



The State of Texas

Secretary of State

CERTIFICATE OF INCORPORATION

OF

PIRATES' COVE TOWNHOME COUNCIL II  
CHARTER NUMBER 01119665

THE UNDERSIGNED, AS SECRETARY OF STATE OF THE STATE OF TEXAS, HEREBY CERTIFIES THAT ARTICLES OF INCORPORATION FOR THE ABOVE CORPORATION, DULY SIGNED AND VERIFIED HAVE BEEN RECEIVED IN THIS OFFICE AND ARE FOUND TO CONFORM TO LAW.

ACCORDINGLY THE UNDERSIGNED, AS SUCH SECRETARY OF STATE, AND BY VIRTUE OF THE AUTHORITY VESTED IN THE SECRETARY BY LAW, HEREBY ISSUES THIS CERTIFICATE OF INCORPORATION AND ATTACHES HERETO A COPY OF THE ARTICLES OF INCORPORATION.

ISSUANCE OF THIS CERTIFICATE OF INCORPORATION DOES NOT AUTHORIZE THE USE OF A CORPORATE NAME IN THIS STATE IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER THE FEDERAL TRADEMARK ACT OF 1946, THE TEXAS TRADEMARK LAW, THE ASSUMED BUSINESS OR PROFESSIONAL NAME ACT OR THE COMMON LAW.

DATED JUNE 29, 1989



EXHIBIT B

*George S. Bayard Jr.*

Secretary of State

FILED  
In the Office of the  
Secretary of State of Texas

JUN 28 1988

Clerk I-D  
Corporations Section

ARTICLES OF INCORPORATION  
OF  
PIRATES' COVE TOWNHOME COUNCIL II

We, the undersigned natural persons of the age of eighteen (18) years or more, at least two (2) of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

NAME

The name of the corporation is PIRATES' COVE TOWNHOME COUNCIL II.

ARTICLE TWO

NONPROFIT CORPORATION

The corporation is a nonprofit corporation.

ARTICLE THREE

DURATION

The period of its duration is perpetual.

EXHIBIT B

ARTICLE FOUR

PURPOSES

The purposes for which the corporation is organized are:

(a) The primary purpose is to operate, maintain and manage a timeshare regime in Galveston, Texas, pursuant to the Texas Timeshare Act, Texas Property Code, §201 et.seq. (Vernon Supp. 1987) and the Declaration of Co-Ownership for Pirates' Cove Townhomes II filed in the County Clerk's office of Galveston County, Texas.

(b) The general provisions and powers are to have and exercise all rights and powers conferred on nonprofit corporations under the laws of Texas, or which may hereinafter be conferred, including the power to contract, rent, buy or sell personal or real property.

(c) To do all other acts necessary or expedient to the administration of the affairs and attainment of the purposes of this corporation.

(d) Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this corporation.

This corporation is organized pursuant to the Texas Non-Profit Corporation Act and does not contemplate pecuniary gain or profit to the members thereof and is organized for nonprofit purposes.

**EXHIBIT B**

ARTICLE FIVE

INITIAL REGISTERED AGENT AND OFFICE

The corporation's initial registered agent for service of process shall be Thomas P. Battle. The street address of the initial registered agent's office shall be: 2002 Timberloch Place, The Woodlands, Texas 77380.

ARTICLE SEVEN

BOARD OF DIRECTORS

The number of directors constituting the initial board of directors of the corporation is five, and the names and addresses of the persons who are to serve as the initial board of directors are:

Lanell Matlock  
2201 Timberloch Place  
The Woodlands, Texas 77380

J. Leonard Rogers  
2201 Timberloch Place  
The Woodlands, Texas 77380

Timothy Weems  
2201 Timberloch Place  
The Woodlands, Texas 77380

Dave Srader  
Route 1, Box 149B  
Galveston, Texas 77551

A. Karen West  
2002 Timberloch Place  
The Woodlands, Texas 77380

**EXHIBIT B**

ARTICLE EIGHT

INCORPORATORS

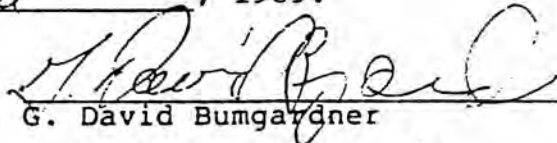
The name and street address of each incorporator is:

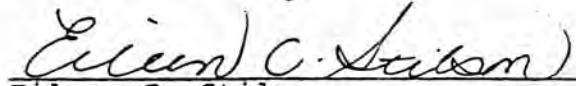
G. David Bumgardner  
2002 Timberloch Place  
The Woodlands, Texas 77380

Eileen C. Stilson  
2002 Timberloch Place  
The Woodlands, Texas 77380

A. Karen West  
2002 Timberloch Place  
The Woodlands, Texas 77380

IN WITNESS WHEREOF, we have hereunto set out hands,  
this 26<sup>th</sup> day of June, 1989.

  
G. David Bumgardner

  
Eileen C. Stilson

  
A. Karen West

EXHIBIT B

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

I, Nancy Stucky, a notary public, do hereby certify that on the 26<sup>th</sup> day of June, 1988, personally appeared G. David Bumgardner, Eileen C. Stilson and A. Karen West, who, each being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year written.



Nancy Stucky  
Notary Public - State of Texas  
Printed Name: Nancy Stucky  
My Commission Expires: 5-19-90

AKW/sp/2BAIPCTII

EXHIBIT B

AMENDMENT TO BYLAWS  
PIRATES' COVE TOWNHOME ASSOCIATION

The Company's Bylaws are amended as follows:

That Article Three, Section 3.06, shall be amended to change the quorum of Members as follows:

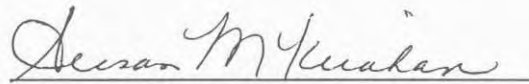
Section 3.06. Quorum. A quorum of Members for any meeting shall be constituted by Members represented in person or by proxy and holding at least ten percent (10%) of the votes entitled to be cast at such meeting. If a quorum is not present at any meeting, Members representing less than a majority of the votes present may adjourn the meeting from time to time without further notice.

That Article Four, Section 4.02, shall be amended to change the number, tenure and qualifications of the Board of Directors as follows:

Section 4.02. Number, Tenure and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of five (5) persons, each of whom shall be a Member of the Association in good standing including but not limited to being current on all maintenance fees; however, if an owner is a trustee of a trust, a director may be a beneficiary of such trust or if an owner is a corporation, a director may be an officer, partner or employee of such owner. If a director shall cease to meet such qualifications during a term, that director shall thereupon cease to be a director and his/her place on the Board shall be deemed vacant.

After effective date of this amendment, The Woodlands Corporation will appoint two (2) directors to serve until the next annual Members' meeting. At the first annual Members meeting after the effective date of this amendment, one (1) of the directors elected shall serve for a one (1) year term, two (2) of the directors elected shall serve for a two (2) year term, and the remaining two (2) directors shall serve for a three (3) year term. Thereafter, each director elected shall serve for a term of three (3) years or until the election of his successor, whichever occurs later, or until his death, incapacity, resignation, or removal.

I HEREBY CERTIFY that the foregoing is a true, complete and correct copy of Amendment to the Bylaws of Pirates' Cove Townhome Association, as amended and effective as of June 2, 1994.

  
Susan Mckirahan, Secretary



AMENDMENT TO BYLAWS  
PIRATES' COVE TOWNHOME ASSOCIATION


The Company's Bylaws are amended as follows:

That Article Three, Section 3.01, shall be amended to change the annual members' meeting language to read:

Section 3.01. Annual Meeting. The regular annual meeting of Members shall be held on such date and at such place and time as designated by the Board of Directors in written notice given to all Members at least ten (10) days prior to the date of such meeting.

I HEREBY CERTIFY that the foregoing is a true, complete and correct copy of Amendment to the Bylaws of Pirates' Cove Townhome Association, as amended and effective as of March 5, 1986.

Dated: March 6, 1986

  
G. David Bumgardner  
Secretary akw

AKW/csc/2HPIRATES

AMENDMENTS TO  
BYLAWS  
PIRATES' COVE TOWNHOME ASSOCIATION

The Company's Bylaws are amended as follows:

First, that the name of the Company be changed to Pirates' Cove Townhome Association;


Second, that wherever the words Lake Como Townhouse appear in the Bylaws it shall be amended to read Pirates' Cove Townhome;

Third, that Article Two, Section 2.02, shall be amended by adding the following provision:

"Provided, however, pursuant to Article II, Section 2.02 of the Declaration of Covenants, Conditions and Restrictions recorded under File Number 8406238 of the Real Property Records of Galveston County, Texas (the "Restrictions"), no member shall have voting rights on any matters relating to the organization or management of the affairs of the Company, including but not limited to election of directors, until seventy-five percent (75%) of the Townhouse Lots have been conveyed by the Developer, as defined in the Restrictions."

I HEREBY CERTIFY that the foregoing is a true, complete and correct copy of Amendments to the Bylaws of Pirates' Cove Townhome Association, as amended by a resolution of the shareholders of the Company and effective as of February 1, 1986.

Dated: February 15, 1986

  
G. David Bumgardner, Secretary

BY-LAWS

LAKE COMO TOWNHOUSE ASSOCIATION

ARTICLE ONE - OFFICES

Section 1.01. Principal Office. The principal office of the Association in the State of Texas shall be located in The Woodlands, Montgomery County. The Association may have such other offices, either within or without the State of Texas, as the Board of Directors may determine, or as the affairs of the Association may require from time to time.

Section 1.02. Registered Office and Registered Agent. The Association shall have and continuously maintain in the State of Texas a registered office and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the Association in the State of Texas, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE TWO - MEMBERSHIP

Section 2.01. Members. Every person or entity who is the record owner or owners or contract purchaser or purchasers of a Townhouse Lot in the Lake Como Townhouse development in Galveston County, Texas, is a Member of the Association.

Section 2.02. Voting Rights. Each Townhouse Lot in the Lake Como Townhouse development in Galveston County, Texas, represents, and is entitled to, one vote on all matters to be voted on by the Members. Each such vote shall be cast by the Member or Members who are the record owner or owners, or contract purchaser or purchasers, of a Townhouse Lot. When a Townhouse Lot is represented by more than one Member, the vote shall be cast by the Member or Members having a majority of the ownership interest in the Townhouse Lot. If the Member or Members having such a majority interest in a Townhouse Lot are not able to agree on any vote, then that vote shall be forfeited by the Member or Members involved, as fractional votes are expressly prohibited.

Section 2.03. Conveyance of Property. Termination of membership results only upon the conveyance of record ownership of a Townhouse Lot by a Member. Upon such conveyance, the membership status of the conveying Member shall cease and terminate.

Section 2.04. Resignation. A Member may resign by filing a written resignation with the Secretary of the Association. Such resignation shall not relieve the Member of the obligation to pay

any past, present, or future dues, assessments or other charges associated with ownership of a Townhouse Lot. Resignation shall not in any way prejudice the membership status of a subsequent purchaser of a Townhouse Lot from a Member who resigns.

Section 2.05. Reinstatement. Upon written request signed by a former Member and filed with the Secretary, the Board of Directors may, by the affirmative vote of two-thirds of the Board, reinstate such former Member on such terms as the Board of Directors may deem appropriate.

Section 2.06. Transfer of Membership. Membership in the Association is neither transferable nor assignable, other than by the conveyance of a Townhouse Lot.

### ARTICLE THREE - MEETINGS OF MEMBERS

Section 3.01. Annual Meeting. An Annual Meeting of the Members shall be held on April 15 in each year, beginning with the year 1985, at the hour of 10:00 o'clock, A.M., for the purpose of electing Directors and for the transaction of other business as may come before the meeting. If the day fixed for the Annual Meeting shall be on a legal holiday, such meeting shall be held on the next succeeding business day. If the election of Directors shall not be held on the day designated herein for the Annual Meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Members as soon thereafter as possible.

Section 3.02. Special Meetings. Special meetings of the Members may be called at any time for any purpose by the Board of Directors, by the President of the Association, or by Members representing at least ten percent (10%) of the total number of votes entitled to be cast by Members at the meeting. If all of the Members shall meet at any time and place, either within or without the State of Texas, and consent to the holding of a special meeting, such meeting shall be valid without call or notice, and at such meeting, any action may be taken.

