

*Hershey Beach*

HOLD FOR D.P.  
AMERICAN TITLE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR A SUBDIVISION IN GALVESTON COUNTY, TEXAS

010-53-0964

THE STATE OF TEXAS           §  
  §  
COUNTY OF GALVESTON       §

This Declaration, made on the date hereinafter set forth, by WELDON DEAN LAWYER, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of that certain property known as AMENDED FINAL PLAT OF HERSHEY BEACH, a subdivision in Galveston County, Texas, according to the map or plat thereof recorded in Plat Record 18, Map 45 of the Map Records of Galveston County, Texas; and

WHEREAS, it is the desire of Declarant to place certain restrictions, covenants and conditions, stipulations and reservations upon and against AMENDED FINAL PLAT OF HERSHEY BEACH, in order to establish a uniform plan for the development, improvement and sale of such property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in said subdivision:

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon AMENDED FINAL PLAT OF HERSHEY BEACH, the property described above, and declares the following reservations, easements, restrictions, covenants, and conditions (sometimes referred to herein collectively as "covenants and restrictions") applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the land, which reservations, easements, covenants, restrictions and conditions shall run with the land and shall be binding upon all parties having or acquiring

any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

## ARTICLE I.

### Definitions

Section 1. "Association" shall mean and refer to AMENDED FINAL PLAT OF HERSHEY BEACH, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Properties, including contract sellers, but excluding those who have such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Subdivision Plat" shall mean and refer to the AMENDED FINAL PLAT OF HERSHEY BEACH, recorded in Plat Record 18, Map 45 of the Map Records of Galveston County, Texas, and any recorded replat thereof.

Section 5. "Lot" and/or "Lots" shall mean and refer to the lots shown upon the Subdivision Plat (with the exception of the Common Properties).

Section 6. "Common Properties" shall mean and refer to those areas of land within the Properties as are now shown and identified on the Subdivision Plat as "Reserve B" and the beach access dune walkovers to be constructed adjacent to lot one, which are to be maintained and regulated by the Association, together with such other property as

the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of grants or dedications by Declarant or Declarant's successors in title. References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in The Declaration and all Supplemental Declarations.

Section 7. "Architectural Control Committee" shall mean and refer to AMENDED FINAL PLAT OF HERSHEY BEACH, provided for in Article VIII hereof.

Section 8. "Declarant" shall mean and refer to WELDON DEAN LAWTHOR, his heirs, executors, administrators, successors, and assigns.

## ARTICLE II.

### Reservations, Exceptions and Dedications

Section 1. Existing Easements. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Subdivision Plat further establishes certain dedications, limitations, reservations, certain minimum setback lines, side building lines and restrictions applicable to the Properties. Further, Declarant and Declarant's predecessors in title have heretofore granted, created and dedicated by several recorded instruments, certain other easements and related rights affecting the Properties. All dedications, limitations, restrictions, minimum setback lines, side building lines and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Properties are incorporated

herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Properties, whether specifically referred to therein or not.

No structure of any nature may be constructed within the boundaries of the Dune Protection Easement, except for dune walkovers.

Section 2. Utility Easements and Rights-of-Way. Declarant reserves the easements and rights-of-way as shown on the Subdivision Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph, cable television, and telephone line or lines, gas, sewers or any other utility Declarant sees fit to install in, across and/or under the Properties.

Section 3. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements and utilities referred to above.

Section 4. Easements and Appurtenances. It is expressly agreed and understood that the title conveyed by Declarant to any Lot or parcel of land within the Properties by contract, deed or other conveyance shall be subject to (a) any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph, cable television, telephone or other utility purposes and shall convey no interest in pipes, lines, poles or conduits, or in any utility facility or appurtenances thereto, constructed by or under Declarant or any easement owner, or their agents through, along or upon the premises affected thereby, or any part thereof, to serve said land or any

other portion of the Properties, and (b) the right of Declarant, its successors and assigns, to maintain, repair, sell or lease such appurtenances to any municipality, or other governmental agency or to any public service corporation or to any other party (and such right is hereby expressly reserved).

Section 5. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Properties for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, water, sewer, telephones, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Properties within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Properties until approved by Declarant. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on the portions of the Properties abutting such easements. Neither Declarant nor any utility company using the easements herein referred to, shall be liable for any damages done by them or their assigns, their agents, employees or servants, to fences, shrubbery, trees or flowers or other property situated on the land covered by said easements.

