY DEVELOPMENT
CORP.
P.O. Box 4000
THE WOODLANDS, TX 77380