Section 3.03. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Texas, as the place for holding the Annual Meeting or for special meeting called by the Board of Directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Association in the State of Texas.

Section 3.04. Notice of Meeting. Written notice stating the place, day, and hour of a meeting of Members shall be delivered to each Member not less than thirty (30) nor more than sixty (60) days before the date of such meeting, by or at the direction of the Secretary of the Association, or the persons calling the meeting. In case of a special meeting, or when required by law

or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the Association, with postage prepaid.

Section 3.05. Action Without a Meeting. Any action required to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Members representing all the votes entitled to be cast on the subject matter thereof.

Section 3.06. Quorum. The Members representing at least a majority of the votes entitled to be cast at any meeting shall constitute a quorum for such meeting. If a quorum is not present at any meeting, Members representing less than a majority of the votes present may adjourn the meeting from time to time without further notice.

#### ARTICLE FOUR - BOARD OF DIRECTORS

Section 4.01. General Powers. The affairs of the Association shall be managed by its Board of Directors.

Section 4.02. Number, Tenure, and Qualifications. The number of Directors shall be three (3). Each Director shall hold office until the next Annual Meeting of Members after election or until a successor is duly elected and qualified. No Director need be a Member of the Association. There shall be no qualifications for Directors.

Section 4.03. Regular Meetings. An Annual Meeting of the Board of Directors shall be held without other notice than this by-law, immediately after, and at the same place as, the Annual Meeting of Members. The Board of Directors may designate the time and place, either within or without the State of Texas, for the holding of additional regular meetings without other notice than such designation.

Section 4.04. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any time and place, either within or without the State of Texas, for holding any such special meetings called by them.

Section 4.05. Notice of Meeting. Written notice stating the place, day, and hour of a special meeting of the Board of Directors shall be delivered to each Director at least two (2) days before the date of the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States

mail with postage prepaid. If notice is given by telegram, the notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-Laws.

Section 4.06. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting. If less than a majority of the Directors are present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 4.07. Manner of Acting. The act of a majority of Directors present at a meeting at which a quorum is present shall be an act of the Board of Directors, unless the act of a greater number is required by law or by these By-Laws.

Section 4.08. Vacancies. Any vacancy occurring in the Board of Directors for any reason may be filled by an act of the Board of Directors or by a special election by the Members in the manner set forth in Section 3.01 of these By-Laws. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 4.09. Compensation. Directors, as such, shall not receive any stated salaries for their services, but, by an act of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting. Nothing contained in this Section shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 4.10. Action by Without a Meeting. Any action required by law to be taken at a meeting of Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of the Directors.

#### ARTICLE FIVE - OFFICERS

Section 5.01. Officers Enumerated. The officers of the Association shall be the President, one or more vice presidents, the Secretary, the Treasurer, and such other officers as may be determined in accordance with the provisions of this Article. The Board of Directors may appoint such other officers, including, but not limited to, additional vice presidents, one or more

assistant secretaries and one or more assistant treasurers. Such officers shall have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary. No officer need be a Member of the Association.

Section 5.02. Selection and Term of Office. The officers of the Association shall be selected annually by an act of the Board of Directors at the Annual Meeting of the Board of Directors. If the selection of officers shall not be held at such meeting, the selection shall be held as soon thereafter as possible. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and qualified.

Section 5.03. Removal. Any officer may be removed by an act of the Board of Directors whenever in its judgment the best interests of the Association would be served thereby. Such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. Vacancies. A vacancy in any office because of death, resignation, disqualification or otherwise, may be filled by an act of the Board of Directors for the unexpired portion of the term.

Section 5.05. President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of Members and the Board of Directors. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors authorizes to be executed, except where the signing and execution thereof shall be expressly delegated by the Board of Directors or these By-Laws or by law to some other officer or agent of the Association. In general, the President shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5.06. Vice President. In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one vice president, the vice presidents in order of their appointment) shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as from time to time may be assigned by the President or Board of Directors.

Section 5.07. Treasurer. The Treasurer shall have charge

and custody of, and be responsible for, all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever; and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositaries as shall be selected in accordance with the provisions of Article Seven of these By-Laws. In general, the Treasurer shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to by the President or Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 5.08. Secretary. The Secretary shall keep the minutes of the meetings of the Members and of the Board of Directors in one or more books provided for that purpose; give all notices in accordance with the provisions of these By-Laws or as required by law; be custodian of the records and of the Seal of the Association, and affix the seal of the Association to all documents, the execution of which on behalf of the Association under its Seal is duly authorized in accordance with the provisions of these By-Laws; and keep a register of the mailing address of each Member which shall be furnished to the Secretary by each Member. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to by the President or Board of Directors.

Section 5.09. Assistant Treasurers and Assistant Secretaries. The assistant treasurers and assistant secretaries, in general, shall perform such duties as shall be assigned by the Treasurer or the Secretary, or by the President or Board of Directors. If required by the Board of Directors, the assistant treasurers shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

## ARTICLE SIX - COMMITTEES

Section 6.01. Committees of Directors. By act of the Board of Directors there may be created committees consisting of two (2) or more Directors. Such committees may have and exercise any power of the Board of Directors in the management of the affairs of the Association, as limited by the act of the Board of Directors creating the committee or by law or these By-Laws. The President of the Association shall appoint the Directors to serve on such committees. No committee shall have the authority of the Board of Directors to amend, alter, or repeal these By-Laws; to elect, appoint, or remove any member of any committee or any Director or officer of the Association; to amend the Articles of Incorporation; to adopt a plan of merger or a plan of consolidation with another corporation; to authorize the sale, lease,



exchange, or mortgage of all or substantially all of the property and assets of the Association; to authorize the voluntary dissolution of the association or revoke proceedings therefor; to adopt a plan for the distribution of the assets of the Association; to alter, to amend, or repeal any act of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed on it or a Director by law.

Section 6.02. Committees of Members. By act of the Board of Directors, there may be created committees consisting of three (3) or more Members of the Association. Such committees shall not have or exercise any power of the Board of Directors, but shall advise and consult with the Board of Directors on matters specified by the act of the Board of Directors creating the committee. The President shall appoint the Members to serve on such committees.

Section 6.03. Miscellaneous Provisions. Matters such as, but not limited to, the term of office of committee members, designation of chairman, filling of vacancies, a quorum for acting, and rules governing committee action shall be included in the act of the Board of Directors creating the committee.

## ARTICLE SEVEN - CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

Section 7.01. Contracts. The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances.

Section 7.02. Checks and Drafts. All checks, drafts, or other orders for the payment of money, notes, or other evidences or indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall, from time to time, be determined by the Board of Directors. In the absence of such determination, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a vice president of the Association.

Section 7.03. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 7.04. Gifts. The Board of Directors may accept on behalf of the association in such banks, trust companies, or other depositories as the Board of Directors may select.

ARTICLE EIGHT - BOOKS AND RECORDS

Section 8.01. The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Members, Board of Directors and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the Members. All books and records of the Association may be inspected by any Member or his agent or attorney for any proper purpose at any reasonable time.

ARTICLE NINE - FISCAL YEAR

Section 9.01. Corporate Fiscal Year. The fiscal year of the Association, for all purposes except the levying and collecting of assessments, shall begin on the first day of February and end on the last day of January of each year.

Section 9.02. Assessments Fiscal Year. The fiscal year of the Association for the purpose of levying and collection assessments shall begin on the first day of July and end on the last day of June of each year.

ARTICLE TEN - DUES AND ASSESSMENTS

Section 10.01. Dues. There shall be no dues, fees, or other charges, as such, for membership in the Association.

Section 10.02. Assessments. The only charge made on Members shall be the assessments made and levied against the Townhouse Lots in accordance with the Declaration of Covenants, Conditions and Restrictions for Lake Como Townhouses at Pirates Beach, filed in Plat Record 17, Map Number 111 of the Plat Records of Galveston County, Texas, as such Declaration may be amended or otherwise changed from time to time.

ARTICLE ELEVEN - WAIVER OF NOTICE

Section 11.01. Whenever any notice is required to be given under the provisions of the Texas Non-Profit Corporation Act or under the provisions of the Articles of Incorporation or the By-Laws of the Association, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE TWELVE - AMENDMENTS TO BY-LAWS

Section 12.01. These By-Laws may be altered, amended, or repealed and new by-laws may be adopted by an act of the Board of Directors at any regular meeting or at any special meeting, if at least two days written notice is given of an intention to alter, amend, or repeal these by-laws or to adopt new by-laws at such meeting.

This instrument is being re-recorded to delete Pages 1 through 5 of the Subsidy Agreement.

005-74-2394

8811841

DECLARATION OF CO-OWNERSHIP  
FOR  
PIRATES' COVE TOWNHOMES

005-78-1129

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	Definitions	2
ARTICLE II	Description of Property	6
ARTICLE III	Description of Units	6
ARTICLE IV	Descriptions of Amenities	7
ARTICLE V	Percentage Interest in Timeshare Regime	7
ARTICLE VI	Percentage of Interest in Common Furnishings	7
ARTICLE VII	Annexation	8
ARTICLE VIII	Deannexation	9
ARTICLE IX	Pirates' Cove Townhome Council	10
ARTICLE X	Management, Maintenance and Repairs	10
ARTICLE XI	Use Rights and Restrictions	12
ARTICLE XII	Operation Fee and Personal Charges	14
ARTICLE XIII	Remedies for Non-Payment of Operation Fees	17
ARTICLE XIV	Insurance	18
ARTICLE XV	Third Party Liens	19
ARTICLE XVI	Pirates' Cove Townhome Association	20
ARTICLE XVII	Amendment	20
ARTICLE XVIII	Enforcement Provision	21
ARTICLE XIX	Miscellaneous Provisions	22

005-78-1130

005-74-2395

EXHIBIT A            Ground Plan  
EXHIBIT B1-B5        Floor Plan of Units  
EXHIBIT C            Percentage Interest in Common Furnishings  
                          and of Common Expenses  
EXHIBIT D            Subsidy Agreement  
EXHIBIT E            Use Period

005-74-2396

DECLARATION OF CO-OWNERSHIP  
FOR  
PIRATES' COVE TOWNHOMES

THE STATE OF TEXAS     S  
                              S  
COUNTY OF GALVESTON    S

KNOW ALL MEN BY THESE PRESENTS:

This Declaration of Co-Ownership for Pirates' Cove Townhomes, is made and executed on this \_\_\_\_\_ day of \_\_\_\_\_, 1988, by Mitchell/Southwest a Delaware corporation whose principal place of business is 2201 Timberloch Place, The Woodlands, Texas 77380.

W I T N E S S E T H

Whereas, Declarant is the owner of the following described real property together with all buildings, structures and improvements thereon and all appurtenances thereto situated in County of Galveston, State of Texas and being known as Pirates' Cove Townhomes, to wit:

Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 according to the map or plat thereof entitled Lake Como Townhouses at Pirates' Beach recorded in Plat Record 17, Map Number 111 of the Plat Records of Galveston County, Texas.

Declarant desires to submit the above-described lots, together with all buildings, structures and improvements and all rights and privileges belonging or in any wise pertaining thereto, to a Timeshare Regime pursuant to Texas Property Code, §201. et. seq. (Vernon Supp. 1987).

Now, Therefore, Declarant, as the owner of the real property hereinabove described for itself, its successors, grantees and assigns, does hereby submit the property to a Timeshare Regime and does hereby declare that the property shall be held, sold, conveyed, encumbered, rented, occupied and used subject to the covenants, conditions, reservations, restrictions and limitations contained herein or incorporated herein by reference. All such covenants, conditions, reservations, restrictions, and limitations shall run with the land and be binding upon and inure to

the benefit of Declarant, all Owners, and any other persons or entities having or acquiring any right, title, or interest therein. Declarant may, in its sole and absolute discretion, submit additional lots hereto in the manner set forth herein in Article VII herein, and may delete Lots from this Timeshare Regime by compliance with the provision of Article VIII herein.