Section 6. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, and other service vehicles to enter upon the Properties in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Properties to render any service.

Section 7. Electric System. An electric distribution system will be installed as part of AMENDED FINAL PLAT OF HERSHEY BEACH, which service area embraces all of the Lots which are platted in AMENDED FINAL PLAT OF HERSHEY BEACH: The Owner of each Lot containing a single dwelling unit, shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available to the electric company at a point designated by such company at the property lines of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the Subdivision Plat or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and

maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit, shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as electric service is maintained in the Residential Subdivision, the electric service to each dwelling unit therein shall be uniform in character and exclusively of the type known as single phase, 240/120 volt, three wire, 60 cycle, alternating current.

The electric company has installed the electric distribution system in the Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Residential Subdivision is being developed for residential dwelling units, including homes, and if permitted by the restrictions applicable to such subdivision, townhouses, duplexes and apartment structures, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent and all of which multiple dwelling unit structures are wired so as to provide for separate metering to each dwelling unit. Should the plans of the Declarant or the Lot Owners in the Residential Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless Declarant has paid to the Company an amount representing the excess in cost, for the entire Residential Subdivision, of the underground

distribution system over the cost of equivalent overhead facilities to serve such Subdivision.

No provision of this Section 7 (the text of which is prescribed by the electric company) shall in any manner operate or be construed to permit the construction on any Lot of any type of residential structure other than a single family residence as provided in Section 1, of Article XI.

Section 8. Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

Section 9. Dune Walkovers. Private dune walkovers four feet (4') in width shall be constructed by the owners and shall be erected at the common lot line of Lots 1 - 2, Lots 3 - 4, Lots 5 - 6 and Lots 7 - 8. Any lot owner constructing a dune walkover within a private beach access easement as shown on the Subdivision Plat shall be entitled to reimbursement by the adjoining lot owner of one-half of the cost of construction of such dune walkover.



## ARTICLE III.

Property Subject to this Declaration

Section 1. Description. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration consists of all of AMENDED FINAL PLAT OF HERSHEY BEACH, according to the Plat thereof recorded in Plat Record 18, Map 45 of the Map Records of Galveston County, Texas (or any subsequently recorded plat thereof), which real property is sometimes hereinafter referred to as the "Existing Property".

Section 2. Mineral Exception. There is hereby excepted from the Properties and Declarant will hereafter except from all its sales and conveyances of the Properties, or any part thereof, including the Lots and Common Properties, all oil, gas, and other minerals, in, on, and under the Properties.

## ARTICLE IV.

The Association

Section 1. Organization. The Declarant has caused the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas.

Section 2. Purpose. The purpose of the Association in general is to provide for and promote the health, safety, and welfare of the Members, to collect the annual maintenance charges and to administer the Maintenance Fund (as defined herein), to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Properties in the Subdivision and such other purposes as are stated in the Articles of

Incorporation and By-Laws consistent with the provisions of The Declaration and all Supplemental Declarations.

Section 3. Directors. The Association shall act through a three (3) member Board of Directors, which shall manage the affairs of the Association. The initial Directors of the Association have been selected by Declarant. Each initial Director shall serve for an initial term of three (3) years, and thereafter, until his successor is duly elected and qualified. Upon the expiration of the term of the initial Directors, the Members shall elect a Board of Directors as provided for in the By-Laws. Any vacancy, from whatever cause, occurring in the Board of Directors during the initial three (3) year term shall be filled by appointment made by the remaining Director or Directors to fill such vacancy shall serve for the remainder of the initial three (3) year term and until his successor is duly elected and qualified. The Directors shall have the power to select one or more advisory directors from the residents of The Subdivision to serve for such periods of time as the Board of Directors shall deem appropriate, for the purpose of providing advice and counsel to the Board of Directors, provided that such advisory directors shall have no right to act on behalf of the Association.

Section 4. Members. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever

the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

Declarant shall be notified of each meeting of the members and shall be entitled to attend such meetings even if Declarant no longer owns a lot or lots in the subdivision.

Section 5. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours.

Section 6. Title to Common Properties. The Declarant may retain the legal title to the Common Properties in the Subdivision until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Properties has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Properties granted to the Association in The Declaration and all Supplemental Declarations.

## ARTICLE V.

### Property Rights in the Common Properties

#### and Common Facilities

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article V, every Member shall have a common right and easement of enjoyment in and to the Common Properties in the Subdivision, and such right and easement shall be appurtenant to and shall pass with the title to each Lot in the Subdivision.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in its discretion, to make, publish, and enforce reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Properties by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Properties or any part thereof at the same time; and

(b) The right of the Association to grant or dedicate easements in, on, under or above such Common Properties or any part thereof to any public or governmental agency or authority or to any utility facility or equipment situated in any part of such Common Properties and owned by the Association to any public or political authority or agency or to any utility company rendering or to render service to the Subdivision or any part thereof; and

(c) The right of the Association to convey or dedicate such portions of such Common Properties as its Board of Directors may deem appropriate to governmental authorities, political subdivisions or other persons or entities for use as the location of schools, churches, and hospitals, or for other similar purposes related to the health, safety, and welfare of the Members; and

(d) The right of the Association to enter management and/or operating contracts or agreements relative to the maintenance and operation of such Common Properties in such instances and on such terms as its Board of Directors may deem

appropriate; the right of the Association to operate recreational facilities and related concessions located on such Common Properties; and

(e) The right of the Association to suspend the voting rights of a Member or his right to use any recreational Common Property during the period he is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against his Lot; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in The Declaration and Supplemental Declarations or in its By-Laws or at law or in equity on account of any such default or infraction; and

(f) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II and Article VI hereof, in The Declaration and in all other Supplemental Declarations; and

(g) The restrictions as to use of the Common Properties provided for in Article IX hereof.

Section 3. Delegation of Use. Any member may delegate his right of use and enjoyment of the Common Properties in the Subdivision, together with all easement rights granted to Members in The Declaration and all Supplemental Declarations, to the members of his family, his tenants, guests (subject to Section 2 (a) above), or contract purchasers who reside on his Lot. The term "member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms or corporations acquiring or succeeding to the title of the Member

by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

## ARTICLE VI.

### Annual Assessments

Section 1. The Maintenance Fund. All funds collected by the Association from the regular maintenance charges provided for in this Article, together with all funds collected by the Association from the regular annual maintenance charges imposed on the Lots in the Subdivision by The Declaration and all other Supplemental Declarations, shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members for the following purposes, to-wit: to promote the health, safety, recreation, and welfare of the Members, including, without limitation, the installation, construction, erection, maintenance and relocation of improvements related to the enhancement and beautification of the Common Properties in the Subdivision, and any other areas provided by The Declaration or any Supplemental Declaration to be developed or maintained by the Association, such as shrubbery, trees, walkways and street lights, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1 preference over other purposes, and it is agreed that all expenses

incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

Further, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all ad valorem taxes and other assessments in the nature of property taxes fairly allocable to the Common Properties and accrued subsequent to the recordation of The Declaration, and prior to the date on which title to such Common Properties and Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

Section 2. Covenant for Assessments. Subject to the provisions set forth below in Sections 3 and 4 relating to the rate at which the maintenance charge and assessments imposed herein shall be paid on unimproved Lots, each and every Lot in the Properties is hereby severally subjected to and impressed with a regular annual maintenance charge or assessment in the amount of One Hundred Fifty and No/100 Dollars (\$150.00) per annum per Lot (herein sometimes referred to as the "full maintenance charge") which shall run with the land, subject to increase and decrease and payable as provided in Section 5 below. Notwithstanding anything to the contrary contained herein, owners of vacant or unimproved Lots shall be charged and shall pay an additional mowing fee of \$100.00 annum for each year that their lot is unimproved.

Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership,

thereof, as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such assessment accrued, but no Member shall be personally liable for the payment of any assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charge or assessment by waiver of the use of enjoyment of the Common Properties, or any part thereof, or by abandonment of his Lot or his interest therein.