In consideration of receiving and by acceptance of a warranty deed or of any other instrument of transfer, whether from Declarant, its successors or assigns, or from any Owner, each Owner for himself, his heirs, legal representatives, successors, assigns, or any other person or persons holding or occupying by, through, or under such Owner, and whether or not expressly stated therein, covenants, consents, and agrees to be bound by, observe, comply with, and perform the covenants, conditions, reservations, restrictions and limitations contained in this Declaration and in the Articles of Incorporation and Bylaws of Pirates' Cove Townhome Council, as each of the aforesaid documents may lawfully be amended and/or supplemented from time to time.

#### ARTICLE I DEFINITIONS

The terms used in this Declaration as well as the Bylaws of Pirates' Cove Townhome Council and all amendments and supplements thereof, shall have the meaning stated in the Act and as follows unless the context otherwise requires or otherwise expressly provides:

1.1. Act shall mean Texas Timeshare Act, Texas Property Code, §201 et. seq. (Vernon Supp. 1987).

1.2. Administered Property shall mean Common Furnishing and Units, excluding the exterior thereof which is to be maintained by the Association pursuant to the Restrictions.

Articles of Incorporation shall mean the Articles of Incorporation of the Council.

1.4. Association shall mean the Pirates' Cove Townhome Association, a Texas non-profit corporation.

1.5. Board or Board of Directors shall mean the Board of Directors of the Council.

1.6. Bylaws shall mean the bylaws of the Council.

1.7. Common Expenses shall mean and include all expenses incurred by the Council or its duly authorized agent(s) for the maintenance, repair, replacement, restoration, improvement, operation and administration of the Property, Common Furnishings and the operation and administration of the Council and shall include, but not be limited to, the Common Expenses described in Section 12.1 herein.

1.8. Common Furnishings shall mean all furniture, furnishings, fixtures and equipment or other personal property from time to time owned in common by all Owners as set forth on Exhibit C attached hereto including replacements.

1.9. Co-Ownership Estates shall mean an undivided one-fourth (1/4) fee simple ownership interest in a Lot and the right to use that estate and the amenities and appurtenances thereto for a specified Use Period.

1.10. Council shall mean Pirates' Cove Townhome Council a Texas non-profit corporation.

1.11. Declarant shall mean Mitchell/Southwest, its successors and assigns, provided such successor or assignee is designated in writing by Declarant as a successor or assign of the rights of Declarant set forth herein.

1.12. Declaration shall mean this instrument, by which the Timeshare Property is submitted to the provisions of the Act, as hereinafter provided, and including all amendments and Supplemental Declarations which may from time to time be executed and filed of record.

1.13. Director shall mean any person appointed or elected to the Board of Directors.

Exchange User shall mean any person who occupies a Unit pursuant to a reciprocal exchange program.

1.15. Galveston Country Club or Club shall mean the private club located in Galveston County, Texas, adjacent to the Property.

1.16. Lot shall mean each individual lot made a part of this Timeshare Regime pursuant to Section 2.1.

1.17. Lots shall mean collectively all lots made a part of this Timeshare Regime.

1.18. Maintenance Period(s) shall mean that period designated and shown on the chart of Use Periods in on Exhibit E as



the time during which maintenance for a particular Unit is performed.

1.19. Management Agreement shall mean the then-effective agreement between Council and the Manager which provides for the management of the Property.

1.20. Manager shall mean the person or entity, its successors and assigns, engaged by the Council to undertake the duties, responsibilities and obligations of managing the Property, pursuant to the then-effective Management Agreement.

1.21. Operation Fee(s) shall mean any amount which, from time to time, is levied by the Board of Directors of the Council upon the Owners. The following are the two (2) types of Operation Fees:

(a) Monthly Operation Fee shall mean a fee levied by the Board upon the Owners for their proportionate share of the Common Expenses of the Council; and

(b) Special Operation Fee shall mean a fee levied by the Board upon the Owners in the event that the Monthly Operation Fee is inadequate to meet the Common Expenses of the Council, or other extraordinary or unbudgeted items deemed reasonably necessary by the Board.

1.22. Owner shall mean or refer to the record Owner of any Co-Ownership Estate which is part of this Timeshare Regime, excluding those having such interest merely as security for performance of any obligation. Declarant shall be deemed an Owner for all purposes hereunder unless otherwise indicated.

1.23. Personal Charge(s) shall mean an amount levied by the Board against a particular Owner or Owners as set forth in Section 12.4.

Plat shall mean the map or plat entitled Lake Como Townhouses at Pirates Beach recorded in Plat Record 17, Map Number 111 of the Plat Records of Galveston County, Texas.

1.25. Property shall mean all Lots, Units and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any wise pertaining thereto.

1.26. Restrictions shall mean that certain Declaration of Covenants, Conditions and Restrictions recorded under County Clerk's File Number 0406238 in the Real Property Records of Galveston County, Texas, and any amendments thereto.

1.27. Rules and Regulations shall mean the Rules and Regulations adopted from time to time by the Manager and approved by the Board of Directors.

1.28. Supplemental Declaration shall mean an instrument recorded by the Declarant when adding additional Lots to this Timeshare Regime or deleting Lots previously submitted to this Timeshare Regime in the manner set forth in Articles VII and VIII herein.

1.29. Subsidy Agreement shall mean an agreement entered into between Declarant and the Council which shall be substantially the same as the agreement attached hereto as Exhibit D.

1.30. Timeshare Regime shall mean all Property submitted to a timeshare regime pursuant to the provisions of the Act and of this Declaration.

1.31. ~~Unit(s)~~ shall mean the ~~residential~~ building constructed on each Lot and shall include garage, storage area, balcony and/or patio. Each Unit will be identified by the number of the Lot on which it is constructed.

1.32. Unit Type shall mean collectively all of the following unit configurations:

(a) Unit Type A shall mean the units constructed on Lots 6, 7 and 9 as shown on Exhibit B-1.

(b) Unit Type B shall mean the units constructed on Lots 10, 11, 15, 17, 18, 19, 20, 21 and 22 as shown on Exhibit B-2.

(c) Unit Type C shall mean the units constructed on Lots 1, 2, 3, 4, 24, 25 and 26 as shown on Exhibit B-3.

(d) Unit Type D shall mean the units constructed on Lots 20, 29, 30, 31, 32, 33, 34, 35, 36 and 37 as shown on Exhibit B-4.

(e) Unit Type E shall mean the units constructed on Lot 5 as shown on Exhibit B-5.

1.33. Use Period shall mean that specific period of consecutive days during which an Owner is allowed to occupy the Lot as set forth in Exhibit E.

**ARTICLE II**  
**DESCRIPTION OF PROPERTY**

2.1. The Property initially consists of Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 as shown on the Plat together with all improvements located thereon. There shall be excluded from the Property any Lot deannexed from the Timeshare Regime pursuant to Article VIII herein; and there shall be included in the Property any Lot annexed to the Timeshare Regime pursuant to Article VII herein.

2.2. A ground plan indicating the location of each existing building is attached hereto as Exhibit A.

**ARTICLE III**  
**DESCRIPTION OF UNITS**

3.1. Units 6, 7 and 9 each consists of 1 bedroom, 1 bath, comprises approximately 802 square feet of interior space as more fully shown on Exhibit B-1 attached hereto and incorporated herein.

3.2. Units 10, 11, 15, 17, 18, 19, 20, 21 and 22 each consists of 2 bedrooms, 1 bath, comprises approximately 970 square feet of interior space as more fully shown on Exhibit B-2 attached hereto and incorporated herein.

3.3. Units 1, 2, 3, 4, 24, 25 and 26 each consists of 2 bedrooms, 1½ baths, comprises approximately 1161 square feet of interior space as more fully shown on Exhibit B-3 attached hereto and incorporated herein.

3.4. Units 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 each consists of 2 bedrooms, 1½ baths, comprises approximately 1174 square feet of interior space as more fully shown on Exhibit B-4 attached hereto and incorporated herein.

3.5. Unit 5 consists of 3 bedrooms, 2½ baths, comprises approximately 1535 square feet of interior space as more fully shown on Exhibit B-5 attached hereto and incorporated herein.

**ARTICLE IV**  
**DESCRIPTIONS OF AMENITIES**

4.1. There are no on-site amenities as of the date of this Declaration.

4.2. Pursuant to the Restrictions each Owner will be required to make application for membership and if accepted maintain a social membership in the Galveston Country Club which is adjacent to the Property and includes dining facilities, swimming pool and tennis courts. Galveston Country Club dues for a social membership will be paid as a part of the Operation Fee. Golf is also available to social members for an additional fee. **DECLARANT DOES NOT OWN THE CLUB AND CANNOT ASSURE ITS CONTINUED AVAILABILITY.**

4.3. A public marina is adjacent to the Property and may be used by Owners for a fee. Since the marina is open to use by the general public, their use of the facility may limit use of it by Owners.

**ARTICLE V**  
**PERCENTAGE INTEREST IN TIMESHARE REGIME**

5.1. The Declarant proposes to convey four (4) undivided fee simple interests in each Lot together with the exclusive right to occupy said Lot for a specific Use Period.

5.2. Each Co-Ownership Estate represents 25% or  $\frac{1}{4}$  of each Lot and .833% or  $\frac{1}{120}$  of the entire Timeshare Regime.

5.3. In the event additional Lots are annexed to the Timeshare Regime or deannexed from the Timeshare Regime, as the case may be, pursuant to Articles VII and VIII herein, the percentage part that each Co-Ownership Estate bears to the entire Timeshare Regime shall be reallocated, and Section 5.2 above shall be amended to reflect said reallocation.

**ARTICLE VI**  
**PERCENTAGE OF INTEREST IN COMMON FURNISHINGS**

6.1. Each Owner of a Co-Ownership Estate shall have an undivided percentage interest in the Common Furnishings as set forth in Exhibit C hereto and incorporated by reference. Each Owner shall have the exclusive right to use the Common Furnishings in his Unit during his Use Period. Declarant is obligated to furnish each Unit prior to the sale of the first Co-Ownership Estate in that Unit.

6.2. An Owner's percentage interest in the Common Furnishings appurtenant to a particular Unit Type will change in the event Lots are annexed or deannexed from the Declaration. If Lots are annexed or deannexed, the interest in the Common Furnishings shall be reallocated to the remaining Owners in the same manner as the allocation of interests were originally calculated, and the Supplemental Declaration shall amend Exhibit C to state the new percentage of interest each Owner will have in the Common Furnishings. Upon deannexation of a Lot, Owners shall relinquish all right, title and interest in and to the Common Furnishings located within the Unit located on said Lot.

6.3. In the event of any damage or destruction to the Common Furnishings other than by ordinary wear and tear, the Board shall promptly cause such damage to be repaired and shall use any available insurance proceeds for such purpose. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, the Board shall levy a Special Operation Fee upon each of the Owners. In the event the damage or destruction was caused by the intentional or negligent act or omission of an Owner, a member of his family, his guests, tenants, invitees, or licensees, then the cost of such repair or the amount of such deficiency shall be a Personal Charge to such Owner, to be paid in the manner provided herein.

#### ARTICLE VII ANNEXATION

7.1. Declarant may in its sole and absolute discretion, annex additional lot(s) to the Timeshare Regime at any time or from time to time by filing a Supplemental Declaration in the County Clerk's Office of Galveston County, Texas.

7.2. Said Supplemental Declaration shall contain the following:

(a) A statement that the property is being added or annexed in accordance with the provisions of this Declaration and that the property being annexed shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of this Declaration;

(b) A statement that all of the provisions of this Declaration shall apply to the property being added or annexed with the same force and effect as if said lot were originally included herein as part of the original development;

(c) A statement that the property being added or annexed is submitted to the jurisdiction of the Council with

the same force and effect as if said property were originally included in this Declaration.

(d) An amendment to Section V changing the percentage part each Co-Ownership Estate bears to the entire Timeshare Regime.

(e) An amendment to Exhibit C reallocating the percentage interest each Owner has in the Common Furnishings.

7.3. Nothing in this Declaration shall be construed to represent or imply that Declarant, its successors or assigns, are under any obligation to add or annex additional property to this Timeshare Regime.

7.4. No property may be added or annexed to this Timeshare Regime by any person or entity other than the Declarant.

#### ARTICLE VIII DEANNEXATION

8.1. Any Lot subject to this Timeshare Regime and owned entirely by Declarant may be deannexed from the Timeshare Regime, provided Declarant shall execute a Supplemental Declaration setting forth the Lot number. Said Supplemental Declaration shall be filed in the County Clerk's Office, Galveston County, Texas.

8.2. Said Supplemental Declaration shall contain the following:

(a) A statement that the Lot is being deleted or deannexed in accordance with the provisions of this Declaration;

(b) An amendment to Section V changing the percentage each Co-Ownership Estate bears to the entire Timeshare Regime;

(c) An amendment to Exhibit C reallocating the percentage interest each Owner has in the Common Furnishings; and

8.3. Any attempted deannexation from this Timeshare Regime other than by Declarant shall be null and void.

ARTICLE IX  
PIRATES' COVE TOWNHOME COUNCIL

9.1. Declarant shall cause to be created a non-profit corporation under the Texas Non-Profit Corporation Act which shall be known as Pirates' Cove Townhome Council, for the purpose of administering the operation and maintenance of the Lots and providing the other functions herein delegated to the Council.

9.2. Each Owner shall be a member of the Council. An Owner's membership shall automatically terminate when he ceases to be an Owner as herein defined. Upon conveyance or transfer of an Owner's interest to a new owner the new owner shall simultaneously succeed to the former Owner's membership in the Council.

9.3. Each Owner shall be entitled to one vote per Co-Ownership Estate. If any Co-Ownership Estate is owned by more than one person, the voting rights of such Owners shall not be divided but shall be exercised as if the Owner consisted of only one person. The Board has the right to suspend an Owner's right to vote upon violation of the Bylaws, Rules and Regulations or with any obligation of Owners hereunder, including but not limited to failure to pay Operation Fees.

9.4. The Board of Directors of the Council shall be appointed or elected in accordance with the provisions of the Bylaws.

9.5. The Council may exercise any and all rights and powers granted to it by law, by its Articles of Incorporation, its Bylaws or this Declaration as amended or supplemented.

ARTICLE X  
MANAGEMENT, MAINTENANCE AND REPAIRS

10.1. Responsibility for the maintenance and repair of the Lots and the exterior of the Units located thereon as well as the Common Areas, as defined in the Restrictions, is vested in the Association pursuant to the provisions of the Restrictions.

10.2. Exclusive control and responsibility over the maintenance, repair, modification, replacement, restoration, alteration, operation and administration of all the Administered Property is vested in the Council. No Owner shall make any repairs, modifications, alterations, additions, redecorations, or replacements to any of the Administered Property without the prior written consent of the Council. Each Owner, during his Use

Period shall keep his Lot and Unit in a clean, sanitary and attractive condition, and shall be personally liable for any damage or destruction thereto caused by such Owner, the members of his family, his guests, tenants, invitees or licensees. The Council shall at all times maintain and keep the Administered Property in good condition and repair. The Council shall have complete discretion to determine the interior color scheme, the decor and the furnishings of each Unit, as well as the timing, extent and nature of all redecorations, repairs and replacements thereof.

10.3. The Council, acting through the Manager or such other person or persons as they shall designate, shall have an irrevocable right of access to each Unit, without liability for trespass, during reasonable hours, as may be necessary to perform and carry out their respective rights, duties and responsibilities as set forth herein, in the Bylaws, in the Rules and Regulations and in the Management Agreement, including but not limited to:

- (a) Making emergency repairs therein;
- (b) Abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity in such Unit;
- (c) Protecting the property rights and general welfare of the Owners; and
- (d) Any other purpose reasonably related to the Council and/or the Manager of their respective duties and responsibilities under this Declaration and the Bylaws.

Such right and authority to enter any Unit shall be exercised in such manner as to avoid any unreasonable or unnecessary interference with the possession, use and/or enjoyment of any Unit by any occupant thereof, and shall be preceded by reasonable notice to the occupant whenever the circumstances permit. No Owner may at any time change a lock on the entrance to any Unit. If an Owner changes any such lock, the Council may replace such lock and assess the cost thereof as a Personal Charge to the responsible Owner.

The Council shall reserve a period each year as the Maintenance Period for such Unit. The Council and its agents shall have free access to each Unit during its designated Maintenance Period for the purpose of effecting any necessary or appropriate maintenance, repairs, modifications, alterations, replacements and additions to such Unit and to the Common Furnishings therein.



ARTICLE XI  
USE RIGHTS AND RESTRICTIONS

11.1. Each Owner shall be designated as Owner A, B, C or D in the deed conveying a one-fourth interest in a Lot, and shall have the exclusive right to occupy and use said Lot, to use and enjoy the Common Furnishings and to exercise the rights appurtenant thereto and to authorize others so to do (including placing the Lot in a vacation exchange program) during the Use Period specified in Exhibit E attached hereto and incorporated herein.

11.2. No Owner shall occupy the Unit, or exercise any other rights of ownership in respect to the Lot during any other Owner's Use Period unless expressly so authorized by the Owner entitled to occupy the Lot during that Use Period.

11.3. Each Owner shall keep the Lot and all Common Furnishings in good condition and repair during his Use Period, vacate the Lot at expiration of his Use Period in accordance with Section 11.1 above, remove all persons and personal property excluding Common Furnishings therefrom, leave the Lot in good and sanitary condition and repair and otherwise comply with such reasonable checkin and checkout and other procedures as may from time to time be contained in the then-current Rules and Regulations.

11.4. Each Owner or Exchange User shall be liable for the uninsured cost and expense of any maintenance, repair, or replacement of the Units, of Common Furnishings, necessitated by his negligence or intentional act or omission. The negligent or intentional act or omission of an Owner's family members, guest, tenants, licensees or invitees (excluding Exchange Users) shall be deemed to be the act of the Owner, and such persons shall be held jointly and severally liable with such Owner. The Manager shall submit a bill to the responsible Owner or Exchange User for all amounts payable to the Council under this Section, which amounts shall be enforceable as a claim for money damages against an Exchange User and shall constitute a Personal Charge to an Owner secured by a lien against the Owner's Co-Ownership Estate. Any loss, damage or destruction to the extent not covered by insurance or recovered shall become a Common Expense.

Each Owner shall cause or permit any unlawful, improper, or offensive use of any Lot or Common Furnishing, nor shall any Owner permit any portion of the Lot to be used in any manner contrary to or not in accordance with the provisions of the Restrictions or this Declaration. Furthermore, no Owner shall cause or permit anything to be done or kept in a Unit which will increase the rate of any of the Council's insurance coverage, or which will obstruct or interfere with the rights of the Owners or

annoy them by unreasonable noises or otherwise, nor shall any Owner commit or permit any nuisance, objectionable or disruptive behavior or illegal acts in or about the Lot.

11.6. If any Owner fails to vacate the Unit at the conclusion of Use Period in accordance with the terms hereof, or any other rules or regulations as may be adopted by the Council, or otherwise uses or occupies the Unit during a Use Period assigned to another Owner, or prevents another Owner from using or occupying the Unit during such Owner's Use Period, the Owner in wrongful possession shall: (a) be subject to immediate removal, eviction and ejection from the Unit wrongfully occupied; (b) be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection of such Owner in wrongful possession, to the extent that such notice may be waived under law; (c) pay to the Owner entitled to use the Unit during such wrongful occupancy, as liquidated damages for the wrongful use of the Unit and the appropriation of such other Owner's use, a sum equal to two hundred percent (200%) of the fair rental value per day of the Unit that is wrongfully occupied for each day or portion thereof, including the day of surrender, during which the Owner in wrongful possession occupies the Unit; (d) reimburse the Owner entitled to use the Unit during the wrongful occupancy of the Unit, for all costs and expenses, including but not limited to, court costs and reasonable attorneys' fees, incurred in connection with the ruling, evicting or ejecting of the Owner in wrongful possession of the Unit; and (e) until all aforementioned sums are paid, the Owner in wrongful possession shall be denied the use of his Lot.

11.7. Declarant, for itself and its successors, assigns, agents, employees, contractors, subcontractors and other authorized personnel, reserves, for an exclusive easement in, over and through the Lots and the common areas for the purposes of: (a) marketing and selling the Lots; (b) maintaining customer relations and providing post-sales service to Owners; (c) displaying signs and erecting, maintaining and operating, for sales and administrative purposes, model Units and a customer relations, customer service and sales office complex on the Property; and (d) showing the Units and common area to prospective purchasers; provided, however, that use of such easement shall not interfere with or diminish the rights of Owners to use and enjoy the premises in accordance with this Declaration.

ARTICLE XII  
OPERATION FEE AND PERSONAL CHARGES

12.1. Each Owner, including Declarant subject to the provision of Section 12.3 below, shall be required to pay an Operation Fee for each Co-Ownership Estate owned. The Monthly Operation Fee shall be levied by the Council, through the Board of Directors, to meet Common Expenses; provided however, until three (3) years following the date of this Declaration, the Board shall not adopt a budget requiring an increase in the Monthly Operation Fee in an amount exceeding the percentage increase in the Houston, Texas Consumer Price Index for all Urban consumers (as defined by the U.S. Department of Labor, Bureau of Labor Statistics) for the previous year unless such budget is approved by a majority of the Owners. The liability for payment of the Common Expenses will be apportioned among Owners according to the Unit Type owned as set forth on Exhibit C attached hereto and incorporated herein by reference. The total expenses applicable to a Unit Type will be set forth in the annual budget which is approved by the Board of Directors. The Common Expenses shall include, but shall not be limited to, the costs of the following items:

- (a) Taxes and any other fees or assessments levied against the Council by a governmental authority;
- (b) The maintenance, repair, modification, alteration and redecoration of the Units;
- (c) The maintenance, repair, modification, alteration, and redecoration of the Common Furnishings;
- (d) Utility charges;
- (e) Basic telephone service;
- (f) Cable television service;
- (g) Insurance coverage, as provided for herein;
- (h) Domestic services, including cleaning and maid service, the frequency of which is to be determined by the Board or the Manager, furnished to or on behalf of the Owners;
- (i) The purchase, repair and replacement of any furniture, fixtures and equipment which may be owned or leased by the Council;

- (j) Galveston Country Club dues for social membership;
- (k) Assessments owed to the Association pursuant to the Restrictions;
- (l) Administrative costs;
- (m) Reserves for the replacement, repair and acquisition of Common Furnishings;
- (n) Management fees;
- (o) Legal and accounting fees; and
- (p) Any other costs incurred by the Council in connection with the maintenance, repair, replacement, restoration, redecoration, improvement, operation and administration of the Property, and in connection with the operation and administration of the Council.

The Monthly Operation Fee shall be due and payable by an Owner on or before the 1st day of each month unless and until the Board of Directors at its sole discretion institutes a different payment schedule by providing written notice thereof to each Owner.

12.2. In the event that the Monthly Operation Fee collected from the Owner are at any time inadequate to meet the costs and expenses incurred by or imposed upon the Council for any reason, including but not limited to (i) the non-payment by any Owner of any Operation Fee or Personal Charge, (ii) a judgment has been filed against the Council, or (iii) there are other extraordinary or unbudgeted items deemed reasonably necessary by the Board, the Board shall immediately determine the approximate amount of such inadequacy, prepare a supplemental budget and levy a Special Operation Fee upon each Owner in such amounts as the Board determines to be necessary in order to pay the Council's costs and expenses. Such Special Operation Fee shall be allocated to the Owners according to the Unit Type and percentage interest owned as set forth on Exhibit C. Any Special Operation Fee shall be payable within thirty (30) days after the date upon which notice of such Special Operation Fee is mailed to the Owner, unless the Board determines that installment payments shall be permitted and provides each Owner with an approved payment schedule, in which case each Owner's payments must be made no later than is specified in such payment schedule. In the event that the Board authorizes the payment of any Special Operation Fee in installments, no notice of the due date of each

individual installment payment shall be required to be given, other than the aforesaid Special Operation Fee notice.

12.3. Notwithstanding any provision to the contrary contained herein, Declarant shall not be required to pay to the Council any Operation Fee attributable to any Co-Ownership Estate of which it is deemed the Owner during any period of time in which Declarant has entered into and is not in breach of a Subsidy Agreement with the Council in a form substantially the same as the Subsidy Agreement attached hereto as Exhibit D.