Section 3. The Annual Maintenance Charge. The annual assessments provided for herein shall commence on January 1, 1996. The first annual assessment shall be payable on the day fixed for commencement. The assessments for each calendar year after the first year shall be due and payable to the Association in advance on January 1st each year. Provided, however, that upon the purchase of his Lot (as evidenced by the date of his term Contract of Sale or Deed, or his occupancy, whichever is earlier), each Member shall be obligated to pay to the Association a pro rata part of the applicable percentage (as determined pursuant to the terms hereof) of the regular annual maintenance charge assessed on such Lot, which shall bear the same ratio to the applicable percentage of the full annual maintenance charge as the number of full calendar months remaining in the year of purchase bears to twelve (12), and which shall be payable in full upon such purchase.



then the amount of the regular annual maintenance charge or assessment last in effect shall continue in effect until duly changed in accordance with the above provisions.

Section 4. Quorum for any Action Authorized Under Section 3. The Quorum required for any action authorized by Section 3 hereof shall be as follows:

At the first meeting called, as provided in Section 5 hereof, the presence at the meeting of Members, or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any such subsequent meeting shall be one-half (1/2) the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 5. Special Assessment for Capital Investments. In addition to the annual assessments authorized above, the Association 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, reconstruction, repair or replacement of a capital improvement upon the Common Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Owner for each assessment period at least thirty (30) days in advance for such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association (or its agent) shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Liens to Secure Assessments. The regular annual maintenance charges or assessments, as hereinabove provided for, shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements thereon, for the benefit of the Association and all Members. The lien hereby created shall be subordinate and inferior to:

- (a) all liens for taxes or special assessments levied by the City, County, and State governments, or any political subdivision or special district thereof, and
- (b) all liens securing amounts due or to become due under any term Contract of Sale, or any mortgage, vendor's lien, or deed of trust filed for

record, prior to the date payment of any such charges or assessments become due and payable, and

(c) all liens, including, but not limited to, vendor's lien, deeds of trust, and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Lot and the improvements thereon, if improved, when the same is purchased, or for any part of the cost of construction, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot to be utilized for residential purposes.

Any foreclosures of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 8. Effect of Non-Payment of Assessment. If any such annual charge or assessment is not paid within thirty (30) days from the date thereof, the same shall bear interest from the due date until paid at the highest interest rate allowed under the laws of the State of Texas, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall

be paid to the Association an additional reasonable amount, but not less than ten percent (10%) of the amount owing, as attorney's fees. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against his Lot. All such actions may be instituted and brought in the name of the Association and may be maintained and prosecuted by the Association in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 9. Collection and Enforcement. Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

## ARTICLE VII.

### Architectural Control Committee

Section 1. Approval of Plans. No building, structure, fence, wall, or other improvements shall be commenced, erected, constructed, placed or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications therefor shall have been submitted to and approved in writing as to compliance with minimum structural and mechanical standards, location and situation on the Lot, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and

topography (including the orientation of the front and rear of any such building with respect to the Lot lines), by the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, and location of the proposed improvements or alterations thereto. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify requirements for each Lot as follows: minimum setbacks; the location, height, and extent of fences, walls, or other screening devices; color schemes; and the orientation of structures with respect to garage access and major entry and frontage. The Architectural Control Committee also shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in the sole discretion of the Architectural Control Committee, with the design or overall character and aesthetics of the Properties. The Architectural Control Committee may require a reasonable fee, which is hereby initially set at \$200.00, for performing the functions herein prescribed and may disapprove plans, specifications, designs and plot plans for failure to pay such fee. Such fees shall be used by the Committee to discharge actual expenses incurred by the Committee and any excess may be paid into the Maintenance Fund established herein.

Section 2. Committee Membership. The Architectural Control Committee shall be initially composed of three (3) individuals who need not be members of the Association

and who, by majority vote, may designate a representative to act for them. The initial Architectural Control Committee shall be appointed by the Declarant.

Section 3. Replacement. In the event of death or resignation of any member of said committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plot plans submitted or to designate a representative with like authority.

Section 4. Minimum Construction Standards. The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards, provided, however, that such outline will serve as a minimum guideline and such Architectural Control Committee shall not be bound thereby.

Section 5. Term. The duties and powers of the Architectural Control Committee and of the designated representative shall cease on and after completion of construction of residences on all lots in the subdivision. Thereafter, the approval described in this covenant shall not be required, and all power vested in said Committee by this covenant shall cease and terminate; provided, that any time after January 1, 1995, whether or not the term of the Architectural Control Committee specified in the preceding sentence shall have expired, by a two-thirds (2/3) vote of the members present and voting, the Board of Directors of the AMENDED FINAL PLAT OF HERSHEY BEACH may assume the duties and powers of the Architectural Control Committee, and thereafter the Board of Directors

of the Association shall have all of the rights, benefits and powers provided herein for the Architectural Control Committee.