12.4. Each Owner shall be responsible for paying to the Council all Personal Charges which are any expenses incurred as a result of the act or omission to act of that Owner during his Use Period or at any other time or of any other persons occupying such Owner's Unit during his Use Period (except an Exchange User), including but not limited to the cost of:

- (a) Long distance telephone charges;
- (b) Additional cleaning and maid services as reasonably may be requested by an Owner;
- (c) Any expenses arising from an intentional or negligent act or omission of an Owner, a member of his family, his guests, tenants, invitees or licensees (to the extent not covered by insurance) or resulting from his or their breach of any of the provisions of this Declaration; and
- (d) Any reasonable late fees, attorneys' fees and other amounts which are incurred by the Council to collect any Operation Fees or Personal Charges.

Personal Charges from an Owner shall be due and payable within thirty (30) days from the date upon which a notice of such Personal Charges is mailed to the responsible Owner.

Owner may exempt himself, his successors or assigns, from his obligation to pay any Operation Fee by his waiver of the use and enjoyment of his Lot or of the Common Furnishings, by his failure to occupy the Unit during his assigned Use Period or by the abandonment of his Co-Ownership Estate.

12.6. In the event that the Board determines at any time during the Council's fiscal year that the aggregate amount of

005-78-1147.

005-74-2412

Operation Fees is, or will be, in excess of the amounts needed to meet the Common Expenses such excess amount shall appear as a line item on the Council's budget for the immediately succeeding fiscal year, and shall be applied to reduce the amount assessed to meet the Common Expenses, as appropriate, for such fiscal year. Any such excess shall not relieve any Owner from his obligation to pay any delinquent amounts which he owes the Council, nor shall any Owner be entitled to a refund of all or any portion of any Operation Fee previously paid on account of such excess.

12.7. Notwithstanding the foregoing provisions of this Declaration, the Board shall from time to time establish one or more reserves as are necessary for the operation and improvement of the Timeshare Regime by including amounts intended for such purpose in the Council's budget or by levying Special Operation Fees upon all of the Owners in such amount as the Board determines to be necessary and appropriate.

12.8. All Operation Fees or Personal Charges which are not paid when due shall be delinquent, shall be increased by a reasonable late charge as imposed by the Board, and shall bear interest from the date of delinquency at the highest rate allowable by law.

**ARTICLE XIII**  
**REMEDIES FOR NON-PAYMENT OF OPERATION FEES**

13.1. Each such Operation Fee, Personal Charge and any late fees, interest and costs of collection, including reasonable attorneys' fees, shall be a personal debt of the Owner against whom assessed. All such foregoing Operation Fees, Personal Charges and other related sums owed or incurred by Owner shall also be a charge on the land and shall be secured by a continuing lien on the Owner's interest in a Lot and his Co-Ownership Estate which lien shall be superior to all other liens and security interests except only for mortgages granted to secure purchase price by such Owner against his Co-Ownership Estate.

13.2. Such lien shall be in favor of the Council for the benefit of all Owners and may be enforced by the Council by all methods available for enforcement of such liens including foreclosure of such lien by an action brought in the name of the Council in a like manner as a mortgage or deed of trust lien on real property and such Owner hereby expressly grants to the Council 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. In any such lien foreclosure, the Owner

005-78-1148

005-74-2413

shall be required to pay to the Council its costs and expenses incurred by such foreclosure, including without limitation its attorney's fees. The Council, acting on behalf of the Owners, shall have the power to bid the interest of Owner at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Notwithstanding any provision hereof to the contrary, the Council shall also have the right to recover a money judgment against such defaulting Owner without foreclosing or waiving the lien securing such debt, all remedies of the Council being cumulative of each other.

**ARTICLE XIV**  
**INSURANCE**

14.1. The Council shall, at its sole cost and expense, keep all of the Units and the Common Furnishings, as well as any property of the Council, insured for the benefit of all Owners and the Council for the total amount, after application of deductibles, of the replacement value thereof against loss or damage by fire and lightning, and other perils included under a Standard Texas Fire and Extended policy form applicable for properties located in coastal areas. If such insurance includes a windstorm exclusion, the Council, to the extent obtainable, shall obtain coverage through the Texas Catastrophe Property Insurance Association, or other association or insurance company underwriting windstorm coverage on coastal properties. All property insurance shall include a waiver of subrogation in favor of Mitchell/Southwest and the Association.

14.2. The Council shall, at its sole cost and expense, procure and maintain, for the mutual benefit of the Council and all Owners, a general liability insurance policy against third party claims for personal injury, death or property damage arising in connection with the use, ownership or maintenance of the Units or the Common Furnishings. Such insurance shall afford protection to such limits as the Board may deem reasonable and appropriate and include in addition to Council and Owner, Mitchell/Southwest and the Association as named insured.

14.3. If reasonably available, in the judgment of the Council, the Council shall procure and maintain a policy of Directors' and Officers' liability insurance in such amount as the Board may decide.

14.4. The Council may also procure insurance against such additional risks as the Board deems advisable for the protection of the Owners and the Council. Owners may carry other insurance for their benefit, and at their expense, provided that liability

005-78-1149

005-74-2414

of the carriers issuing insurance obtained by the Council shall not be affected or diminished by reason of any such additional insurance carried by Owner.

14.5. All policies of insurance provided for in this article shall name the Council and each of the Owners, as insured, as their respective interest may appear. The policy or policies described in Section 14.1 shall inure to the benefit of the holder of any mortgage, as the interest of any such mortgagee may appear, by standard policy or policies described in Section 14.1, shall be adjusted with the insurance company or companies by the Council. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Declarant, the Council, the Board, or any Owner shall void such policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Each such policy issued by the insurer shall, to the extent reasonable obtainable, contain an agreement by the insurer that such policy shall not be cancelled without at least thirty (30) days' prior written notice to Declarant and Owner.

14.6. For so long as Declarant retains a legal or equitable interest in any Lot, the property may, at Declarant's election, be insured under such blanket insurance policies as may be available to Declarant from time to time, unless prohibited by law. The procurement of such coverage shall be deemed to constitute full compliance with the insurance requirements contained herein, provided that the coverage afforded the Council by the blanket insurance policy includes protection against each of the perils enumerated herein, with reasonable limits. The blanket insurance policy premium shall be allocated between the Council and Declarant.

#### ARTICLE XV THIRD PARTY LIENS

15.1. Any liens against an Owner's interest in a Lot shall be limited to the interest of such Owner in his Co-Ownership Estate only, and shall not entitle any lienholder to assert any claim against the interest or Co-Ownership Estate of any other Owner, the Common Furnishings or any property of the Council.

15.2. Each Owner shall furnish written notice to the Council of every lien upon his Co-Ownership Estate within seven (7) days after the Owner receives notice thereof.



005-78-1150

005-74-2415

**ARTICLE XVI**  
**PIRATES' COVE TOWNHOME ASSOCIATION**

16.1. This Declaration incorporates by reference and is made subject to the terms and conditions of the Restrictions.

16.2. The Restrictions provide for an annual assessment to be set by the board of directors of the Association to be assessed against each Lot, as well as for special assessments as determined by the board of directors of the Association. Each Owner, except Declarant, shall be deemed to have assumed and agreed to pay one-fourth ( $\frac{1}{4}$ ) of the assessment applicable to such Owner's Lot. The Board of Directors of the Council shall include the annual and any special assessment imposed by the board of directors of the Association upon the Owners as an item in the annual budget and shall be responsible for the payment of all such assessments upon collection of the Operation Fee from the Owners.

16.3. The Restrictions provide that there shall be one vote for each Lot. Each Owner hereby irrevocably appoints the Board of Directors of the Council as his Attorney In Fact in his name, place and stead for the purpose of voting his interest in the affairs of the Association.

16.4. The Association is an entirely separate organization apart from the Council. All Owners will be members of two (2) non-profit corporations (i) the Council and (ii) the Association.

**ARTICLE XVII**  
**AMENDMENT**

17.1. This Declaration may be amended or modified by vote three-fourths ( $\frac{3}{4}$ ) of all of the Owners of Co-Ownership Estates. Provided, however, that no such amendment may affect or alter the right of any Owner to occupy his Unit during his assigned Use Period unless such Owner shall expressly so consent; provided further that notwithstanding the foregoing so long as Declarant remains the Owner of one or more Co-Ownership Estates this Declaration shall not be amended so as to adversely affect the Declarant, including but not limited to increasing any obligation or decreasing any right of Declarant hereunder, without the Declarant's consent. Subject to the foregoing provision, any amendment shall be binding upon every Owner whether the burdens thereon are increased or decreased. It can also be amended by Declarant only, without vote of the other

005-78-1151

005-74-2416

Owners of Co-Ownership Estates, if so required by the Texas Real Estate Commission.

17.2. Any such amendments to this Declaration shall become effective upon the recording in the County Clerk's Office, Galveston County, Texas, of any instrument executed solely by Board of Directors or Declarant as the case may be. Amendments executed by Board of Directors must set forth a list of all Owners who voted for the amendment.

**ARTICLE XVIII**  
**ENFORCEMENT PROVISION**

18.1. In the event that any Owner should fail to comply with any of the provisions of this Declaration, the Declarant, the Council and/or any Owner may bring action for damages, to enjoin the violation, or specifically enforce the provisions of this Declaration. In any such legal proceeding, the prevailing party shall be entitled to costs and reasonable attorneys' fees. All sums payable hereunder by any Owner shall bear interest at the prime rate from the date due.

18.2. The remedies set forth herein shall be cumulative and in addition to all other remedies which may be available at law or in equity; provided, however, that no breach of any provision hereof by any Owner or by Declarant or failure of any Owner to comply with any provision hereof shall permit or empower any other Owner to terminate any such provision or excuse any such breach or failure, and each Owner shall continue to perform and comply with and hold his Co-Ownership Estate subject to all of the provisions of this Declaration notwithstanding any such breach or failure.

**ARTICLE XIX**  
**MISCELLANEOUS PROVISIONS**

19.1. Neither the Declaration nor any of the deeds conveying a Co-Ownership Estate shall be deemed to evidence a joint venture, partnership or any other similar arrangement, and no party shall have the right to participate in the individual profits, if any, of any other party arising out of the rental of the Unit.

19.2. The captions used in this Declaration and in any exhibits annexed thereto are inserted solely as a matter of

005-78-1152 005-74-2417

convenience and shall not be relied upon and/or used in construing the effect or meaning of the provisions thereof.

19.3. Whenever the context so requires, the use of any gender in the Declaration shall be deemed to include both genders, and the use of the singular shall be deemed to include the plural and the plural shall include the singular.

19.4. The provisions hereof shall be deemed to be independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

19.5. No restriction, condition, obligation or provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

19.6. This Declaration shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 11th day of March, 1988.

MITCHELL/SOUTHWEST

**PAID**

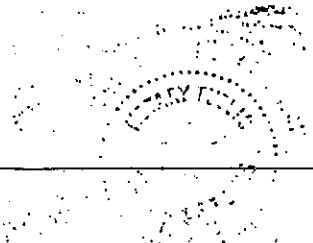
When Recorded Return To:  
The Woodlands Corporation  
Attn: Mary Rose / *Karen West*  
P. O. Box 4000  
The Woodlands, Texas 77380

By: *Timothy Weems*  
Name: Timothy Weems  
Title: Vice President

*aku*

THE STATE OF TEXAS    S  
                                  S  
CLERK            LVESTON    S

This instrument was acknowledged before me this 11th day of March, 1988, by Timothy Weems, Vice President, of Mitchell/Southwest, a Delaware corporation, on behalf of said corporation.



*Natalie F. Claunch*  
Printed Names: Natalie F. Claunch  
Notary Public, State of Texas  
My Commission Expires: 9-6-88

005-78-1153

# PIRATES' COVE TOWNHOMES

005-74-2418

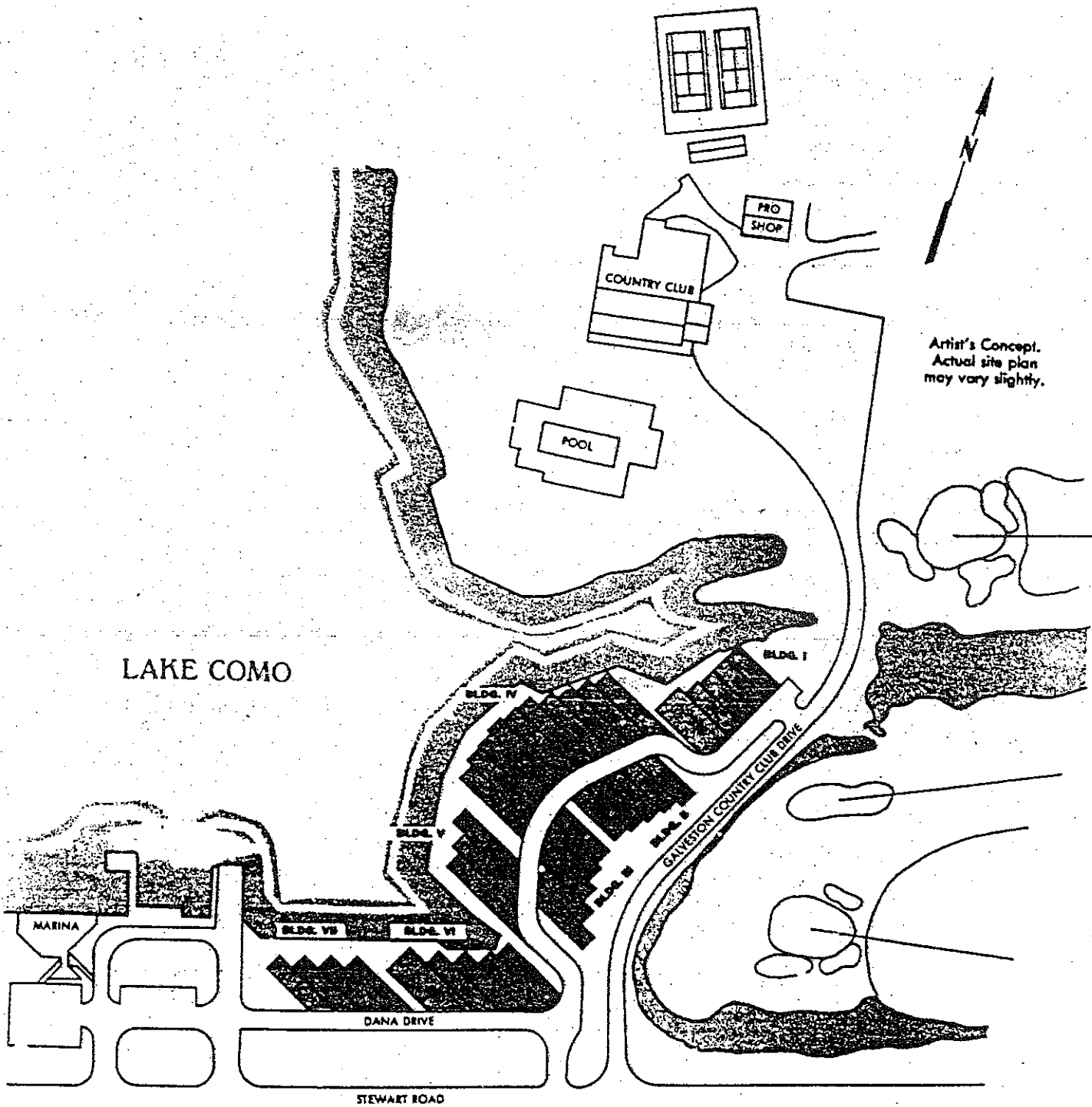
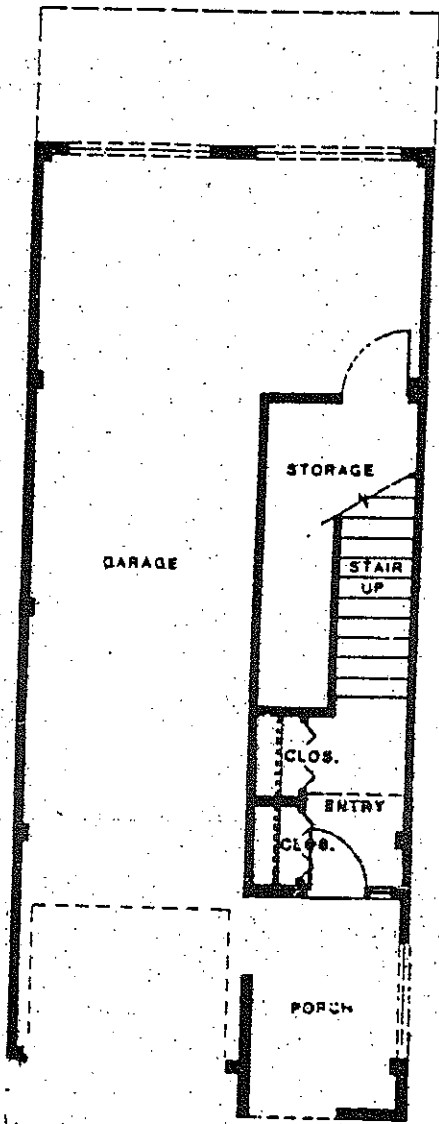


EXHIBIT "A"

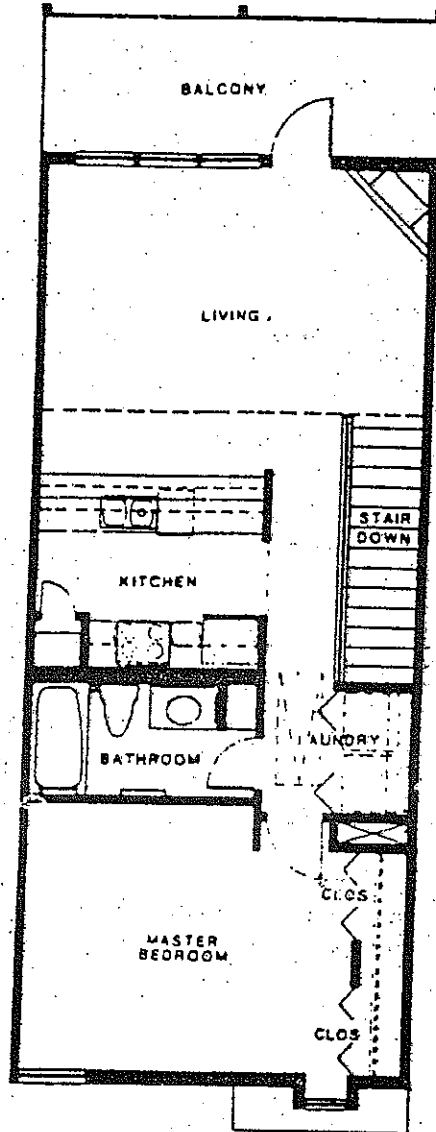
# PIRATES' COVE TOWNHOMES

005-76-1154

005-74-2419



LOWER LEVEL



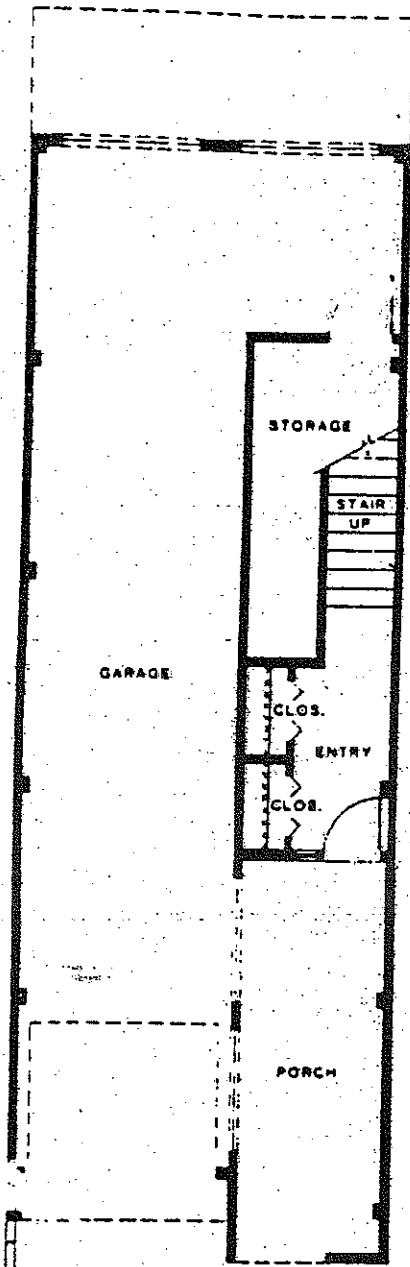
UPPER LEVEL

Unit Type A

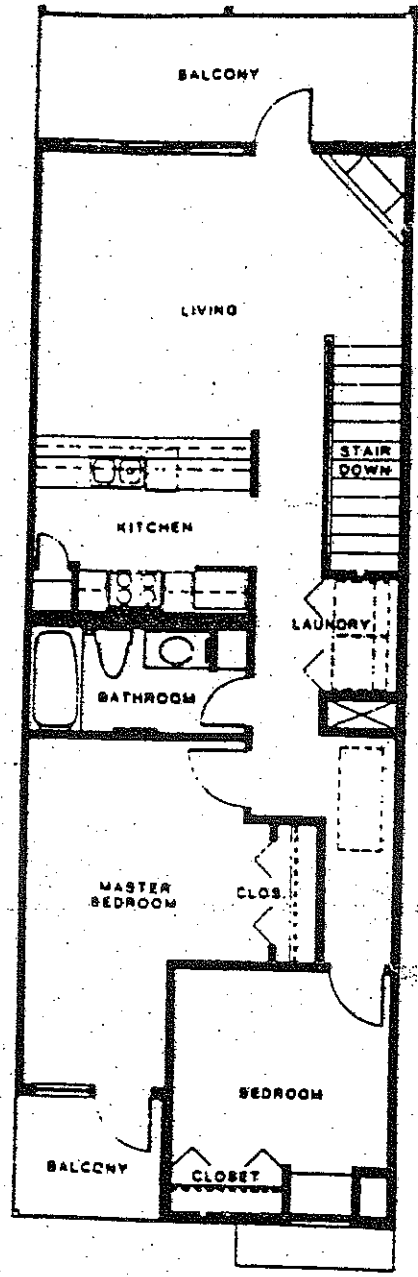
EXHIBIT "B-1"