Section 6. Variances. Where circumstances, such as topography, location of property lines, location of trees, or other matters required, the Architectural Control Committee, by vote or written consent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under jurisdiction of such committee pursuant to this Article, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the property.

#### ARTICLE VIII.

##### Other Easements

Section 1. The rights and duties of the Owners of Lots within the property with respect to sanitary sewer and water, electricity, gas, telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone and cable television lines or drainage facilities are installed within the Properties, which connection lines or facilities or any portion thereof, lie in or upon Lots owned by the Association or any entity other than the Owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots within the Properties in or upon which said connections, lines or

facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, gas, telephone or cable television lines or drainage facilities are installed within the Properties, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his Lot.

Section 2. Easements over the Lots and Common Properties for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by Declarant, together with the right to grant and transfer same.

Section 3. Public and Private Streets. All Lots within the Subdivision shall abut and have access to a public or private street. Public and private street rights-of-way are shown on the recorded plat of AMENDED FINAL PLAT OF HERSHEY BEACH.

Section 4. Universal Easement. Each Lot and its Owner within the Properties is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots and Common Properties for the purpose of accommodating any encroachment due to engineering error, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of the said encroachments, settling or shifting; provided, however, that in no event shall an easement or encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners. In the



event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot within the Properties is hereby declared to have an easement for overhanging roofs and eaves as originally constructed over each adjoining Lot and/or Common Property and for the maintenance thereof. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot.

#### ARTICLE IX.

##### Utility Bills, Taxes and Insurance

###### Section 1. Obligations of the Owners.

(a) Each Owner shall have his separate electric, gas (if and when available) and water meter and shall directly pay at his own cost and expense for all electricity, gas (if and when available), water, sanitary sewer service (if and when available), telephone service, cable television and other utilities used or consumed by him on his Lot.

(b) Each Owner shall directly render for taxation his own Lot and improvements thereon, and shall at his own expense and cost directly pay all taxes levied or assessed against or upon his Lot and his improvements and property thereon.

(c) Each Owner shall be responsible at his own cost and expense for his own property insurance on the building and contents of his own residence, and his additions and improvements thereto, including decorations, furnishings and personal property

therein; and also for his personal liability not covered by liability insurance for all Owners which may be obtained by the Association as part of the common expense in connection with the Common Properties.

Section 2. Obligation of the Association.

(a) The Association shall maintain the property shown on the Subdivision Plat as Reserve A - Reserve T and shall pay the cost of such maintenance as a common expense of all owners.

(b) The Association shall render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon the Common Properties and the improvements and the property appertaining hereto.

(c) The Association shall have the authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Properties.

(d) All costs, charges and premiums for all utility bills, taxes, and any insurance to be paid by the Association as hereinabove provided shall be paid out of the Maintenance Fund as a common expense of all Owners and shall be a part of the maintenance assessments.

ARTICLE X.

Maintenance and Repairs

Section 1. By the Owners. It shall be the duty, responsibility and the obligation of each Owner at his own cost and expense to care for, maintain and repair the exterior

and interior of his residence house and improvements on his Lot and the fixtures, appliances, equipment and other appurtenances thereto and also including the private driveway appurtenant to his residence house and situated on his Lot. The Association shall have no duty or obligation to any Owner in this regard.

Section 2. By the Association. The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Properties and all parts thereof, except that it shall be the obligation of each Owner, and not the obligation of the Association, to pay for the cost of repair and maintenance of private driveways, sidewalks, and fence or fences which are appurtenant to his residence house.

#### ARTICLE XI.

##### Restrictions of Use

Section 1. Single Family Residential Construction. No Building shall be erected, altered or permitted to remain on any single Lot, other than one detached single-family residential dwelling. No such residence shall be constructed on less than the equivalent of one (1) full Lot as defined on the recorded Subdivision Plat or any recorded replat thereof approved by Declarant.

Section 2. Commercial Use. No part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes.

Section 3. Minimum Square Footage and Driveway.

(a) No residence which fronts on the beach shall be constructed on any lot or building site which has an under-roof living area of less than eighteen hundred (1,800) square feet, excluding porches, garages, patios, and the like, and which has a deck area of less than 400 square feet, and which has a ground level storage area of less than 250 feet.

(b) No residence which fronts Hershey Beach Drive shall be constructed on any lot or building site which has an under-roof living area of less than 1400 square feet, excluding porches, garages, patios, and the like, and which has a deck of less than 400 square feet, and which has a ground level storage area of less than 250 feet.

(c) No more than one (1) dwelling shall be built on any one (1) Lot or building site. Each lot must be served by a private concrete driveway.

Section 4. Upon construction of a residence on each lot, there shall also be constructed a concrete slab under said residence which is at least four inches (4") in depth and covers the entire area under the residence to a point one foot (1') outside all pilings.

Section 5. All residences, garages, storage rooms, etc. must be painted and kept in good condition. No unpainted wood shall exist on, in and around a residence except for decks, pilings and stairways.

Section 6. Location of Improvements Upon the Lot. No building shall be located on any Lot nearer to the front lot line or side street lot line than the minimum building setback lines shown on the recorded plat.

Section 7. Signs, Advertisements, Billboards. No sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view on any portion of any Lot except one sign for each building site, of not more than five hundred seventy-six (576) square inches for the purpose of advertising the property for sale or rent. Declarant shall have the right to remove any such sign, advertisement or billboard or structure which is placed on said Lots in violation of this Section and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

Section 8. Prohibition of Offensive Activities. No noxious or offensive trade or activity shall be conducted, whether for profit or not, on any Lot. No activity which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance, or which will degrade property values, or distract from the aesthetic beauty of the Subdivision, shall be conducted.

Section 9. Temporary Structures. No structures of a temporary character, trailer, tent, shower, garage, barn or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any Lot at any time as a residence or other structure temporarily or permanently except such buildings or structures as are specifically permitted.

Section 10. Animal Husbandry. Dogs, cats (excluding horses or livestock) may be kept in a household and shall not exceed a total of two (2) pets, provided they are not used for commercial purposes.

commercial purpose.) Notwithstanding the foregoing, no animals or fowl may be kept on the property which results in any annoyance or are obnoxious to residents of the vicinity.

Section 11. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment. No mobile home, trailer, camper, boat, truck larger than a three-quarter (3/4) ton pickup, or similar equipment shall be parked or stored permanently or semi-permanently on any public street, right-of-way or on driveways. Permanent or semi-permanent storage of such vehicles or items must be screened from public view within the garage. The Board of Directors of the Association may adopt rules for the regulation of the admission and parking of vehicles within the Common Properties, including the assessment of charges to owners who violate, of whose invitees violate, such rules. Under no circumstances may repairs to any vehicles or equipment be made on the Property except when screened from public view within a garage.

Section 12. Walls, Fences and Hedges. Chain-link fences are prohibited on any portion of the property. No fence shall be more than 4 feet in height. Construction of all fences must be approved by the Architectural Control Committee.

Section 13. Visual Obstructions at the Intersections of Public Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways within the triangular area formed by the junction of street curb lines and line connecting them at points ten (10) feet from the junction of the street curb lines (or extensions thereof) shall be placed, planted or permitted to remain on any corner Lots.

Section 14. Visual Screening on Lots. The drying of clothes in public view is prohibited, and the Owners or occupants of any Lots at intersections of streets or

adjacent to parks, playgrounds, greenbelts, or other facilities where the rear or side yard of portion of the Lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view. Similarly all yard equipment, woodpiles or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, as to conceal them from view of neighboring Lots.

Section 15. Lot Maintenance. All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupants of all Lots shall keep all weeds and grass thereon cut and shall in no event use any Lot for storage of material and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish except by use of an incinerator approved by Declarant, and then only during such condition as is permitted by law. The Association shall be responsible for mowing all unimproved lots. The expense of such mowing shall be paid by the Association from the \$200.00 fee paid by the owner of each unimproved lot pursuant to Article VI, Section 2. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements, or any of them, such default continuing after ten (10) days written notice thereof, Declarant, or its assignee, may without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot, cut, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition,

and may charge the Owner or occupant, as the case may be, for said services, and the Owner or occupant agrees by the purchase or occupation of the property to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's lien is herein and hereby retained against the above described property in favor of Declarant or their assignee but inferior to purchase money liens or mortgages. Such vendor's lien shall be applicable and effective whether mentioned specifically in each deed or conveyance by Declarant or not.