# PIRATES' COVE TOWNHOMES

005-74-1153  
005-74-2420



LOWER LEVEL

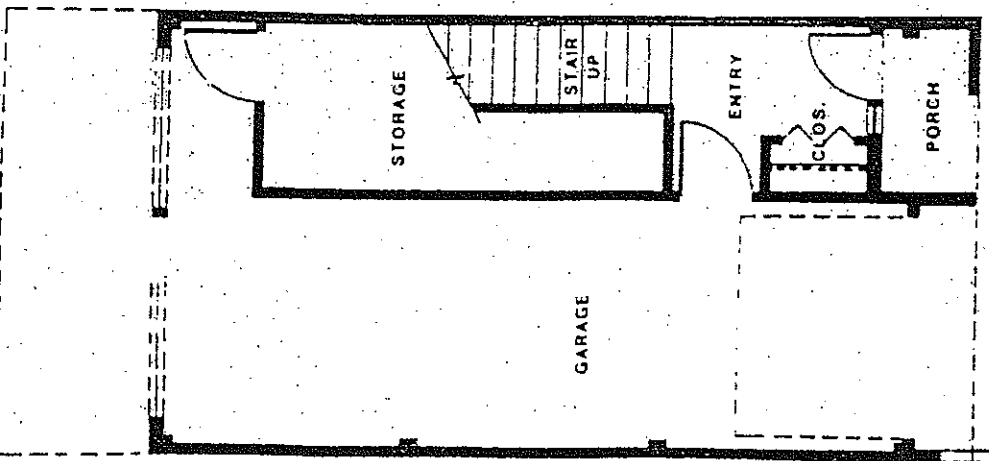
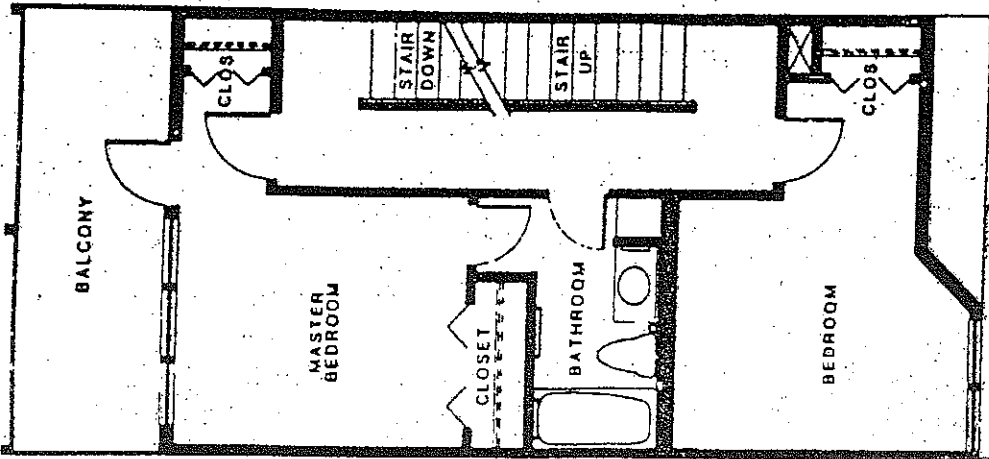
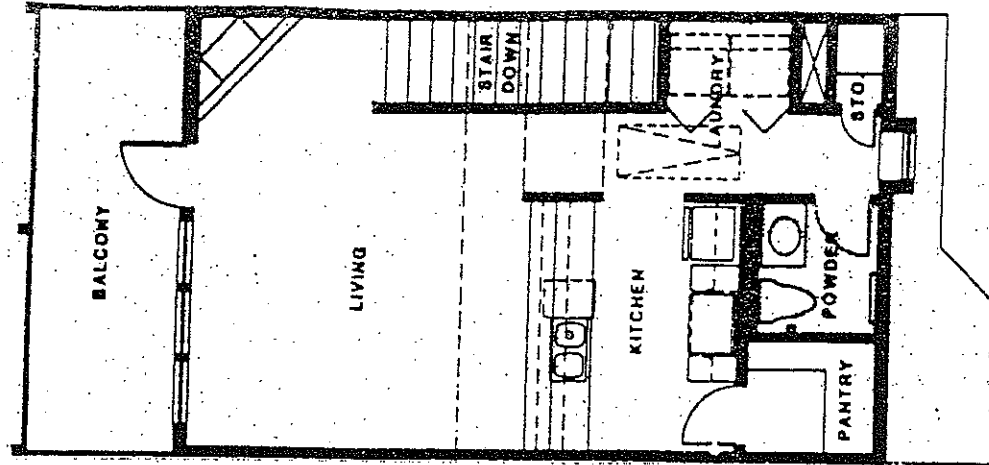


UPPER LEVEL

Unit Type B  
EXHIBIT "B-2"

# PIRATES' COVE TOWNHOMES

005-74-320

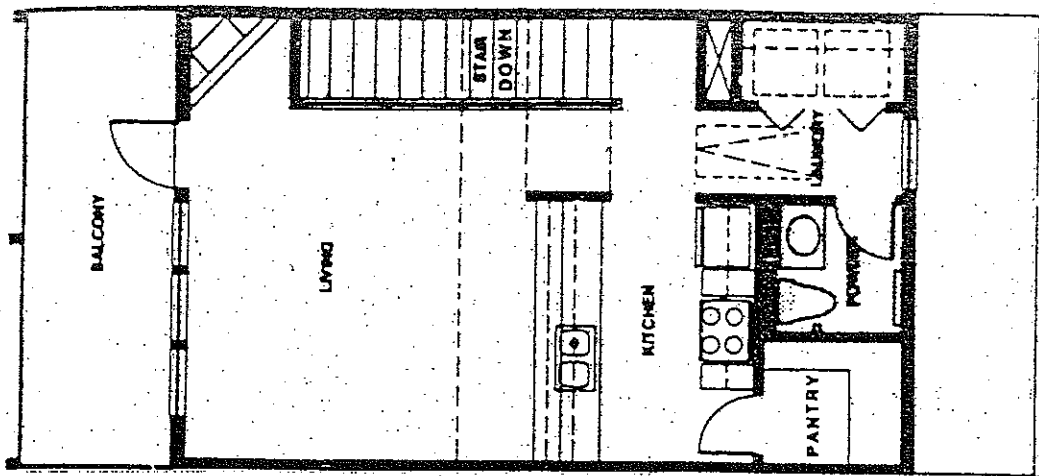


Unit Type C  
EXHIBIT "B-3"

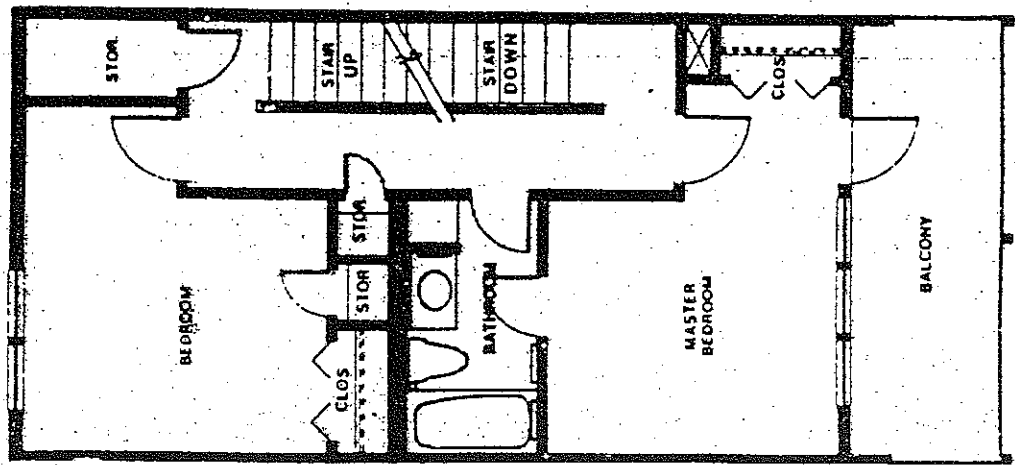
# PIRATES' COVE TOWNHOMES

005-74-2422

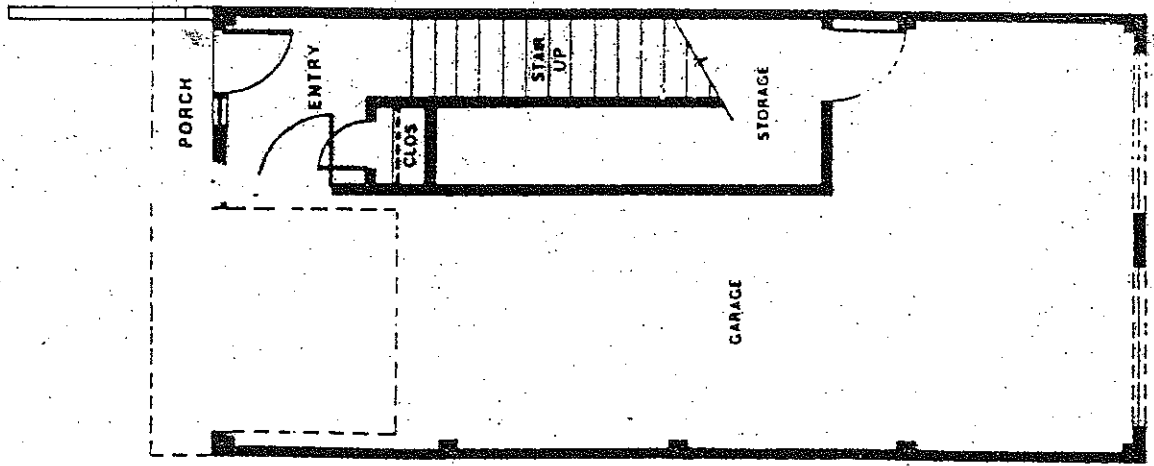
005-78-1157



UPPER LEVEL



MID LEVEL



LOWER LEVEL

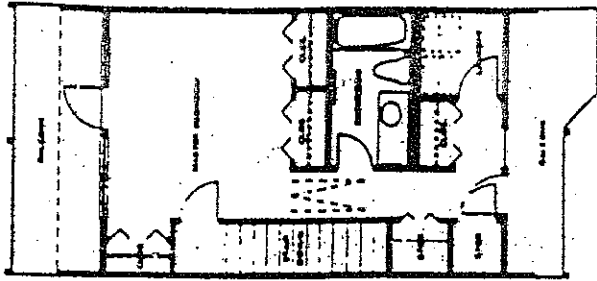
Unit Type D  
EXHIBIT "B-4"



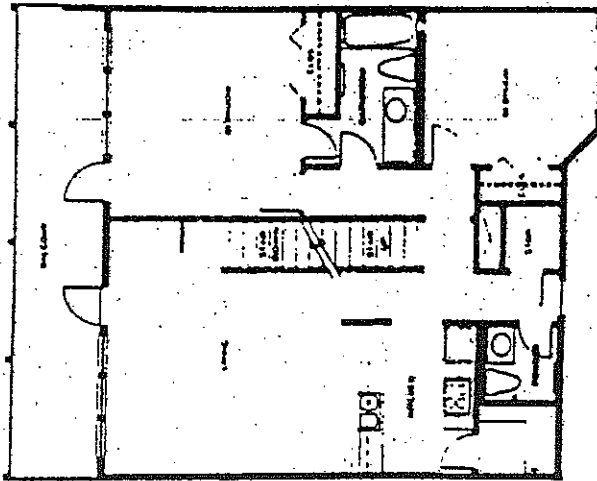
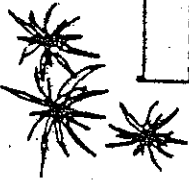
# PIRATES COVE TOWNHOMES

005-14-2423

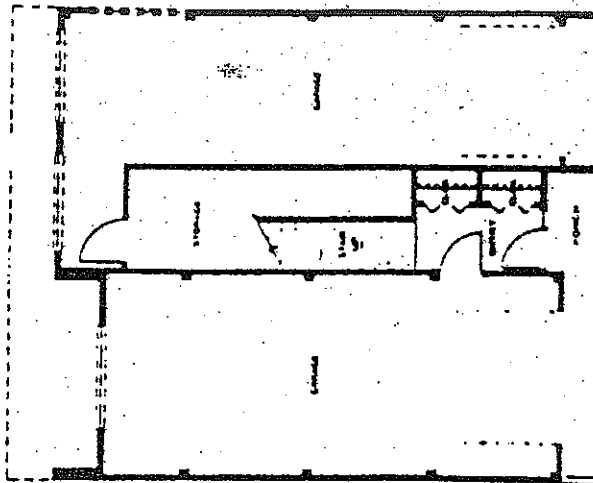
005-78-1158



UPPER LEVEL



MID LEVEL



LOWER LEVEL



Unit Type E  
EXHIBIT "B-5"

Exhibit "C"

005-74-2424

**Pirates Cove Townhome Council  
Percentage Interest in Common Furnishings and  
Common Expenses per Co-Ownership Estate**

005-78-1159

Unit Type A: 0.6162%  
Unit Type B: 0.7453%  
Unit Type C: 0.8920%  
Unit Type D: 0.9020%  
Unit Type E: 1.1797%

005-74-2425

005-78-1160

SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into this 11<sup>th</sup> day of March, 1988, by and between Mitchell/Southwest a Delaware corporation (the "Declarant") and PIRATES' COVE TOWNHOME COUNCIL, a Texas non-profit corporation (the "Council").

W I T N E S S E T H:

WHEREAS, Declarant is the owner in fee simple of certain real property and improvements which have been submitted to a Timeshare regime pursuant to that certain Declaration of Co-Ownership for Pirates' Cove Townhomes, recorded or to be recorded in the County Clerk's Office, Galveston County, Texas, and all amendments and supplements thereto (the "Declaration");

WHEREAS, pursuant to Section XII of the Declaration, each Owner, including Declarant, with respect to any Co-Ownership Estate of which it is deemed the Owner, is required to pay any Operation Fee which may from time to time be levied upon his Co-Ownership Estate;

WHEREAS in lieu of the payment of any the Monthly Operation Fees by Declarant which are attributable to any Co-Ownership Estate owned by Declarant, Section 12.3 of the Declaration entitles Declarant to enter into this Subsidy Agreement; and

WHEREAS by their execution hereof, Declarant and the Council intend to establish a method whereby Declarant will subsidize, in accordance with the terms hereof, certain specified amounts which arise in connection with the costs and expenses of operating and administering the Timeshare Regime.

WHEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

1. DEFINITIONS. Unless otherwise defined herein, the terms used in this Subsidy Agreement shall be defined as said terms are defined and used in the Declaration.

"Adjusted Common Expenses" shall mean the actual Common Expenses incurred or payable or paid less the amounts included in the Budget for the Common Furnishings Reserves.

"Adjusted Operation Fees" shall mean the Monthly Operation Fees provided for in each annual Budget assessed against and payable by each Co-Ownership Estate not owned by Declarant.

EXHIBIT D

"Budget" shall mean the annual Budget adopted by the Council.

"Common Furnishings Reserves" shall mean a reserve fund established to repair and replace the Common Furnishings on a timely basis.

"Declarant's Share of Common Furnishings Reserve" as to each Unit, shall mean that portion of the Common Furnishings Reserves applicable to each Co-Ownership Estate of such Unit owned by Declarant after Declarant has sold the first Co-Ownership Estate in such Unit.

"Deficiency" shall mean, for each calendar month for each year for which the Council has adopted a Budget, the amount, if any, by which the Adjusted Common Expenses exceed the Adjusted Operation Fees for that month.

2. ADOPTION OF ANNUAL BUDGET. Prior to the beginning of each year, the Council agrees to adopt for such year an annual Budget to cover all anticipated Common Expenses, including a Common Furnishings Reserve, and providing for a Monthly Operation Fee sufficient to pay all costs included in such annual Budget without a deficit in any month.

3. PAYMENT OF DEFICIENCIES. During each year in which the Council has adopted a Budget as provided for in paragraph 2 above, Declarant agrees to pay the following:

(a) On or before the tenth (10th) day of the following month, the Deficiency for the preceding month;

(b) On or before 30 days following the end of each fiscal year, the Declarant's Share of the Common Furnishings Reserves for the preceding year;

All Special Operation Fees levied by the Council against the Co-Ownership Estates owned by Declarant, as and when they become due.

4. REIMBURSEMENT TO DECLARANT. Notwithstanding anything to the contrary contained herein, Declarant shall never be required to pay to Council any amount over that amount which would otherwise have been payable by Declarant in the absence of this Subsidy Agreement. Within sixty (60) days following the end of any fiscal year of the Council during the term hereof, the Council shall reimburse Declarant for the amount, if any, by which the total of all subsidy payments made by Declarant during such fiscal year in accordance with the provisions hereof exceeds

the cumulative total of Monthly Operation Fees which would otherwise have been payable by Declarant for such fiscal year in the absence of this Subsidy Agreement. To the extent that the Council levies a Special Operation Fee against the Owners in order to provide the necessary funds for such reimbursement, Declarant shall be entitled to receive a credit against its proportionate share of such Special Operation Fee for any sums due to it.

5. EFFECT OF THIS SUBSIDY AGREEMENT UPON DECLARANT'S OBLIGATION TO PAY OPERATION FEES. Provided Declarant shall not be in default in the performance of any of its obligations hereunder, Declarant shall not be required to pay to the Council any Monthly Operation Fee attributable to any Co-Ownership Estate of which it is the Owner. In the event Declarant fails to perform any material obligation required to be performed by it hereunder, and should Declarant not cure any such failure within twenty (20) days from the date upon which it receives written notice of the alleged breach from the Council, then Declarant shall be in default hereunder, in which event: (a) the obligation of Declarant to pay Monthly Operation Fees attributable to those Co-Ownership Estates of which it is the Owner shall resume, as of the date of such default, and (b) in the event of the non-payment of Monthly Operation Fees, the Council shall be entitled to exercise each and all of the rights and remedies afforded it, pursuant to Article XIII of the Declaration; provided, however, that notwithstanding Declarant's failure to cure any default hereunder within the time period specified, Declarant shall have the right thereafter to cure such default, and upon so doing, Declarant may notify the Council of Declarant's future intention to comply with all of the terms and provisions of this Subsidy Agreement, in which case all of the rights, duties and obligations of Declarant and the Council hereunder shall continue unabated, and any Operation Fees theretofore paid by Declarant shall be applied to Declarant's future Subsidy Payments hereunder.

6. TERM. The term of this Subsidy Agreement shall commence on the Starting Date and shall expire on the earlier to occur of: (a) the date as of which title to ninety percent (90%) of all of the Co-Ownership Estates which have been authorized for sale pursuant to the Declaration have been conveyed by Declarant to third persons or entities; or (b) the date which is thirty (30) days following the date upon which Declarant elects, at its sole option, by written notice to the Council, to terminate this Subsidy Agreement.

7. EFFECT OF TERMINATION. When this Subsidy Agreement is terminated pursuant to paragraph 6 above, the Declarant shall be required to pay Monthly Operation Fees on Co-Ownership Estates owned by it.

005-78-1163

005-74-2428

8. MISCELLANEOUS.

(a) Notices. Any notice, request, demand, instruction or other information or document to be given hereunder shall be in writing and shall be deemed to have been duly given and effective when personally delivered or five (5) business days after being deposited in the United States mail as registered or certified mail, postage prepaid, return receipt requested or by overnight courier service and addressed as follows:

If to the Council:

PIRATES' COVE TOWNHOME COUNCIL  
2201 Timberloch Place  
The Woodlands, Texas 77380

If to the Declarant:

MITCHELL/SOUTHWEST  
2201 Timberloch Place  
The Woodlands, Texas 77380

In the event either of these addresses changes, the appropriate party is required to notify the other party in writing of such change.

(b) Waiver. No restriction, condition, obligation or provision contained herein shall be deemed to have been abrogated or waived by reason of any failure to enforce same, irrespective of the number of violations or breaches thereof which may occur.

(c) Entire Agreement. This agreement constitutes the entire agreement between the parties with respect to the subsidization program contemplated herein and replaces any prior negotiations, representations, agreements and understandings, both oral and written. Any modification to this agreement shall not be effective unless such modification is set forth in a written instrument which is signed by each of the parties hereto.

(d) Captions. The captions used in this Agreement are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of the provisions hereof.

(e) Survival of Agreement. This agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

005-78-1164

005-74-2429

(f) Severability. The provisions hereof shall be deemed to be independent and severable, and the invalidity or partial invalidity of any one provision shall not effect the validity or enforceability of any other provision hereof.

(g) Attorneys' Fees. In the event any controversy, claim or dispute between the parties hereto arising out of or relating to this agreement or the breach thereof results in arbitration or litigation, the prevailing party in such proceeding (s) shall be entitled to recover from the losing party, reasonable expenses, attorneys' fees and other costs.

(h) Governing Law This agreement is made and entered into in the State of Texas and shall be governed, interpreted and construed under the laws of the State of Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Subsidy Agreement as of the date first written above.

"DECLARANT"  
MITCHELL/SOUTHWEST

By: *Timothy Weems*  
Name: Timothy Weems  
Title: Vice President

"COUNCIL"  
PIRATES' COVE TOWNHOME COUNCIL

By: *J. L. Rogers*  
Name: J. L. Rogers  
Title: President

*okw*

005-78-1165

005-74-2430

EXHIBIT "E"

USE PERIODS: FOR YEARS 1988 TO 2047

1988, 2008, 2028,	1992, 2012, 2032,	1996, 2016, 2036,	2000, 2020, 2040,	2004, 2024, 2044
Owner A	Owner B	Owner C	Owner D	
Week	Week	Week	Week	
2*	3	4	1*	
5	7	9	11	
6	8	10	12	
13	15	17	19	
14	16	18	20	
21	23	25	27	
22	24	26	28	
29	31	33	35	
30	32	34	36	
37	39	41	43	
38	40	42	44	
45	47	49	51	
46	48	50	52	

1989, 2009, 2029,	1993, 2013, 2033,	1997, 2017, 2037,	2001, 2021, 2041,	2005, 2025, 2045
Owner A	Owner B	Owner C	Owner D	
Week	Week	Week	Week	
1*	2*	3	4	
11	5	7	9	
12	6	8	10	
19	13	15	17	
20	14	16	18	
27	21	23	25	
28	22	24	26	
35	29	31	33	
36	30	32	34	
43	37	39	41	
44	38	40	42	
51	45	47	49	
52	46	48	50	

1990, 2010, 2030,	1994, 2014, 2034,	1998, 2018, 2038,	2002, 2022, 2042,	2006, 2026, 2046
Owner A	Owner B	Owner C	Owner D	
Week	Week	Week	Week	
4	1*	2*	3	
9	11	5	7	
10	12	6	8	
17	19	13	15	
18		14	26	
25		21	23	
26	28	22	24	
33	35	29	31	
34	36	30	32	
41	43	37	39	
42	44	38	40	
49	51	45	47	
50	52	46	48	

1991, 2011, 2031,	1995, 2015, 2035,	1999, 2019, 2039,	2003, 2023, 2043,	2007, 2027, 2047
Owner A	Owner B	Owner C	Owner D	
Week	Week	Week	Week	
3	4	1*	2*	
7	9	11	5	
8	10	12	6	
15	17	19	13	
16	18	20	14	
23	25	27	21	
24	26	28	22	
31	33	35	29	
32	34	36	30	
39	41	43	37	
40	42	44	38	
47	49	51	45	
48	50	52	46	

\*Weeks 1 and 2 are extended maintenance periods - no occupancy rights



The schedule of assigned weeks shall automatically repeat at the end of each schedule. All of the weeks above shall start at five o'clock (5:00) P.M. on the Friday noted and shall end at eleven o'clock (11:00) A.M. on the following Friday. In each year where there is a fifty-third (53rd) Friday, the fifty-third (53rd) week shall become a part of the fifty-second (52nd) week and shall be considered a part of Week 52 which shall start at five o'clock (5:00) P.M. on the fifty-third (53rd) Friday and end at five o'clock (5:00) P.M. on the following Friday (which shall be the beginning of week number one (1) for that year).

(b) Intervening Maintenance Periods: The intervening Maintenance Periods shall begin at eleven o'clock (11:00) A.M. on Friday and end at five o'clock (5:00) P.M. on Friday. There shall not be an intervening Maintenance Period whenever the Use Periods both before and after such intervening Maintenance Period are owned by the same owner. In that event, the intervening Maintenance Period shall be treated as a part of the preceding Use Period.

(c) Extended Maintenance Periods: Two annual extended Maintenance Periods, the first of which shall begin on the first (1st) Friday in each year at eleven (11:00) A.M. and shall end at five o'clock (5:00) P.M. on the Friday of the following week, and the second of which shall begin the second (2nd) Friday in each year at five o'clock (5:00) P.M. and shall end at five o'clock (5:00) P.M. on the Friday of the following week. Necessarily, as these weeks rotate pursuant to the provisions set forth above, the Owner's occupancy rights for these specific weeks will be deemed waived in favor of the Declarant or Manager for purposes of the extended maintenance.

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

MAR 15 8 54 AM '88  
J. B. Kirkendall  
COUNTY CLERK  
GALVESTON COUNTY TX

MAR 15 1988

When Recorded Return To:  
The Woodlands Corporation  
Attn: *Karen West*  
P. O. Box 4000  
The Woodlands, Texas 77380 *pd*



*Jessie B. Kirkendall*  
COUNTY CLERK  
GALVESTON CO., TEXAS

576-

1849-15-210

005-78-1167

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

APR 6 1988



*Jessie B. Kirkendall*  
COUNTY CLERK  
GALVESTON CO., TEXAS

FILED FOR RECORD

APR 6 3 06 PM '88

*Jessie B. Kirkendall*  
COUNTY CLERK  
GALVESTON COUNTY TX.

The Woodlands, Texas 77380  
P. O. Box 4000  
Airtel: Mary Rose  
The Woodlands Corporation  
When Recorded Return To:

APR 12 8 21 AM '88