Section 16. Antennas. No electronic antenna satellite dish or signal reception device of any type shall be erected, constructed, placed or permitted to remain on any Lots, houses or buildings constructed in this Subdivision.

Section 17. Removal of Dirt and Trees. The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such Lot. No trees shall be cut except to provide room for construction of improvements or to remove dead or unsightly trees.

Section 18. Roofing Material. The roof of any building shall be constructed or covered with laminated, 240 lbs. or better, shingles. Any other type roofing material shall be permitted only at the sole discretion of the Architectural Control Committee upon written request.

Section 19. Roof Projections. No projections of any type shall be placed or permitted to remain above the roof of any residential building with the exception of chimneys, vent stacks, other ventilation, solar panels, sky lights and ridge venting. The



Architectural Control Committee may, in its sole discretion, permit construction of rooftop sundecks.

Section 20. Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any residential building on any part of the property which is visible to the public from public streets.

Section 21. Swimming Pools. All swimming pools must have an enclosure fence, not less than four (4) feet in height.

Section 22. Landscaping and Landscape Maintenance. Each lot owner may choose the extent to which to landscape his lot. Each lot owner shall plant two (2) palm trees on that portion of the owner's lot which abuts Hershey Beach Drive. All landscaping of every kind and character including shrubs, trees, grass and other plantings, shall be neatly trimmed, properly cultivated and maintained continuously by the Owner thereof in a neat and orderly condition and in a manner to enhance its appearance.

Section 23. Garbage Disposals. All residences shall be equipped with garbage disposals and said disposals shall be kept in good working order at all times.

Section 24. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community and the decision of the Architectural Control Committee that any such matter is not harmonious shall be final.

Section 25. Right of Inspection. During reasonable hours and after reasonable notice, the Association shall have the right to enter upon and inspect the property or any portion thereof and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reasons thereof.

Section 26. New Construction. All buildings or structures on the Property shall be of new construction. All buildings or structures must be completed within six (6) months of start of construction.

## ARTICLE XII.

### General Provisions

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period

by an instrument signed by not less than seventy-five percent (75%) of the Owners, and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Owners. Any amendment must be recorded.

Section 4. Amendments by Declarant. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidence by the Declaration, and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

Section 5. Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any member or members will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association where copies may be purchased at reasonable cost.

Section 6. Annexation. Additional residential property and Common Properties may be annexed to the properties with the consent of two-thirds (2/3) of the combined

class membership, provided that such additional properties shall be subject to the provisions hereof and a maintenance assessment as provided herein.

ARTICLE XIII.

Reservation of Minerals

There is hereby excepted from the land encompassed by the boundaries of this Subdivision, and Declarant will hereafter except from all its sales and conveyances of said land, or any part thereof, including the Common Properties, all oil, gas and other minerals, provided that Declarant hereby retains and reserves and by each conveyance will retain and reserve the right to pool the land with other lands, together with the right to drill under and through the subsurface of the land for development of oil, gas and other minerals. Such exceptions and such retained rights and reservations shall inure to the benefit of Declarant and their heirs, executors, administrators, successors, and assigns.

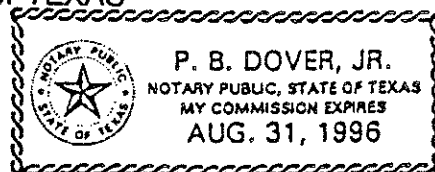
IN WITNESS WHEREOF, the undersigned, being the Declarant, has hereunto set its hand this 10 day of JULY, 1995.

Weldon Dean Lawther  
WELDON DEAN LAWATHER

SUBSCRIBED AND SWORN TO BEFORE ME this the 10 day of JULY, 1995.

P. B. Dover, Jr.  
Notary Public in and for the  
State of TEXAS

AFTER RECORDING,  
RETURN TO:



P. B. DOVER, JR.  
ATTORNEY AT LAW  
P.O. BOX 57  
DEER PARK, TX 77536

010-53-1001

FILED AND RECORDED

Official Public Records of Real Property

*Patricia Ritchie*

7-28-95 10:50 A BOWERS\_A \$81.00 9527872  
Patricia Ritchie - Co. Clerk  
Galveston Co. TX